

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

In the Matter of

TOWN OF WEST NEW YORK,

Public Employer,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Docket No. RO-80-176

Petitioner,

-and-

WEST NEW YORK MUNICIPAL
EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation sets aside an election among blue collar employees on the basis of objections relating to materials attached to paychecks favoring one of the competing organizations. The objecting party established a prima facie case for setting aside the election. The employer and competing employee organization declined the opportunity to present rebuttal evidence at a hearing and agreed to a new election.

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Appearances:

For the Public Employer
Dorf and Glickman, Esqs.
(Steven S. Glickman, Esq.)

For the Petitioner
Parsonnet, Duggan & Pykon
(Victor Parsonnet, Esq.)

For the Intervenor
Philip Feintuch, Esq.

DECISION AND DIRECTION OF ELECTION

Pursuant to an Agreement for Consent Election a secret ballot election was conducted among blue collar employees of the Town of West New York (the "Town") on July 31, 1980, for the purpose of providing employees with an opportunity to designate the West New York Municipal Employees Association (the "Association"), Local 29, RWDSU, AFL-CIO (Local 29"), or neither, as their exclusive representative for the purpose of collective negotiations.

A majority of ballots were cast for the Association. However, on August 4, 1980, post-election objections were filed by Local 29. Local 29 asserts that certain improper conduct affecting employee free choice occurred prior to the election and urges that the election be set aside.

N.J.A.C. 19:11-9.2(i) provides:

Where objections as defined in § (h) of this section are filed, the Director of Representation shall conduct an investigation into the objections if the party filing said objections has furnished sufficient evidence to support a prima facie case.

N.J.A.C. 19:11-9.2(j) provides that the administrative investigation may include an investigatory hearing where there are substantial and material factual issues which have been placed in dispute.

Pursuant to the above rules, the undersigned determined that a prima facie case existed for setting aside the election on the basis of allegations by Local 29 that a leaflet supporting the Association was attached to employees' pay stubs shortly before the election. The parties were advised of this determination and, during the investigation, were provided with the opportunity to provide formal statements of position concerning this objection. The Association submitted a position which placed in dispute substantial and material factual issues, and accordingly, on November 7, 1980, pursuant to N.J.A.C. 19:11-9.2(j), a Notice of Hearing was issued to resolve these disputed factual issues. However, the Association, by letter dated December 1, 1980, and the Town, by letter dated January 15, 1981, agreed to the conduct of a new election concerning the instant unit. Local 29, by letter

dated January 16, 1981, nevertheless insisted on proceeding to the hearing on the objections and would not agree to an election.

On January 30, 1981, the undersigned advised the parties that the Town and the Association, although denying that objectionable conduct occurred, had apparently waived the opportunity to assert a rebuttal to the objections at a hearing and had instead agreed to the conduct of a new election. Accordingly, the parties were advised that there were no substantial and material factual issues placed in dispute.


As noted above, the undersigned initially determined that Local 29 had furnished sufficient evidence to support a prima facie case that the election should be set aside. Since the Town and the Association do not seek to rebut such evidence, any evidentiary proffer originally submitted by the Town and the Association in rebuttal to the objections has been deemed withdrawn. Since the prima facie case established by Local 29 is not to be rebutted, the undersigned shall revoke the Notice of Hearing previously issued herein, finds that improper conduct affecting the election has occurred, and directs that a new election among blue collar employees be held.

In a statement of position received on February 13, 1981, Local 29 requests "a posting setting forth the objections filed by Local 29." Local 29 asks that a new election be delayed. Local 29 states, "However, because of the nature of the objections, which in our minds poisoned the atmosphere, such an election should not be held for a period of at least three (3) to four (4) months."

The undersigned notes that approximately seven months have already elapsed from the date of the first election to the date of this decision directing a new election. Local 29 has not submitted to the Commission any evidentiary proffer to substantiate its claim that an additional period of three to four months to "clear the air" is necessary in order to guarantee employee free choice. ^{1/}

Accordingly for the above reasons, the undersigned determines that improper conduct affecting the results of the election has occurred and that the election should be set aside. The undersigned directs that a new election be held within thirty (30) days hereof and that blue collar employees be provided with the opportunity to determine whether they wish to be represented by the West New York Municipal Employees Association, Local 29, RWDSU, AFL-CIO or neither.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: March 2, 1981
Trenton, New Jersey

^{1/} In the event that the Director of Representation orders a new election following the disposition of objections, the scheduling of any further election shall be at the discretion of the Director of Representation. N.J.A.C. 19:11-9.4.