

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

In the Matter of

SECAUCUS MUNICIPAL UTILITIES AUTHORITY,

Public Employer,

-and-

DOCKET NO. RO-82-159

LOCAL UNION NO. 11, a/w I.B.T.,

Petitioner.

SYNOPSIS

The Director of Representation, dismisses Petitioner's post election objections and issues the Certification of Results of the election. The employee organization alleged that factual misrepresentations by the employer destroyed the laboratory conditions necessary for a fair representation election. The alleged misrepresentations were contained in a letter received by employees in the mail six days before the election. In approaching objections relating to campaign misrepresentations, the Commission's standard is that the election will be set aside only where there has been a factual misrepresentation involving a substantial departure from the truth at a time which precludes an effective reply. The evidence preferred by the employee organization failed to establish a prima facie case that it was unable to provide an effective reply to the alleged misrepresentations.

D.R. NO. 82-57

STATE OF NEW JERSEY  
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Appearances:

For the Public Employer  
Carroll, Panepinto, Pachman, Williamson & Paolino, Esqs.  
(Martin R. Pachman, of Counsel)

For the Petitioner  
Schneider, Cohen, Solomon & DeMarzio, Esqs.  
(Bruce D. Leder, of Counsel)

DECISION

Pursuant to an Agreement for Consent Election, a representation election was conducted on April 26, 1982 among all blue collar employees employed by the Secaucus Municipal Utilities Authority (the "Authority"). The tally of ballots indicated that of approximately 11 eligible voters, four valid votes were cast for Local Union No. 11, International Brotherhood of Teamsters ("Local 11") and five valid votes were cast against the participating employee representative. There was one challenged ballot, which did not affect the results of the election.

Post election objections were timely filed by Local 11 on April 29, 1982. Affidavits in support of the objections were filed on May 12, 1982.

N.J.A.C. 19:11-9.2 sets forth the procedures and standards utilized by the Commission in determining the disposition of objections to an election. N.J.A.C. 19:11-9.2 states, in pertinent part:

(h) Within five days after the tally of ballots has been furnished, any party may file with the director of representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. 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.

(i) Where objections as defined in subsection (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. Failure to submit such evidence may result in the immediate dismissal of the objections.

(j) Where an administrative investigation has been conducted into the objections that have been filed as defined in subsection (h), a hearing may be conducted where the investigation reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the director of representation, may more appropriately be resolved after a hearing. After the administrative investiga-

tion has been completed, an administrative determination will be rendered with regard to the objections either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

Accordingly, objections, when filed, must describe conduct which would warrant the setting aside of the election as a matter of law and the objecting party has the burden to proffer evidence, sufficient to support a prima facie case, which precisely and specifically shows the occurrence of the alleged objectionable conduct.

The undersigned is guided by the following standard established by the Commission in In re Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970) (Slip Opin. at 10), aff'd sub. nom. AFSCME, Local 1959 v. P.E.R.C., 114 N.J. Super 463 (App. Div. 1971):

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice. Conduct seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election. The foregoing rule requires that there must be a direct relationship between improper activities and the interference with freedom of choice, established by a preponderance of the evidence. 1/

1/ In NLRB v. Golden Age Beverage Co., 71 LRRM 2924, 2926 (5th Cir. 1969), a leading private sector case, the Court observed that the objecting party has the burden of proving that there has been prejudice to the fairness of the election. The Circuit Court stated:

This is a heavy burden; it is not met by proof of mere misrepresentations or physical threats. Rather, specific evidence is required, showing not only that the unlawful acts occurred, but also, that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election. (continued)

Accordingly, the undersigned has studied the objecting party's proffer in order to make an initial determination as to whether sufficient evidence has been furnished to support a prima facie case warranting the conduct of an investigation into the objections.

The objections concern three letters which were allegedly mailed by the Authority to employees eligible to vote in the election in question. According to Local 11, the Authority sent letters to employees' homes, which were dated April 16, 19, and 21 and were received on April 17, 20, and 23, 1982, respectively. <sup>2/</sup> Local 11 alleges that the letters materially misrepresented facts concerning Local 11. Specifically, Local 11 alleges that the letters make it appear that Local 11 represented employees of the Town of Secaucus and, in negotiations with the Town, had made certain concessions to the Township, resulting in a reduction of benefits to employees. Local 11 asserts that these alleged factual misrepresentations serve to destroy the laboratory conditions necessary for a fair representation election and, thus, asks that the election in this matter be set aside and a new election ordered.

