

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

In the Matter of

RUTGERS UNIVERSITY,

Public Employer,

-and-

Docket No. RO-1042

RUTGERS UNIVERSITY COLLEGE TEACHERS'  
ASSOCIATION,

Petitioner.

SYNOPSIS

In a previous Commission decision, In re Rutgers University, P.E.R.C. No. 76-49, 2 NJPER 229 (1976), the Commission ordered a secret ballot election among coadjutant faculty employees of Rutgers University to determine whether they desired representation by Rutgers University College Teachers' Association. A standard for determining the eligibility of employees to vote in the election was an indication of a voter's desire to be rehired to teach at least one semester during the next academic year. A secret mail ballot election was conducted under the direction of the Director of Representation Proceedings. The University objected to the conduct of the election.

In the present decision the Director of Representation Proceedings dismisses the University's objection. Voters were requested to respond to the following question on the secret ballot: "Are you willing to be rehired to teach at least one semester during the 1976-77 academic year?" The Director determines, contrary to the assertion of the University, that the procedure utilized to determine subjective voter desires with regard to being rehired was adequate.

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

In the Matter of

RUTGERS UNIVERSITY,

Public Employer,

-and-

Docket No. RO-1042

RUTGERS UNIVERSITY COLLEGE TEACHERS'  
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer, Pitney, Hardin & Kipp, Esqs.  
(Mr. S. Joseph Fortunato, of Counsel)

For the Petitioner, Joseph Fisch, Esq.

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision of the Public Employment Relations Commission<sup>1/</sup> a secret mail ballot election was conducted among the coadjutant faculty of Rutgers University to determine whether these employees desired to be represented by the Rutgers University College Teachers' Association for the purpose of collective negotiations. Specifically, the Commission directed an election in the unit described as follows: All coadjutant faculty members who commence employment for at least their second semester during a given academic year and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year. The undersigned Director of Representation Proceedings administered the conduct of the election in fulfillment of his election

1/ In re Rutgers University, P.E.R.C. No. 76-49, 2 NJPER 229 (Decided June 22, 1976; Issued June 25, 1976).

responsibilities as delegated by the Commission pursuant to N.J.A.C. 19:11-2.1 et seq.<sup>2/</sup> Rutgers has filed a timely objection to the election.

Rutgers' objection is directed to the undersigned's administration of the election, in that it contends that the procedure adopted by PERC for the determination of which potential eligible voters have expressed a willingness to be rehired to teach at least one semester during the 1976-1977 academic year was inadequate in law and in fact. The objection is specifically directed to the following question which appeared on the ballot: "Are you willing to be rehired to teach at least one semester during the 1976-1977 academic year?" Before further discussing the objection, however, a brief delineation of the background of this matter may be helpful.

On May 11, 1976, the Executive Director directed an election among the Rutgers' coadjutant faculty (E.D. No. 76-35, 2 NJPER 176 (1976)). The coadjutants described are faculty employed on a semester basis - either winter, spring, or both at the University College Division of Rutgers. Acting upon Rutgers' request for review of the decision, the Commission modified the Executive Director's decision to the extent that an additional factor - indicia of employment continuity - be utilized to define the unit of employees and, similarly, to gauge voter eligibility. Specifically, the Commission stated:

"We adopt the Association's general position with respect to indicia of employment regularity, which the University also seeks if public employee status is found, and the unit definition will be modified as follows: 'All coadjutant faculty members who commence employment for at least their

<sup>2/</sup> On June 22, 1976 the Executive Director, Jeffrey B. Tener, was sworn in as full-time Commission Chairman. See N.J.S.A. 34:13A-5.2, as amended by Section 3 of P.L. 1974, c. 123. Effective immediately thereafter, the Commission approved the elimination of the Executive Director position, and named the Director of Representation Proceedings as its designee to perform those functions in representation proceedings which the Executive Director had theretofore performed. See N.J.S.A. 34:13A-6(f).

second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.' Similarly, those eligible to vote shall be those coadjutant faculty members employed for at least their second semester during the 1975-76 academic year, and who express a willingness to be rehired to teach at least one semester during the 1976-77 academic year." P.E.R.C. No. 76-49 at p. 4, 2 NJPER at 229-30. (footnote omitted)

During the summer months a mail ballot election was conducted among the coadjutants. A two-part ballot, a copy of which is attached hereto, was prepared by the undersigned. The first question asked, as stated above, was designed to satisfy the Commission's willingness-to-be-rehired criteria.<sup>3/</sup> An affirmative response to the question was a prerequisite for tallying the response to the second question, which was directed to representational desire.

