

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX

Public Employer

and

MIDDLESEX COUNTY COUNCIL NO. 7,
NEW JERSEY CIVIL SERVICE ASSOCIATION

Public Employee Representative

and

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO

Public Employee Representative

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Public Employee Representative

Docket Nos. RO-76

RO-77

RO-86

RO-87

DECISION AND CERTIFICATIONS OF REPRESENTATIVES

Pursuant to Consent Election Agreements secret ballot elections were conducted under supervision of the Executive Director on November 19 and 20, 1970 among the employees in the units described below. 1/ The tally of ballots in Docket No. RO-77 concerning employees of the County Youth House Center, which was served on the parties November 19, 1970 indicated that of approximately 40 eligible voters, one cast a ballot for Council No. 7, New Jersey Civil Service Association and 30 voted for the Communications Workers of America. There were no void or challenged ballots. The tally of ballots in Docket No. RO-76 covering office employees of the Juvenile and Domestic Relations Court and the District Court, which was served on the parties November 25, 1970, showed that of approximately 23 eligible voters, 14 voted for and six voted against the C.W.A. There were no void or challenged ballots. The tally of ballots in Docket No. RO-86 covering office employees of Middlesex County, which was served on the parties November 20, 1970, demonstrated that of approximately 320 voters, 88 voted for and 24 voted against Council No. 7, N.J.C.S.A. Again, there were no challenged or void ballots. Finally, the tally of ballots in Docket No. RO-87 involving employees of the Parks, Highway and Bridge, and Public Property Departments, which was served on the parties November 20, 1970, revealed that of approximately 414 eligible voters, three cast void ballots, and seven cast challenged ballots, 11 cast ballots for the C.W.A., 207 cast ballots

1/ There were four units. One unit (RO-77) was confined to employees of the County Youth House Center. The election in this unit was conducted on November 19, 1970. Eligible to vote were all girl supervisors, boy supervisors, senior supervisors, dietary employees and cooks, maintenance employees and clerical employees employed by Middlesex County Youth House excluding managerial executives, professional employees, crafts, police and supervisors within the meaning of the Act. Elections in the other three units were held on November 20, 1970. (continued on pg. 2)

for Council No. 7, 154 voted for American Federation of State, County and Municipal Employees, AFL- CIO, and nine voted against ~~against~~ participating employee representatives. Challenges were not determinative in any of the elections.

Objections to Conduct of Election and to Conduct Affecting Results of the Election were timely filed by A.F.S.C.M.E. on November 30, 1970. While the objecting party appeared on the ballot in only one of the voting units, no certifications have been issued for any of the units.

A.F.S.C.M.E. objects as follows and requests a hearing thereon:

1. At the polling place at the Administration Building three separate elections were conducted by the same Commission Agent at the same time, including the unit in this matter, for which the ballots were white, and two other units unrelated to this matter, (a) a clerical unit, for which the ballots were buff, and (b) a County Court unit, for which the ballots were blue.

When the polls were closed and the ballot boxes were opened and the ballots were counted, it was discovered there that were 20 blue ballots (meaning votes of the County Court unit) in excess of the eligibility list for that unit. This could only be so because voters were given the wrong colored ballots; hence, voters in our unit, instead of being given white ballots, must have been given some blue ballots erroneously, and therefore their votes were erroneously kept out. The number of blue ballots exceeding those who voted in the County Court unit was even greater than 20.

Because of the mix-up in giving eligible voters the wrong colored ballots at the Administration Building polling place it is quite probable that more than enough voters who should have received white ballots, were given blue ballots or even the buff ballots through error, and hence their vote was not correctly recorded in the proper unit, thereby defeating the entire purpose of the election. There was

1/ (continued) One of these units (RO-86) consisted of all office clerical employees employed by the County of Middlesex, excluding professional employees, managerial executives, confidential employees, craftsmen, police and supervisors within the meaning of the Act, and also excluding employees of the following: the Youth Center, court clerks under the jurisdiction of the County Clerk, Roosevelt Hospital, and clerical employees of District Court, Juvenile and Domestic Relations Courts. Another of these units (RO-76) included all office clerical employees of the Juvenile and Domestic Relations Court and District Court of Middlesex County, excluding professional employees, managerial executives, confidential employees, craftsmen, police and supervisors within the meaning of the Act. The third unit (RO-87) included all employees of the Parks, Highway and Bridge, and Public Property Departments employed by the County of Middlesex to and including road foreman level, highway and bridge inspectors and any employee carrying the title of "laborer" and excluding office clericals, managerial executives, professional employees, craftsmen, police and supervisors within the meaning of the Act.

only one ballot box used at the Administration Building place for the ballots cast by all three units - another obvious error in running the election.

