

D.R. NO. 94-13

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

In the Matter of

BOROUGH OF BROOKLAWN,

Public Employer,

-and-

Docket No. RO-93-163

UNITED STEELWORKERS OF AMERICA,
AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation dismisses objections to a secret ballot election conducted among three "nonsupervisory white collar employees" of the Borough of Brooklawn.

The Borough objected to the unit description (which varies from title-by-title description in the petition) and to a rerun election ordered after mail ballots were timely but improperly returned to the Commission's post office box.

The Director dismissed the objections and certified the results of the election.

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Appearances:

For the Public Employer
Davis, Reberkenny & Abramowitz, attorneys
(Harry A. Horwitz, of counsel)

For the Petitioner
Andrew J. Charnick, Jr., Staff Representative

DECISION

On December 17, 1993, the Borough of Brooklawn filed objections to a secret ballot election in which the United Steelworkers of America received all three votes. The Borough objects to the Director's earlier decision to void the results of a mail ballot election among the same employees (and order a new election) and it objects to the unit description. Specifically, it urges that the unit description "is not what the union petitioned-for, was never agreed to by the public employer, was not raised as an issue at the hearing by PERC or the union and as a result was not litigated."

On October 21, 1993, the Commission adopted a Hearing Officer's recommendations (H.O. No. 94-1, 19 NJPER 550 (¶24262 1993), and remanded the above-captioned case to me to conduct an election "consistent with those recommendations." Borough of Brooklawn, P.E.R.C. No. 94-37, 19 NJPER 570 (¶24267 1993). One recommendation of the hearing officer was to "conduct an election among remaining employees in the petitioned-for unit." The petition sought a unit of all tax collector typists, deputy court administrators, waterworks clerks and deputy borough clerks. The hearing officer recommended (and the Commission affirmed) that the deputy borough clerk was a confidential employee.

The hearing officer also described this unit as "nonsupervisory white collar employees", a description repeated verbatim in the Commission decision. The description was also used by the staff agent in both the proposed consent agreement form and in written correspondence dated May 5, 1993.

On November 9, 1993, a Notice of Election was sent to the parties for a mail ballot election for a unit of "all nonsupervisory white collar employees." Notwithstanding the employer's objection to the unit description, mail ballots with instructions and self-addressed stamped envelopes were sent to eligible employees on November 10, 1993, and "were to be received" by 10 a.m., December 1, 1993, pursuant to the Notice.

On December 1, 1993, no ballots were found in the post office box at the address printed on each envelope. A tally sheet reflecting that fact was sent to the parties. The parties were also so notified by telephone.

On December 2, 1993, the petitioner provided us with a copy of a receipt for certified mail addressed to our post office box. We conducted an investigation and found the voters had placed their respective Commission-supplied, self addressed stamped envelopes into a large envelope and mailed this envelope certified mail to our post office box. The docket numbers and Commission eligibility key numbers of the enclosed Commission envelopes matched those in the file. Since the large envelope was sent certified mail, the post office did not place it in our post office box and was not recovered by the PERC agent who went to retrieve the mail ballots on December 1, 1993.

On December 7, 1993, I ordered that an in-person secret ballot election be conducted and the mail ballot election voided.

The Borough never objected to the order for the rerun election and now objects to that election, evidently disapproving of the results. The objection has no merit. N.J.A.C. 19:11-9.2(h). I note that the mail ballots were timely received. Weighing both the voters' failure to mail the ballots according to the enclosed instructions and our failure to collect them, I determined that the election must be rerun. N.J.A.C. 19:11-9.4; 19:11-5.1. The rerun election was conducted on December 16, 1993.

I also dismiss the objection concerning the unit description. The Commission is charged with determining in each instance which unit is appropriate. N.J.S.A. 34:13A-6. The Commission favors structuring units along broad-based, functional lines and is reluctant to find appropriate units which are structured along occupational or departmental lines. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 272 (¶15134 1984). The unit description used in the elections comports with these requirements -- the "petitioned-for" description does not. When the parties failed to reach an agreement for an election, we were especially obliged to determine the appropriate unit. Furthermore, the Borough did not object to the generic description until November 10, 1993, long after the hearing officer and Commission applied the term in their respective decisions.

The Borough complains that the directed unit description is much broader than the petitioned-for unit and that "there could be a number of people who would not share a community of interest with members of the bargaining unit." This objection is merely theoretical; the Borough has not identified any employee who would fall within the description but was not declared an eligible voter. If an employee does not share a community of interest with the nonsupervisory white collar unit, the Borough may file an appropriate petition. See N.J.A.C. 19:11-1.5.

The objections to the December 16, 1993 election are dismissed and the results are certified, consistent with the enclosed Certification of Representative.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 27, 1993
Trenton, New Jersey