

D.R. NO. 99-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

HUDSON COUNTY SCHOOLS OF TECHNOLOGY,

Public Employer,

-and-

C.W.A., LOCAL 1037, AFL-CIO,

Docket No. RO-99-72

Petitioner,

-and-

HUDSON COUNTY CAREER DEVELOPMENT ASSN/NJEA,

Intervenor.

SYNOPSIS

The Director of Representation dismisses CWA's post-election objections to an election conducted among professional and non-professional, non-supervisory employees employed by the Hudson County Schools of Technology. CWA objected to campaign tactics prior to the election and conduct near the polling place on the date of the election. The Director finds that CWA failed to furnish sufficient evidence to support a prima facie case in accordance with N.J.A.C. 19:11-9.2(i) and that the affidavit submitted by CWA alleges no personal knowledge as to the remaining objections.

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Appearances:

For the Public Employer
Brownstein, Booth & Barry, attorneys
(Alexander W. Booth, Jr., of counsel)

For the Petitioner
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

For the Intervenor
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

DECISION

Pursuant to an Agreement for Consent Election, a representation election was conducted on March 18, 1999^{1/} by the Public Employment Relations Commission (Commission) among the

^{1/} At the direction of the Director of Representation, and in conjunction with the parties, the election originally scheduled for March 15, 1999 was postponed due to inclement weather and rescheduled for March 18, 1999.

professional and non-professional, non-supervisory employees employed by the Hudson County Schools of Technology (HCST) in the Career Development Center (CDC).

Out of approximately 39 eligible voters, 19 ballots were cast for the Hudson County Career Development Assn/NJEA (NJEA), 15 ballots were cast for CWA Local 1037 (CWA) and no votes were cast against representation.^{2/} There were no void ballots. There were 3 challenged ballots which would not affect the results of the election. Therefore, a majority of the valid votes were cast for the NJEA.

Pursuant to N.J.A.C. 19:11-9.2(h), CWA filed timely post-election objections to conduct affecting the results of the election. The objections concern campaign tactics prior to the election and conduct near the polling place on the date of the election. The objections were supported by the certification of Hetty Rosenstein, executive vice-president of CWA Local 1037, together with exhibits. The certification attests to personal knowledge of the following facts:

CWA filed two representation petitions seeking to represent supervisory and non-supervisory employees employed by HCST. The NJEA intervened in the non-supervisory petition. The parties entered into consent election agreements for both units.

^{2/} A professional option election was also conducted. Out of approximately 6 eligible voters, 4 votes were cast for inclusion with non-professional employees. No votes were cast against inclusion.

Prior to the election in the supervisory unit, HCST agreed to voluntarily recognize CWA as the exclusive representative of the supervisory unit pursuant to N.J.A.C. 19:11-3.1; an election was never conducted. However, despite agreeing to do so, HCST has not voluntarily recognized CWA to date.^{3/}

CWA expressed a concern to HCST that there existed a wide-spread perception that the superintendent preferred the NJEA over CWA. CWA requested the superintendent to issue a statement declaring his neutrality in the non-supervisory election. On February 12, 1999, the superintendent issued such a statement. The statement read as follows:

An election to be conducted [by] the Public Employment Relations Commission is scheduled for March 15, 1999 between 10:30 a.m. and 12:00 p.m. You will be deciding whether you want CWA Local 1037 or the Hudson Career Development Association/NJEA to represent you, or whether you prefer to be represented by no union.

Please be advised that I have no preference as to either of the two employee organizations. I have no intention of bargaining differently depending upon which employee organization you select.

The choice is entirely yours.

This statement was prepared by CWA's counsel. NJEA's counsel had no objection to the statement.

^{3/} The petition in the supervisory unit is currently pending.

At a February 24, 1999, CWA meeting with CDC employees, Al Manzo, an assistant counselor and eligible voter, stated that the superintendent informed him that he preferred dealing with the NJEA and that if CDC staff voted for the NJEA, the Vocational School unit and CDC unit would merge when the CDC moved to a new facility.

HCST's eligibility list included William Neff despite the fact that Neff's title, Chief of Security, was not specifically listed in the unit description contained in the consent agreement. It was only after CWA objected to the inclusion of Neff's name on the eligibility list that the employer consented to its removal.

Other objections raised by CWA are unsupported by the certification because they are not based on personal knowledge of the affiant. These objections are:

During February and March prior to the election, NJEA supporters met constantly with Neff, a supervisory employee, in his office during working hours. Neff promised raises to eligible voters and jobs to relatives of persons eligible to vote. Furthermore, Neff attended a February 25, 1999 campaign dinner hosted by NJEA for eligible voters.

At the March 18, 1999 election, Neff voted a challenged ballot and remained in the voting area for several minutes observing non-supervisory employees voting. When he left the voting area, Neff stood outside the door watching employees go

into the Resource Room to vote. When CWA complained about Neff's presence outside the voting area, Mario Cellitti, a maintenance worker who reports to Neff, remained outside the Resource Room door. Moreover, NJEA representatives met with Neff during the election.