The unit receiving the greatest number of votes received less than 50% plus 1 vote of the entire eligibility list for this entire unit. Hence, it must be conclusively presumed that this gross error vitiated the entire conduct and result of the election.

2. There were four polling places with one ballot box at each polling place, and after the polls were closed, these were all assembled at the Administration Building polling place, but the Commission Agent running the election did not show the unopened ballot boxes to the observers for the several units in order to verify that the seals had not been tampered with, but instead immediately started to rip open the ballot boxes so that there was no check on whether or not the seals had been tampered with enroute.

3. Michael Schlemmer, an observer for the Public Employer, was permitted by the Commission Agent to physically handle the ballot box and to carry it from the polling place to the Commission Agent's car and later from that car to the place of count in the Administration Building. This is an impermissible practice for anyone except a Commission Agent to handle a ballot box.

4. In the last week preceding the election some foremen told eligible voters that if any union got in as a result of the election, the foreman would have to send the workers home on rainy days, time clocks would be installed, and similar unfavorable practices initiated. This undoubtedly intimidated many eligible voters from voting for any union.

5. At the Thompson Park voting place the observer for the Public Employer and for the NJCSA set themselves up with private voting lists and even though the AFSCME representative protested to the Commission's Agent before the polls were opened, he nevertheless permitted them to continue their conduct during the entire voting period.

6. At the Thompson Park voting place CWA Representative Edward Schultz was allowed to pass out leaflets at the very door of the polling place throughout the polling period.

7. Because there were 4 polling places, it was agreed beforehand that since the unit included voters who worked on the highways, they might not find it convenient to vote at a specified location; therefore it would be valid for them to vote at any location convenient to the individual voters. The Commission split the eligibility list into 4 sections, one for each polling place, and many of the highway employees who tried to vote at a place not having their names on the particular fragment of the list were not even allowed to vote challenged ballots.

8. Emma Chalker, Recording Secretary of Middlesex Council No. 7 NJCSA, and ineligible and excluded from the white collar unit as a supervisor, was allowed to be present at two of the four polling places during polling hours (Administration Building and Thompson Park), called and informed all of the foremen that temporary (i.e. probationary) employees could not vote, and this information was passed along to such employees, deceiving them out of their right to vote. They were not excluded by the consent election agreement.

9. Foreman Burke of the night shift at the Administration Building informed the night shift workers that they could not vote after 3 P.M., whereas the polls were open until 4 P.M. and the night shift itself does not start until 3:30 P.M., thereby illegally restricting and deceiving some night shift workers of their right to vote, certainly until 3:30 P.M. on their own time, or even until 4 P.M. on the employer's time. 2/

On December 4, 1970 by letter, the Executive Director requested the objecting party to submit all evidence in support of the objections by the close of business on December 14, 1970. A sworn statement signed by a representative of Council #1, AFSCME and another AFSCME International Representative was received by the Commission on December 14, 1970. 3/

2/ The objections, though submitted by Counsel for AFSCME, were signed and sworn to by one of its International Representatives who was assigned to and worked during the campaign involved in the challenged election. He stated that the matters set forth in the objections were true to the best of his knowledge, information and belief, as some of these events were reported to him by his fellow workers and by employees in the bargaining unit while others he personally observed. It was not clear from review of the objections which events he observed and which were reported to him. Thus, it cannot be determined which objections are supported by hearsay and which are supported by direct evidence based upon personal knowledge of the declarant.

3/ The statement was confined to events allegedly occurring on November 20, 1970 at the Administration Building, Thompson Park (one of the polling places) and at the Middlesex County Court House (the place for tallying of ballots).

Affidavits have been submitted by all agents of the Commission who served as such at the election.