A tally of these ballots took place on August 30, 1976, approximately one week after the concluding date of the election. Observers of both parties were present during the tally. As per the voting instructions, the returned ballots were sealed in secret ballot envelopes. These envelopes in turn were sealed into return envelopes, a facsimile of which is attached hereto, which contained a signature attestation block indicating that the voter believed he or she was eligible to vote and personally voted the within ballot.

The results of the tally indicate that of approximately 300 eligible voters, 189 ballots were returned. Nineteen of the ballots were void for various reasons not relevant hereto, two ballots were challenged also for reasons not relevant hereto and not opened, and 168 ballots were counted. Of these 168 ballots, all responses indicated an affirmative answer to the first question. As to the second question, 145 ballots were cast for the Association and 23 ballots were cast against representation. A majority of ballots were, accordingly, cast for representation.

<sup>3/</sup> The wording of this question was extracted from the Commission's decision.

Rutgers' objection to the election, filed on September 7, 1976, states as follows:

"The basis for this objection is that the procedure adopted by the Commission to determine the eligibility of voters within the meaning of the PERC decision is inadequate in law and in fact. More specifically, Rutgers University intends to object to conduct of the election on the basis that the procedure adopted by PERC for the determination of which potential eligible voters have expressed a willingness to be rehired to teach at least one semester during the 1976-77 academic year was within the meaning of the Commission's decision inappropriate and inadequate in law and in fact."

On September 15, 1976, the undersigned requested Rutgers to provide "specific evidence which you rely upon in support of the claimed irregularity in the election process" and informed Rutgers that an administrative investigation would not be conducted unless sufficient evidence, such as affidavits and other documentation, was furnished to support a prima facie case. By letter dated September 20, 1976, Rutgers reiterated that it "objects to the procedure adopted by Mr. Kurtzman to determine which coadjutant faculty members were eligible to vote in the representation election..." Rutgers contends that the election should be set aside "as a matter of law because the procedure was inadequate to determine which coadjutants in fact expressed a willingness to be rehired to teach at least one semester during the 1976-1977 academic year within the meaning of the Commission's definition of voter eligibility." It submits that the Commission's modification of the earlier Executive Director's decision was intended to "insure that only those coadjutants who had a 'regularized' employment relationship with Rutgers were included in the unit," and that "the rationale for this modification was to insure that only those coadjutants who were entitled as a matter of law to be represented for the purposes of collective negotiations voted in the representation election."

In pertinent part Rutgers urges the following:

If the "expression of willingness" requirement were simply for identification purposes, then the procedure adopted by Mr. Kurtzman might have been adequate. But this requirement was imposed to separate voters entitled to representation as a matter of law from those not so entitled. For this purpose, the procedure adopted by Mr. Kurtzman was totally inadequate. An acceptable procedure would have been to have the prospective voter attest to his or her willingness to be rehired before a notary public or an attorney-at-law.

The issue raised by Rutgers' challenge to the conduct of the election presents a case of first impression. However, in other circumstances in which facts are in dispute, PERC does require the submission of affidavits, e.g. evidence submitted in support of a post-election objection must be in the form of "affidavits or other documentation". Rutgers respectfully suggest (sic) that a determination of the question of voter eligibility in this case is as important as a determination of disputed facts with respect to which affidavits or testimony under oath is required and, consequently, should turn only on sworn statements.

The undersigned assumes that by the suggested "attestation" requirement, Rutgers means an affirmation of truth sworn to before a notary public or an attorney rather than merely a notary's or attorney's attestation of signature.

In short, therefore, Rutgers has objected to the election process; and it has suggested a different procedure which it claims would be acceptable for reasons which the undersigned can only conclude are such that it insures the veracity of a voter's answer as to willingness to be rehired. However, for the reasons stated below the undersigned determines that the procedure utilized is valid.

