

E.D. NO. 14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY WELFARE BOARD

Public Employer

and

Docket Nos. RO-96  
RO-108

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioner

and

ESSEX COUNTY EMPLOYEES ASSOCIATION

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

A consent election was held in the above-captioned matter on May 20, 1970, and the results were inconclusive. A run-off election was ordered and was held on June 29, 1970, with the result that of approximately 400 eligible voters there were 177 votes for Essex County Employees Association, 138 votes for Communications Workers of America, 1 void ballot and no challenged ballots.

Thereafter, timely objections to the election were filed by the Communications Workers of America, AFL-CIO. Said objections allege the following:

1. The attorney for the Welfare Board was in the vicinity of the doorway of the polling place and entered the polling place on several occasions, contrary to direction of the Election Officer at a pre-election meeting. He is also alleged to have told the

summer help to vote, according to reports of other employees.

2. One Ruth Villanova, a part-time summer employee, therefore not eligible to vote, was observed to cast a ballot. This incident creates a suspicion that other ineligible may also have voted.
3. Essex County Employees Association used the inter-office mail system to deliver campaign literature. Specifically, Mr. Joseph Bonvegna, Assistant Field Office Supervisor, is accused of so circulating a memo with instructions for distribution of literature. This means was also used to circulate an unsigned, untruthful leaflet.
4. The same Bonvegna actively solicited votes for the Association and it is claimed such activity constituted undue influence.

On the basis of the foregoing, request is made by CWA to set the election aside.

The undersigned has investigated the objections set forth above and hereby finds:

1. The presence of the attorney for the Board at the polling place did occur. On the occasion of his entering the polls, he was requested to leave by the Election Officer. Partisans of both sides were in the public corridor, and, absent a pre-election agreement to the contrary, were entitled to be there. There is no evidence that their presence or any activities ascribed to the Board's attorney tended to interfere with the employees freedom of choice of a representative.
2. The casting of a ballot by Ruth Villanova is supported by an affidavit which alleges that Miss Villanova cast a ballot by using the name of one Judith Fisicaro, who would have been eligible had she not terminated her services on May 1, 1970.

Assuming the accuracy of this allegation, the use of observers, ostensibly acquainted with the voters, is designed to prevent such an occurrence. This one instance of the casting of a vote by an ineligible could hardly be deemed sufficient to taint the entire election. That others may also have voted who were ineligible is, in the language of the objections, speculation. There is no evidence at hand to support such an allegation, thus it is found the one improperly cast vote, constitutes an invalid post-election challenge and does not warrant setting the election aside.

3. The question of the use by the Association of the inter-office mails for the circulation of organizing literature was raised at the pre-election conference on June 25, 1970. In fact, exhibits 1 and 2 attached hereto, were shown at that meeting. Specifically, Mr. Bonvegna's use thereof was discussed, and the representative of the public employer thereupon forbade its continuance. Were this means of distribution used this could scarcely be advanced as grounds for setting an election aside, in the face of the employer's open and official opposition to such use.

Use of the public employer's facilities could only be raised if it were occurring with his consent, in which case it could validly be claimed that the parties were receiving disparate treatment from the employer. Such a situation has not been alleged here, therefore the objection is found to lack merit.

Futhermore, the evidence presented in support of the allegation, Exhibits 1 and 2, reveal that the material was not in the form of an "official" memo but was a handwritten instruction from Mr. Bonvegna which directs information to employees "interested in the Association". This is not clear evidence of the use of "inter-office"

mail for distribution of partisan propaganda.

With reference to the contents of the document so distributed the undersigned concludes that this is partisan propaganda which does not contain any threats or promises nor can it reasonably be construed to have tended to interfere with the employees freedom of choice.

With reference to the unidentified document appended as Exhibit 3, the document does not contain any evidence of trickery which could prevent the voters from assessing it as partisan propaganda even though not identified as to the source of distribution. Whether this document was sponsored and distributed by the Association, the public employer or some employees is immaterial where the message is susceptible to a reply by the objecting party and the employees may evaluate its message as partisan in nature. Without determining the accuracy of the representations in Exhibit 3 the undersigned finds it did not tend to interfere with the employees freedom of choice of a representative.

Accordingly, objection No. 3 is overruled in its entirety.

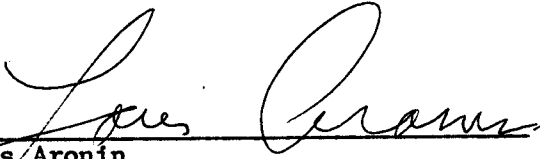
4. The alleged pro-Association activity of Mr. Bonvegna, absent threats or coercion, was permissive activity. There is no obligation upon supervisors to be neutral and they are free to express opinions. Such expressions of opinions by a supervisor do not per se constitute a basis to warrant setting aside an election. Accordingly, objection No. 4 is overruled.

Based upon the reasoning as set forth above, the objections are hereby dismissed.

Therefore, Petitioner, Essex County Employees Association, having received a majority of all valid votes cast, will be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Essex County Employees Association has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit of all office clerical employees, including the office clerical employees in the data processing department, employed by Essex County Welfare Board, excluding head clerks, supervisory employees, managerial executives and all other employees, as their representative for the purpose of collective negotiations; and that pursuant to the New Jersey Employer-Employee Relations Act of 1968, the said organization is the exclusive representative of all employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment.

  
Louis Aronin  
Executive Director

DATED: August 18, 1970  
Trenton, New Jersey