The gist of the first objection is that since 20 more ballots were cast in the court unit than there were eligible voters, these 20 votes "must have been" diverted from the blue-collar unit where they allegedly belonged. The background information recited in the objection is correct regarding the use of different colored ballots and the fact that the court unit produced 20 ballots in excess of the number of eligibles. That excess resulted because no separate list of eligibles in the court unit was produced for the Commission's use in the election. When certain clerical employees, carrying court-like job titles, appeared at the polls to vote, they were given the court unit blue ballot when in fact they should have been given a clerical unit ballot. When the true eligibles in the court unit presented themselves to vote, they were given the proper (blue) ballot but were challenged by the Commission because their names did not appear on any list. After the election, when the Employer produced the court unit eligibility list, all such challenges were resolved by the parties' agreement ^{4/} that they were eligible. These parties further agreed that the now resolved challenges would constitute the total complement of ballots in the court unit and that all other ballots were to be disregarded as void ballots. It was on this basis that the tally was compiled for the court unit. The results in the clerical unit were such that an additional 20 votes for any choice would not have changed the outcome.

AFSCME has submitted no evidence contrary to the above account nor has it submitted any evidence supporting its claim that "...voters in our unit, instead of being given white ballots, must have been given some blue ballots erroneously..." Furthermore, if all 20 ballots in question were to be tallied in favor of AFSCME, the outcome in the blue-collar unit would remain the same. In the absence of evidence that the complained of irregularity was in fact prejudicial to the interest of any party, the undersigned finds this aspect of the objection to be without merit.

This objection also notes the "obvious error" in the use of one ballot box for elections in three units. Why this usage is error is not made clear. Since each unit was assigned a different color ballot, the number of ballot boxes is of no consequence, and the mix-up in the distribution of ballots would not have been cured or prevented by use of separate boxes. Accordingly, this assertion is found to be without merit.

At the end of the first objection, AFSCME states that the fact that the leading vote-getter in the blue-collar unit failed to receive 50% plus one vote of the entire eligibility list compels the conclusion that the above-described situation requires that the election be set aside. It must be pointed out that Section 19:11-21 of the Commission's Rules and Regulations provides that the majority representative shall be determined by a majority of the valid ballots cast and not 50% plus one of the entire eligibility list. Therefore, this contention lacks merit and is hereby dismissed. For the foregoing reasons Objection No. 1 is overruled in its entirety.

^{4/} That is, the Employer and Council No. 7, CSA, the only parties involved in the court unit.

The second objection alleges that the Commission Agent who conducted the election did not show the unopened ballot boxes from the different polling places to the observers at the various units before opening the boxes in order to count the ballots. There is no suggestion either in the objection or in the evidence submitted in support of the objections that any ballot boxes had been tampered with in any way. Furthermore, affidavits from the three Commission Agents who were in charge of the three polling places away from the Administration Building (where the boxes were brought to count the ballots) assert that in each case an observer from AFSCME was present when each ballot box was sealed and that each signed the sealed ballot box. AFSCME observers or representatives led, followed, or accompanied the cars in which the ballot boxes were transported from the polling places to the Administration Building. These individuals went with the Commission Agents to the area where the ballots were counted. The election officer in charge of the election affirmed in a signed statement that the ballot boxes which were delivered to him by the Commission Agents were untampered with and had their seals intact. Absent any evidence or even suggestion that the seals might have been tampered with, it is not found that the election should be set aside. Accordingly, this objection is overruled.

The next objection indicates that Michael Schlemmer, who acted as an observer for the public employer, was permitted by a Commission Agent to carry the ballot box from the polling place to his car and again from his car to the Administration Building. As in the objection above, there is no evidence or even a suggestion that anything was done to the ballot box which would affect the results of the election. From the point of view of appearances, it would have been better if the Commission Agent had carried the ballot box himself. However, the fact that he didn't in the absence of evidence or an allegation that the box was tampered with is not found to warrant setting the election aside. This objection is overruled.

The fourth objection states that in the week preceding the election some foremen told eligible voters that if the union won, certain undesirable changes would take place. Allegedly, this intimidated eligible voters. The objection does not indicate the names of any foremen who engaged in such intimidation or does it indicate the names of any eligible voters so intimidated. There is no evidence in support of this allegation. Therefore, the objection is overruled.

Another objection is that at one polling place, observers of the public employer and one of the employee organizations kept a list of those who voted in spite of a protest from an AFSCME representative. There is no showing here or any charge that the results of the election were affected in any manner by this conduct.

