

D.R. NO. 94-14

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

In the Matter of

TOWNSHIP OF HAINESPORT,

Public Employer,

-and-

Docket No. RO-93-184

AFSCME COUNCIL 71, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation dismisses the union's post-election objections which asserted that two "temporary" employees were improperly permitted to vote and that the employer improperly challenged a third voter.

The Director finds that the union cannot use the post-election objections procedure as a substitute for challenging the voters' eligibility at the time of the election. Further, the Director finds that the employer legitimately challenged the third voter on the basis of her disputed employment status. There is no need to resolve that voter's eligibility as it could not affect the election results.

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Appearances:

For the Public Employer  
Bennett Bozarth, attorney

For the Petitioner,  
John Hemmy, Associate Director

DECISION

Pursuant to an Agreement for Consent Election, a representation election was conducted on November 19, 1993, by the Public Employment Relations Commission among approximately 13 non-supervisory employees of Hainesport Township. The tally of ballots reveals that five votes were cast in favor of representation by AFSCME, six votes were cast against representation and one ballot was challenged. Therefore, a majority of valid ballots were cast against representation.

On November 29, 1993, AFSCME filed timely post-election objections.<sup>1/</sup> It asserts that two voters were improperly permitted to vote in the election, and that the ballot of a third voter, whose eligibility was challenged by the Township, should have been counted as an eligible vote.

N.J.A.C. 19:11-9.2(h) sets forth the standard for reviewing election objections:

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. (emphasis supplied)

Under N.J.A.C. 19:11-9.2(i), if the Director of Representation concludes that the objecting party has presented a prima facie case, he shall conduct a further investigation; failure of the objecting party to furnish evidence which establishes a prima facie case may result in immediate dismissal of the objections.

AFSCME asserts that voters Salvatore Costa and Kristine Wisnewski were temporary employees, hired to fill positions for limited engagements, and should not have been eligible to vote.

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<sup>1/</sup> N.J.A.C. 19:11-9.2 permits the filing of objections within five days of service of the tally. N.J.A.C. 19:10-1 instructs that a filing period of five days or less is computed as working days. Because of the Thanksgiving holiday, the objections filing period ran until November 30, 1993.

Under the terms of the Agreement for Consent Election executed by the parties in this matter, and under N.J.A.C. 19:11-9.2(d), both parties were permitted to have an observer present during the election. The role of the election observer includes challenging the eligibility of voters.

N.J.A.C. 11:19-9.2(e) provides,

An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted prior to the time that a person casts a ballot....A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope.

Although apprised of its right to do so, AFSCME chose not to designate an employee as its observer for the election. Therefore, it did not challenge any voters during the election. AFSCME cannot now use the post-election objection process to seek to challenge voter eligibility. Tp. of Brick, E.D. No. 76-14, 1 NJPER (¶65 1975); Bor. of Cliffside Park, E.D. No. 55, NJPER Supp. (¶146 1974). Accordingly, AFSCME's objection that two temporary employees were permitted to vote is dismissed.

AFSCME also asserts that the Township improperly challenged a third voter, Patricia Szclc, on the basis that she was no longer employed by the Township. AFSCME argues that Szclc was eligible to vote.

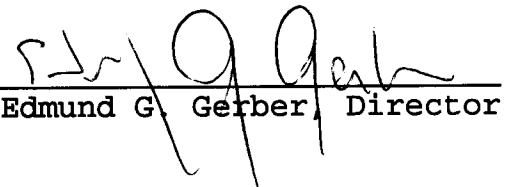
The Township properly asserted a challenge to a voter whose employment status it believed was in dispute. N.J.A.C. 11:19-9.2(k) provides that we will investigate challenged ballots if they are

sufficient in number to affect the results of the election. Here, the one challenged ballot cannot affect the election result.

Assuming arguendo that Szalc's ballot was counted as eligible, one additional vote, even if cast in favor of representation, could not result in a majority vote for AFSCME. An organization may only be certified by a majority vote. See Evesham Tp. Bd. of Ed., D.R. No. 79-36, 5 NJPER 253 (¶10143 1979). Accordingly, AFSCME's objection concerning the Township's challenge to a voter's eligibility is dismissed.

For the reasons set forth above, I find that AFSCME has not demonstrated that election conduct occurred which warrants setting aside the election as a matter of law. A certification of results of the election shall issue forthwith.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: January 6, 1994  
Trenton, New Jersey