

D.R. NO. 90-19

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

In the Matter of

BERGEN COMMUNITY COLLEGE,

Public Employer,

-and-

BERGEN COMMUNITY COLLEGE STAFF ASSOCIATION,

Docket No. RO-H-89-133

Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 804,

Intervenor.

SYNOPSIS

The Director of Representaion affirms a Hearing Officer's decision dismissing objections to the conduct of an election. The objections concerned a flyer with a misrepresentation of law distributed prior to an election. It was found that the misrepresentation was not material and did not unduly influence the voters free choice in the election. Moreover, the flyer was distributed sufficiently before the date of the election for the objecting party to correct the misrepresentation.

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Appearances:

For the Public Employer, Schepisi & McLaughlin, P.A.  
(Paris P. Eliades, Esq.)

For the Petitioner, Loccke & Correia  
(Michael J. Rappa, Esq.)

For the Intervenor, Cohen, Weiss & Simon  
(Earl R. Pfeffer, Esq.)

DECISION

On June 5, 1989 the Bergen Community College Staff Association ("Staff Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent a collective negotiations unit of full and part-time non-professional employees employed by Bergen Community College ("College"). The unit was then represented by the International Brotherhood of

Teamsters, Local 804 ("Local 804"). On June 15, 1989, Local 804 intervened and on June 21, 1989 the parties executed an agreement for a secret ballot election.

An election was conducted on July 13, 1989 in which ninety-one (91) ballots were cast for the Staff Association, eighty-two (82) ballots were cast for Local 804 and one vote was cast for no representation. (C-2).

On July 20, 1989, Local 804 filed post-election objections alleging that within 48 hours before the election, the Staff Association distributed campaign literature containing factual misrepresentations. N.J.A.C. 19:11-9.2(h). The alleged factual misrepresentations were about Local 804's dues structure and its contract negotiations with the College. Local 804 further alleges that because the literature was distributed within 48 hours of the election, it did not have enough time to effectively reply to the Staff Association's literature.

After an administrative investigation of the objections, I issued a Notice of Hearing on September 14, 1989. Joyce M. Klein conducted a hearing on October 11 and 12, 1989. At the hearing, Local 804 and the Staff Association examined witnesses, introduced exhibits and argued orally. On January 5, 1990, the hearing officer issued a report recommending that Local 804's election objections be dismissed and that I issue a Certification of Representative based upon the results of the election. The hearing officer informed the parties that exceptions were due on or before January 18, 1990.

Neither party filed exceptions. I have reviewed the record, the Hearing Officer's Findings of Fact and conclusions of law are accurate.<sup>1/</sup> I adopt and incorporate them here.

Accordingly, I conclude that even though a Staff Association flyer misstated the law, it was not a material misrepresentation that would unduly influence unit members' free choice. I further conclude that, under all the circumstances of this case, the distribution of the flyer by the Staff Association 36 hours prior to the start of the election left enough time for Local 804 to correct the misrepresentation.

ORDER

The objections to the election are dismissed and I will issue a Certification of Representative certifying the Bergen Community College Staff Association as the exclusive majority representative of the unit of all full and part-time nonprofessional employees employed by the College.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: February 9, 1990  
Trenton, New Jersey

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<sup>1/</sup> I hereby correct the following transcript references. Page 4, line 11 change 1T155 to 1T169; Page 13, bottom line change 1T166 to 1T167; Page 14, line 10 change 1T85 to 2T85.