The sixth objection alleges that CWA Representative Edward Schultz was permitted to pass out leaflets at the very door of the Thompson Park polling place throughout the polling period. There is no specific evidence in support of this allegation and the Commission Agent assigned to Thompson Park affirmed in his affidavit that he did not observe anyone distributing leaflets at or near the polling place any time during the polling period. Whether AFSCME'S international representative observed this behavior or whether it was reported to him is not clear from his statement of objections or is this clarified by the statement filed on December 14, 1970. Further this statement affirms that CWA Representative Joseph Clarkin distributed leaflets at least 25 feet from the polling place when voters began to arrive at the Administration Building at Thompson Park. Thus, there is a contradiction in the evidence submitted by AFSCME as to whether it was Schultz or Clarkin who engaged in the alleged activity. In any event the affidavit referred to above from the Commission Agent refutes the objector's contention. Accordingly, this objection is overruled.

The seventh objection says that many highway employees who tried to vote at a polling place where they were not scheduled to vote were not allowed to vote challenged ballots. In the evidence submitted in support of this objection, the only individual named is Al Ferrara. An examination of the voting list reveals that Mr. Ferrara's name is checked off the list and that, therefore, he did cast a ballot. Thus, this objection is overruled.

The eighth objection is that Emma Chalker of Council No. 7, a supervisor for the public employer, was permitted to be present at two of the four polling places and that she called and informed all foremen that temporary employees could not vote and that this information was passed along to eligible voters, thus deceiving them out of their right to vote. The affidavits from the Commission Agents stationed at the two places where Miss Chalker went stated that while she did appear on occasion at these polling places, she only briefly remained there. In the statement submitted in support of the objections, declarants state that a representative of AFSCME who acted as its observer at the Administration Building told them that Emma Chalker had sat in the voting area for at least a half hour. The representative, however, did not submit any affidavit. AFSCME submitted no evidence that any temporary employee was deceived out of his right to vote. Thus this objection is nothing more than an assertion supported by hearsay evidence of little probative value and therefore is overruled.

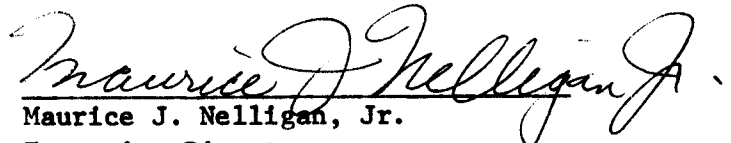
Finally, AFSCME objects that Foreman Burke of the night shift at the Administration Building informed night shift workers that they could not vote after 3:00 P.M. when the polls were open until 4:00 P.M. There is no evidence of any specific night shift worker having been deceived out of his right to vote as alleged in the objection. Furthermore, the Notices of Election which were to be posted by the Public Employer clearly indicated that the polls were to be open between 10:00 A.M. and 4:00 P.M. for employees in the blue-collar unit. Accordingly, this objection is overruled.

To warrant a hearing on its objections AFSCME must present evidence demonstrating the existence of substantial questions of fact, which, if resolved in its favor, would require the setting aside of the challenged election. 5/ Here, however, AFSCME has failed to raise such questions as it has not documented some of its objections and has elected to support others with hearsay evidence of doubtful probative value. Therefore, no hearing shall be conducted on these objections and the majority representative selected in all elections shall be certified.

CERTIFICATIONS OF REPRESENTATIVES

IT IS HEREBY CERTIFIED that the following organizations have been designated and selected by a majority of employees voting in the units described more fully in footnote 1 above, as their representatives for purpose of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act of 1968, the said organizations are the exclusive representatives of all the employees in such units for the purpose of collective negotiations with respect to terms and conditions of employment:

1. Docket No. RO-76: office employees of the Juvenile and Domestic Relations Court and the District Court - Communications Workers of America, AFL-CIO.
2. Docket No. RO-77: Youth House Center - Communications Workers of America, AFL-CIO.
3. Docket No. RO-86: office employees of the County - Council No. 7, New Jersey Civil Service Association.
4. Docket No. RO-87: blue-collar employees of the County - Council No. 7, New Jersey Civil Service Association.


Maurice J. Nelligan, Jr.
Executive Director

DATED March 10, 1971
 Trenton, New Jersey

5/ City of Union City, E.D. No. 24.