With regard to allegations concerning improper pre-election campaign statements or literature, the undersigned, in In re County of Salem, D.R. No. 81-30, 7 NJPER 182 (¶ 12080 1981), aff'd P.E.R.C. No. 81-121, 7 NJPER 239 (¶ 12107 1981), stated that he would be guided by the policy established by the National Labor Relations Board in Hollywood Ceramics Co., 140 NLRB 221, 51 LRRM 1600 (1952) and reaffirmed in General Knit of California, 239 NLRB 101, 99 LRRM 1687 (1978). Under

<sup>1/</sup> (Continued) The New Jersey Supreme Court has stated in Lullo v. Intern'l Assn. of Firefighters, 55 N.J. 409 (1970) that the Commission should utilize NLRB law and policy as a guide to its own decisions in representation proceedings.

<sup>2/</sup> Copies of these letters are attached hereto and made a part hereof.

the standard established, a representation election will be set aside only where there has been a factual misrepresentation involving a substantial departure from the truth at a time which precludes an effective reply.

An examination of the letters sent by the Authority to employees prior to the election herein reveals that of the three letters, only the letter received by employees on April 20, 1982 contains the factual misrepresentations alleged by Local 11. The allegations of factual misrepresentations do not implicate the letters received April 17, and April 23, 1982. <sup>3/</sup> Assuming that the content of the April 20, 1982 letter could constitute a material factual misrepresentation, the undersigned has reviewed whether or not that alleged misrepresentation occurred at a time which precluded an effective reply by Local 11.

The undersigned has previously considered several cases wherein the validity of election objections turned on the question of the ability of employee organizations to effectively reply to alleged factual misrepresentations. In Passaic Valley Sewerage Commission, D.R. No. 81-21, 6 NJPER 410 (¶ 11208 1980), affm'd P.E.R.C. No. 81-51, 7 NJPER 504 (¶ 11258 1980), factual misrepresentations occurring four days prior to a representation election were found to have taken place within sufficient time for effective rebuttal by the employee organization. In City of Atlantic City,

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<sup>3/</sup> Furthermore, the letters of April 17 and April 23 appear to contain acceptable electioneering material by the Authority and do not constitute grounds for setting aside the election.

D.R. No. 82-54, 8 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1982), an alleged misrepresentation attributed to a representative of a rival union one day prior to a representation election did not present a prima facie case which would warrant setting aside the election. The facts in that matter revealed that a representative of the employee organization was present to confront the source of the alleged factual misrepresentations and had an opportunity to rebut it.

In the instant matter, the objectionable factual misrepresentations were received by employees eligible to vote in the election a full six days prior to the representation election. The nature of the alleged factual misrepresentations (i.e. that Local 11 also represented Town employees and had made certain concessions leading to reduced benefits for these Town employees) suggests that an effective opportunity to respond to that material existed and rebuttal could easily have been made during a six day period. Local 11 has not alleged any circumstances which prevented it from making a timely, effective reply. <sup>4/</sup>

Accordingly, Local 11 has failed to present evidence establishing a prima facie case of election irregularity regarding the Authority's

<sup>4/</sup> The undersigned notes that different types of alleged factual misrepresentations may require different amounts of time for effective rebuttal. For example, In Kawneer Co., 119 NLRB 185, 41 LRRM 1333 (1958), the Board found that two days were insufficient for the factual rebuttal of the material misrepresentations where "...one party to a representation proceeding mistakes material facts which are within its special knowledge, under such circumstances that the other party or parties cannot learn about them in time to point out the misstatements, and the employees themselves lack the knowledge to make possible a proper evaluation of the misstatements...." at p. 1334. However, the undersigned notes that the alleged factual misrepresentations here did not concern material facts within the special knowledge of the employer. Instead, Local 11 was in the position to know whether the facts were misstated and would appear to have had ample time within which to effectively rebut such misstatements.

pre-election campaign activity and the objections are hereby dismissed. In accordance with the rules of the Commission, the undersigned shall issue the appropriate Certification of Results of the election to the parties herein.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
\_\_\_\_\_  
Carl Kurtzman, Director

DATED: June 8, 1982  
Trenton, New Jersey



Phone: (201) 330-2089

Municipal Government Center

1203 Paterson Plank Road

Secaucus, New Jersey 07094

# SECAUCUS MUNICIPAL UTILITIES AUTHORITY

April 16, 1982

Dear Employee:

As you know, the employees of the Secaucus Municipal Utilities Authority are being asked to join the Teamsters Union.

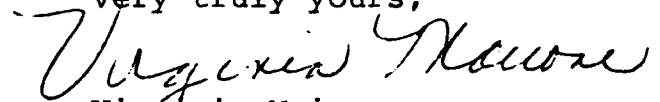
The Commissioners and I want to make our position on this matter very clear. We don't believe that our employees really want or need a Union.

