

D.R. NO. 86-20

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

In the Matter of

JERSEY CITY MEDICAL CENTER,

Public Employer-Petitioner,

-and-

INTERNATIONAL SERVICE WORKERS
OF AMERICA, LOCAL 103,

DOCKET NO. RE-86-4

-and-

JERSEY CITY MEDICAL CENTER
ASSOCIATION.

Synopsis

The Director of Representation dismisses election objections regarding allegations of unequal access to eligible employee voters being permitted by the Public Employer prior to the election. The Director finds that the evidence submitted in support of the objections was facially deficient. The affidavit submitted was based solely on hearsay and accordingly no residuum of competent evidence existed on which to base an investigation.

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INTERNATIONAL SERVICE WORKERS
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JERSEY CITY MEDICAL CENTER ASSOCIATION,

Appearances:

For the Public Employer, Petitioner
Grotta, Glassman & Hoffman, Esqs.
(M. Joan Foster, of counsel)

For the I.S.W.A., Local 103
Stephen J. Edelstein, Esq.

For the Jersey City Medical Center Association
Cole and Cole, Esqs.
(Larry M. Cole, of counsel)

DECISION

Pursuant to an Agreement for Consent Election, a representation election was conducted on March 20, 1986 by the Public Employment Relations Commission ("Commission") among approximately 75 non-nursing supervisory employees of the Jersey City Medical Center ("Medical Center"). Employees were provided the

opportunity to choose a representative, either the incumbent certified representative, I.S.W.A., Local 103 ("I.S.W.A.") or the Jersey City Medical Center Association ("Association") or to choose not to be represented. The tally of ballots reveals that 28 valid ballots were cast for Jersey City Medical Center Association; 25 valid ballots were cast for I.S.W.A., Local 103; 2 valid ballots were cast against representation and no ballots were challenged.

On March 25, 1986, pursuant to N.J.A.C. 19:11-9.2(h), I.S.W.A. filed post-election objections alleging that the public employer rendered improper assistance to the Jersey City Medical Center Association by permitting representatives of the Association access to eligible employee voters on its premises during work hours. I.S.W.A. contends that Association representatives were permitted to campaign, electioneer and distribute literature on the premises while similar access was denied to its own representatives.

In support of these allegations, I.S.W.A. submitted two affidavits. Both affidavits recite details surrounding the same incident - an officer of the I.S.W.A. made arrangements to have a meeting on the employer's premises at 2 p.m. on March 13, 1986. However, on the 13th, a representative of the employer called the I.S.W.A. at 11:30 a.m. to cancel the meeting. The representative stated that he "was not required to permit (the I.S.W.A.) to meet with the employees at the time and place scheduled as long as (the hospital) did not permit the Jersey City Medical Center Association

to conduct a similar meeting." The representative of the I.S.W.A. went to the Medical Center around 2 p.m. to explain that the meeting was cancelled. After 15 minutes had passed, a security officer told the I.S.W.A. officer he was required to leave and escorted him off the premises.

In addition, one affidavit stated that there was electioneering by the Jersey City Medical Association on the premises of the Medical Center. These allegations go to establishing unequal access. However, the affiant did not actually observe electioneering on the Medical Center premises during working hours. Rather, he made these statements on the basis of information he received from certain named employees. The affidavit does not allege that these named employees witnessed the acts alleged. A copy of the literature alleged to have been distributed was also submitted.

N.J.A.C. 19:11-9.2(h) sets forth the initial standard for the Director's review of 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 added)

Thereafter, pursuant to N.J.A.C. 19:11-9.2(i), the Director of Representation must review the objections and supporting evidence to determine "if the party filing said objections has furnished

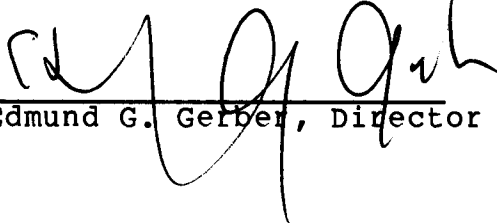
sufficient evidence to support a prima facie case." The Director will assume the veracity of the specific evidence proffered by the objecting party. If sufficient evidence has not been submitted to support a prima facie case, the Director may dismiss the objections immediately. If sufficient evidence has been submitted, then, and only then, will the Director conduct an investigation into the objections. See In re State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd App. Div. Dkts. No. A-3275-80T2 & A-4164-80T3.

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-prong test is not met, the objections will be dismissed.

In the present case, I.S.W.A. failed to meet the procedural or evidentiary component. The affidavit submitted as evidence of unequal treatment is facially deficient. The assertions made therein rely on hearsay and hearsay alone. No direct evidence (i.e., based on the personal knowledge of the affiant) whatsoever was submitted. None of the persons alleged to have witnessed the

improper electioneering gave statements regarding the activities which occurred, nor were any details set forth. Accordingly, this type of evidence, based solely on hearsay, cannot be considered sufficient. In order to support a finding that the procedural component has been met, a residuum of competent evidence must exist. See e.g., Rules of Procedure for the Office of Administrative Law, N.J.A.C. 1:1-15.8. In this case, one of the two prongs of the threshold standard has not been met and therefore the objections are hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

Dated: April 25, 1986
Trenton, New Jersey