

E.D. NO. 17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN

Public Employer

and

TEAMSTERS UNION LOCAL NO. 866

Docket Nos. RO-142

RO-147

Petitioner

and

UNION COUNCIL NO. 8, N.J.C.S.A.

Intervenor

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Consent Election Agreement, a secret ballot election was conducted under the supervision of the Executive Director on July 14, 1970 among the employees in the appropriate unit, i.e. employees of the Department of Public Works, (more fully set forth below).

The election officer served upon the parties a Tally of Ballots which revealed that, of 92 ballots cast, 50 were for the Petitioner, 37 were for the Intervenor, 3 were for neither organization, and 2 ballots were challenged. The challenged ballots are not determinative.

Subsequent to the election, objections were timely filed by the Public Employer and the Intervenor.

Intervenor objects as follows:

1. A purported copy of the official secret ballot containing a cross in the box marked Teamsters Local #866 and not clearly marked "Sample" on its face was posted on the bulletin board in the Department of Public Works of the City of Linden on June 29, 1970 by representatives of Teamsters Local #866. It is claimed that said action is violative of Section 19:11-18 of the Rules and Regulations.

2. Said purported ballot was used "otherwise" by Teamsters Local #866 in conjunction with its campaign prior to the election.

3. On July 8, 1970, a Mr. McKenzie, representing Teamsters Local #866 was on city property campaigning on behalf of Teamsters Local #866. Mr. McKenzie refused to leave the ~~premises~~ when ordered to do so by Mr. Mesler, Superintendent of the Public Works Department.

The objections of the Public Employer recited the same matter as that of the Intervenor, with the exception of the incident involving Mr. McKenzie. In an affidavit in support of the Public Employer's objections, Mr. Mesler, Superintendent of the Department of Public Works, says, "I asked him to leave and not to bother the men during working hours. He departed forthwith."

In addition, the Public Employer also objects to the posting on June 29 of an unofficial Notice of Election, three days prior to the posting of the official notices. According to Mesler, this notice stated the date of the election and "had a square marked 'Vote Teamsters'". Mesler also states, "I do not know who placed the [unofficial] notice or who removed it but it was not within my authority or any authorized personnel from my department."

With respect to the copy of the Commission's ballot, the Employer submitted a document which in all significant respects is a true reproduction of the Commission's official ballot except that an "X" has been marked in the box below the designation "Teamsters Local 866". The word "SAMPLE" does not appear on the face of this ballot. Mr. Mesler states that this facsimile ballot was circulated among employees in his department several days prior to the election. He further states "I do not know who was responsible for this Act but it was done without my authority". There is no contention that the facsimile ballot was used in the voting process itself on election day.

The Petitioner denies each and every objection, including use of the marked ballot and the posting of a notice and points out that the objections fail to proffer supportive proof as to who posted the ballot and notice. In its reply to the objections, Petitioner says, "We affirmatively state that the only notice posted on behalf of Petitioner prior to the official notice from the Commission was a hand-written notice advising the employees that agreement had been reached for the conducting of an election on the date agreed upon. This is no way violates any rules or regulations of the Commission."

Denial of any wrong-doing in regard to the McKenzie incident is also filed by the Petitioner.

The objecting parties were requested by the undersigned to submit all evidence supporting their respective positions. Intervenor has not responded; the Public Employer submitted the affidavit of Mr. Mesler, mentioned previously herein.

Section 19:11-18 of the Commission's Rules and Regulations provides:

Appropriate notices of election shall be furnished by the Executive Director to the public employer for suitable posting. Such notices shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, the date(s), hours and place(s) of the election and shall contain a sample ballot.

The reproduction of any document purporting to be a copy of the Commission's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

As indicated above, the evidence submitted fails to establish the identity of the person or party responsible for the composition, distribution or posting of the facsimile ballot. The fact that the Teamsters' box is marked with an "X" does not raise the presumption that the Teamsters are the responsible party nor is it, from that fact alone, a permissible inference. In the absence of affirmative evidence indicating the party responsible, the undersigned concludes that these objections which implicate the Teamsters as the wrongdoer, must be overruled.

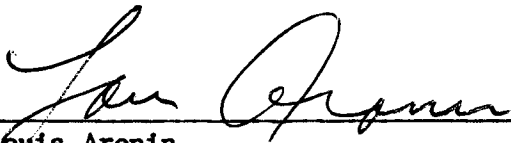
Regarding the "unofficial" notice, the Petitioner asserts that notice of the Consent Agreement and the date of the election were indeed posted by Petitioner's agents. This description differs somewhat from that of the Employer who claims the notice contained a "Vote Teamsters" statement. In either event the notice amounts to no more than typical campaign propaganda which in no way can be construed as the interference with the election.

In regard to the McKenzie visitation to the employees during working hours, this may be an infraction of one of the Employer's work rules, but is not normally the kind of conduct the Commission attempts to regulate. Under the circumstances this does not constitute a basis to set aside the election.

The undersigned hereby dismisses each and every objection filed by the Employer and the Intervenor. Therefore, Petitioner, having received a majority of all valid votes cast, plus challenged ballots, will be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Teamsters Local No. 866 has been designated and selected by a majority of the employees in a unit of all employees of the Department of Public Works including: truck drivers, equipment operators, laborers, automotive equipment mechanics, sanitation men and parks groundskeepers employed by the City of Linden, New Jersey, excluding managerial executives, professional employees, supervisors within the meaning of the Act, craft employees and policemen as their representative for the purposes 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 purpose of collective negotiations with respect to terms and conditions of employment.



Louis Aronin
Executive Director

DATED: September 16, 1970
Trenton, New Jersey