For many years, the Authority has maintained an open door policy by which any problems which we have could be straightened out. We don't believe that we need to have an outside group collecting dues from your pockets to speak for you. We together really know what our problems are and we together can solve them in the future, just as we have in the past, without a paid union official from outside speaking for us.

Because we want this issue as to union resolved, we have agreed to an election so each of you can vote by secret ballot, and not be bullied or coerced into voting either way. The election will be held by the Labor Board on Monday, April 26, 1982.

Remember, just because you signed a card doesn't mean that you have to vote for the Union. We will be contacting you again in the next few days and telling you why we think you should vote NO in the election.

Very truly yours,

  
Virginia Maione  
Acting Executive Director

Phone: (201) 330-2089  
Municipal Government Center  
1203 Paterson Plank Road  
Secaucus, New Jersey 07094

# SECAUCUS MUNICIPAL UTILITIES AUTHORITY

April 19, 1982

Dear Employee:

When we wrote you a few days ago, we said we'd tell you why we think you should vote NO in the union election.

First, remember that you must pay dues to the Union for it to represent you. In the negotiations with the Town, the Union insisted upon a clause which requires that even if you choose not to belong, you still must pay 85% of the dues.

So, since you will be paying dues if you vote yes, lets see how much the Union has really done for the Town employees it represents. Do you know that you now have:

- 1) The same vacation program - WITHOUT PAYING DUES
- 2) The same overtime system - WITHOUT PAYING DUES
- 3) The same holidays - WITHOUT PAYING DUES

In addition, do you know that negotiations are a two way street. That means that no one can guarantee that all benefits will increase or even stay the same. For example, when the Town negotiated, the Union gave up unlimited sick leave (which you now enjoy) for a system of only 15 days per year.

Finally, remember that a Union can always out-promise management in an election. We as management are forbidden by law from making you any promises as to what we'll do if you vote NO in the election. All we can say is that we believe we have met the needs of our people in the past, and will do so in the future. For example, our employees are the only ones given an extra \$100. in order to purchase eyeglasses. No Union did this for you. Management, it its desire to meet your demands, agreed to this without your having to pay anyone to represent you.

continued .....

For all of these reasons, we ask you to remember that in your own interest you don't need to pay dues to an outside Union to do what we have always done ourselves. Remember to vote NO on Monday.

Very truly yours,

*Virginia Maione*

Virginia Maione  
Acting Executive Director

Phone: (201) 330-2089

Municipal Government Center

1203 Paterson Plank Road

Secaucus, New Jersey 07094

# SECAUCUS MUNICIPAL UTILITIES AUTHORITY

April 21, 1982


Dear Employee:

On Monday, you will be asked to make a very important decision. That decision will be whether you want to continue the informal way we have always gotten along, or whether you want to begin a new system of formal contracts with a paid outside representative.

As we have told you before, we do not believe that a Union is necessary. This is not a large operation. We all know each other, having all been raised in, and living in Secaucus. We don't think that a paid outsider is the answer to your problems.

Remember that regardless of what the Union may promise, it can only deliver what management agrees to at the bargaining table. While we don't know what "demands" a Union might make, we do know that excessive demands in these hard times have resulted in layoffs of personnel, and closing of operations. In order to get people back to work, Unions recently have begun to agree to give-backs. While much of this has been in the private sector (G.M., Ford. etc.), the public sector is not immune. What we do know is that without outsiders, we have always done right by each other in good times and bad times. We would like that to continue and therefore ask you again to vote NO in Monday's election.

Very truly yours,

  
Virginia Maione  
Acting Executive Director



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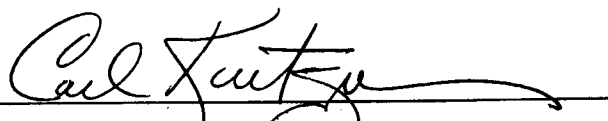
CERTIFICATION OF RESULTS OF ELECTION

An election having been conducted in the above matter under the supervision of the undersigned Executive Director in accordance with the Act and Chapter 11 of the Commission's Rules and Regulations and Statement of Procedure; and it appearing from the Tally of Ballots that no exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned,

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described below for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning of the New Jersey Employer-Employee Relations Act of 1968.

UNIT: All blue collar employees employed by Secaucus Municipal Utilities Authority excluding all office, clerical, supervisory employees, and confidential employees, managerial executives, craft employees, professional employees and police.

  
Carl Kurtzman, Director  
of Representation

DATED: June 8, 1982  
Trenton, New Jersey