Employees, in order to be eligible under the test established by the Commission, had to express a willingness to be rehired. The first question on the ballot was designed to elicit a response from the potential voter as to such employer's willingness to be rehired. Any employee who had, prior to casting his ballot, formally indicated to the University a non-willingness

to be rehired, should not have answered "yes" to the first question and accordingly would not have been eligible. Thus, the employer was free to come forward at the tally and present evidence indicating that the employee was not willing to be rehired at the time the ballot was mailed to the Commission.<sup>4/</sup>

Upon challenge pursuant to the above we would have segregated the ballot, opened it, and ascertained the answer to question #1. If the answer to that question was "no", the voter would have indicated his or her ineligibility, and the ballot would have been considered void. If the answer was "yes", we would not have taken any further action with regard to that ballot at that time. Rather, we would have put the ballot aside. If the challenge ballots were sufficient in number to affect the result of the election, we would have investigated the employer's evidence of non-willingness. See N.J.A.C. 19:11-2.4. If the employer's challenge(s) were sustained, the employee(s) would have been ruled ineligible and the ballot(s) would have been deemed void.

In a parallel situation, if the voting method were by an on-site election rather than by mail ballot, a challenge could have been asserted when the voter appeared to cast his or her ballot. The voter would have been granted the opportunity to cast a challenged ballot. Inside the voting booth the voter would indicate his subjective desire by secret ballot as to both questions #1 and #2. Under such circumstances we would not require that the voter attest by affidavit to his or her subjective desire as to

---

<sup>4/</sup> At the tally, Rutgers asserted a blanket challenge to the eligibility of all ballots on the same basis as the instant objection, i.e. the propriety of the process. Challenges are for the purpose of questioning eligibility of specific voters, not for questioning the validity of the process itself. This was explained to the Rutgers' observer by the Commission's election agent, who correctly disallowed the blanket challenge who informed the observer that the nature of the challenge was appropriately an objection to the election which could be asserted within five (5) days after the tally, and indicated to the observer the appropriate time at which specific individual challenges could be made.

question #1. The same procedure is applicable to a vote by mail. The employer's claim that the process was invalid because the employee should have been required to swear to his answer to question #1 is not relevant. Even if the sworn affidavit requirement had been adopted, the employer would still have had the opportunity to present evidence disputing the veracity of the answer. Accordingly, regardless of which requirement - affidavit or non-affidavit - had been adopted the challenge mechanism was available to the parties to dispute the truthfulness of employee response and to permit the Commission to ascertain employee eligibility.

However, no documentary evidence of any rejection of offers of employment or any other evidence of unwillingness to be rehired has been provided nor has any allegation of such been made. In the absence of such evidentiary proffer and in the absence of even an allegation of false answers, it is reasonable to presume that pursuant to the procedure adopted employees have truthfully responded to the threshold question.

The undersigned concludes that the procedure utilized to elicit voter response relative to the Commission's criteria of "willingness to be rehired" was sufficient to fulfill the mandates of his election responsibilities. Rutgers has failed to sustain its position with regard to the inappropriateness of the procedure devised by the undersigned and likewise has failed to establish any basis for a claim of inaccuracy of results obtained pursuant to the implementation of such procedure. Therefore the undersigned, having conducted an investigation of the objection to the conduct of the election, and having determined that substantial and material factual issues which would warrant the issuance of a notice of hearing do not exist, hereby dismisses the objection filed by the University.

Accordingly, the undersigned shall certify the results of the election in which Rutgers University College Teachers' Association received a



majority of ballots cast, and shall issue the following Certification of Public Employee Representative.

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the undersigned, in accordance with the New Jersey Employer-Employee Relations Act, as amended, and Chapter 11 of the Commission's Rules and Regulations; and it appearing from the Tally of Ballots that an exclusive representative for collective negotiations has been selected;

Pursuant to the authority vested in the undersigned, IT IS HEREBY CERTIFIED that Rutgers University College Teachers' Association, has been designated and selected by a majority of the employees of Rutgers University in the unit of "All coadjutant faculty members who commence employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year," as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the said representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the

parties and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

BY ORDER OF THE DIRECTOR OF  
REPRESENTATION PROCEEDINGS

A handwritten signature in cursive script, reading "Carl Kurtzman", written over a horizontal line.

Carl Kurtzman, Director  
Representation Proceedings

DATED: December 7, 1976  
Trenton, New Jersey