During the election, NJEA supporters congregated in the hall outside the Resource Room. Management did not instruct these employees to go back to their work areas. However, Mike Pecklers, Director of Support Services for HCST, complained to Serge Leone, Olga Lange's supervisor, that Lange was in the hallway and not working. Lange was a CWA supporter.

N.J.A.C. 19:11-9.2(h) sets forth the standard for reviewing election objections:

A party filing objections must furnish evidence such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election and shall produce the specific evidence which that party relies upon in support of the claimed irregularity in the election process. (emphasis added)

Under N.J.A.C. 19:11-9.2(i), if the Director of Representation concludes that the objecting party has presented a prima facie case, he shall conduct a further investigation; failure of the objecting party to proffer sufficient evidence to support a prima facie case may result in immediate dismissal of the objections.

An election conducted by the Commission is a presumptively valid expression of employee choice. An objecting party must show evidence of conduct that interfered with or reasonably tended to interfere with the freedom of that choice. The evidence must demonstrate a direct relationship between the improper activities and the interference with the voters' freedom of choice. An allegation of seemingly objectionable conduct, without more, will not be sufficient to set aside an election. Jersey City Dept. of Public Works, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd sub nom. Am. Fed. of State, County and Municipal Employees, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971) citing NLRB V. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969).

I have reviewed the objections and the supporting statements submitted by CWA. I find that CWA has not established a prima facie case as required by N.J.A.C. 19:11-9.1(h).

CWA objects to Manzo's pre-election statements on February 24, 1999, concerning statements allegedly made to him by the superintendent that he (the superintendent) preferred the NJEA and that if the NJEA won the election, when the CDC moved into its new facility, the unit would be combined with the vocational school unit and come under the NJEA contract.

In Passaic Valley Sewerage Auth., P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980), the Commission articulated its standard for campaign statements made in the course of a representation election. It stated that a representation election will be set

aside where there has been a misrepresentation or other similar campaign trickery which involves a substantial departure from the truth and which is made at a time which prevents other parties from making an effective reply. The misstatements, whether deliberate or not, must reasonably be expected to have a significant impact on the election. Moreover, a union's campaign statement, even one that includes misstatements of facts, will not cause an election to be set aside if there is sufficient time for the other party to respond. Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 63 (¶19021 1987).

Here, Manzo's statements were made approximately three weeks before the election giving CWA adequate time to rebut any untruthful statements or correct any misrepresentations. Moreover, the statements were made at a meeting conducted by CWA and presumably heard by CWA representatives who could immediately respond. Therefore, this objection cannot serve as a basis for setting aside the election.

CWA also objects to the inclusion of Neff's name on the eligibility list asserting that the inclusion of Neff on the list was a deliberate attempt by the employer to have Neff vote in the election and influence eligible voters. CWA must show the appearance of Neff's name on the list interfered or tended to interfere with the employees' free choice. CWA has demonstrated no such nexus. Under N.J.A.C. 19:11-10.1(a), the eligibility list is distributed by the public employer to the Director of Representation

and to the employee organization(s). It is not distributed to the voters. No evidence supports a finding that this conduct affected employees' freedom of choice.

Further, the employer removed Neff's name from the list after CWA raised an objection. The fact that his name appears or is removed from the eligibility list neither prevents him from appearing at the polling site and casting a ballot nor precludes a challenge to that vote. See N.J.A.C. 19:10-3(e).^{4/} Neff's appearance at the polling site to cast a ballot does not constitute grounds for overturning the election.

As to the remaining objections raised by CWA, no direct evidence based upon personal knowledge was submitted.^{5/} Rosenstein's certification alleges no personal knowledge of CWA's claims that Neff promised raises to employees and jobs to their relatives, that Neff waited outside the polling area after casting his challenged ballot in order to observe voters, that he then met with NJEA representatives in his office, that Celliti, a maintenance worker reporting to Neff, then observed voters outside the polling area, and that Pecklers complained to Leone, a supervisor, that Lange, a CWA supporter, was in the hallway outside the polling area

^{4/} Neff voted in the election. Since his name did not appear on the employer's eligibility list, the Commission challenged his ballot.

^{5/} On March 26, 1999, CWA was specifically advised of its obligation to provide sufficient evidence to support its claims.

and that Pecklers did not similarly complain about NJEA supporters being in the hallway outside the polling area.

In Jersey City Medical Center, D.R. No. 86-20, 12 NJPER 313 (¶17119 1986), the Director discussed the standards contemplated by N.J.A.C. 19:11-9.2(i) in reviewing election objections. He found that:

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-prong test is not met, the objections will be dismissed. [Id. at 314.]

In the present case CWA did not meet the procedural or evidentiary component as to the objections concerning Neff's promises and the activities outside the polling area on election day.^{6/}


Accordingly, I dismiss the election objections filed by CWA, Local 1037. In accordance with the rules of the Commission, I shall issue the appropriate Certification of Representative to Hudson County Career Development Assn/NJEA.

6/ In Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 222 (¶19080 1988), the Director held that "[T]he Commission will not overturn the results of a representation election based solely upon a party's characterization of events." Id. at 223.

ORDER

The post-election objections filed by CWA are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: May 5, 1999
Trenton, New Jersey