D.R. NO. 81-49

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

In the Matters of

STATE OF NEW JERSEY,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Intervenor.

Docket Nos. RE-81-2
RE-81-3
RE-81-4
RE-81-5

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION, a/w AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Organization.

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioner,

-and-

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION, a/w AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Organization.

Docket Nos. RO-81-126
RO-81-127
RO-81-128
RO-81-129

SYNOPSIS

The Director of Representation dismisses objections filed by the American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME") to runoff elections held in the following units of state employees: (1) Professional Unit, (2) Primary Level Supervisors Unit, and (3) Higher Level Supervisors Unit. The Director specifically finds that AFSCME has failed to produce evidence in support of its objections which precisely and specifically shows that conduct has occurred which would warrant setting aside the elections as a matter of law, N.J.A.C. 19:-9.2(h). Since challenged ballots were not determinative of the results of the three elections and since the Director has now dismissed AFSCME's objections, the Director issues a Certification of Representative to the Communications Workers of America, AFL-CIO in each of the three statewide units.

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Employee Organization.

Appearances:

For the State of New Jersey
Frank A. Mason, Director, Office of Employee Relations

For Communications Workers of America, AFL-CIO,
Kapelsohn, Lerner, Reitman & Maisel, Esqs.
(Sidney Reitman, of Counsel)

For the American Federation of State, County, and Municipal Employees, AFL-CIO
Sterns, Herbert & Weinroth, Esqs.
(John M. Donnelly, of Counsel)

DECISION

This decision relates to objections filed concerning runoff elections in representation matters involving certain State employees. On December 16, 1980, the undersigned directed mail ballot elections in four separate statewide negotiations units consisting of approximately 32,028 state employees: (1) Administrative and Clerical Services Unit (approximately 11,496 employees) (2) Professional Unit (approximately 10,392 employees), (3) Primary Level Supervisors Unit (approximately 8,666 employees), and (4) Higher Level Supervisors Unit (approximately 1,474 employees) In re State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶ 12019 1980). Three employee organizations -- Communications Workers of America, AFL-CIO ("CWA"), American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME"), and New Jersey State Employees Association affiliated with American Federation of Teachers, AFL-CIO, ("SEA/AFT") -- qualified to participate in the mail ballot elections. Employees could vote for any of the three organizations or none.

On February 17, 1981, the Commission mailed ballots to employees in each of the four units. Instructions accompanying the ballot set a deadline of 4:30 p.m. on March 9, 1981, for their return to the Commission.

From March 9 thru March 12, 1981, Commission staff agents sorted and counted the ballots in each of the four units. With the exception of the Professional Unit, the results in each unit were

dependent upon the resolution of certain challenged ballots.[1/] On March 25 and April 3, 1981, the undersigned issued two decisions containing determinations of challenged ballots. In re State of New Jersey, D.R. No. 81-32, 7 NJPER 205 (¶ 12091 1981); In re State of New Jersey, D.R. No. 81-34, 7 NJPER 209 (¶ 12093 1981). On April 6, 1981, after a count of the challenged ballots on which there had been a determination, revised tallies of ballots issued in the three remaining units. These results appear below. [2/]

On March 18, 1981, SEA/AFT, pursuant to N.J.A.C. 19:11-9.2 (h), filed eleven objections to the elections. No other party filed any objections nor supported SEA/AFT's objections. On April 10, 1981, the undersigned dismissed SEA/AFT's objections. In re State of New Jersey, D.R. No. 81-35, 7 NJPER 220 (¶12096 1981). Because CWA had received a majority of the valid ballots cast in the Administrative and Clerical Services Unit, the undersigned issued the appropriate Certification of Representative in that

1/ Challenged ballots were not determinative of the results in the Professional Unit. The results, listed below, established the need for a runoff between CWA and AFSCME, N.J.A.C. 19:11-9.3:

Professional Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
2,313	1,722	1,475	582	211	185

2/ Administrative and Clerical Services Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
3,165	1,373	1,183	323	475	170

Primary Level Supervisors Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
2,162	1,317	1,193	463	268	51

Higher Level Supervisors Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
349	226	222	155	61	7

Pursuant to the Act and Commission rule 19:11-9.5, to be certified as the exclusive representative an employee organization must receive a majority of the valid ballots cast in the election.

unit. Because no choice received a majority of the valid votes cast in either the Professional Unit or the Primary Level Supervisors Unit, the undersigned directed that runoff mail ballot elections be held between CWA and AFSCME (or their appropriate supervisory affiliates) in these units.[3/] N.J.A.C. 19:11-9.3. Challenges remained determinative in the Higher Level Supervisors Unit and after a further administrative investigation, the undersigned resolved additional challenged votes. In re State of New Jersey, D.R. No. 81-37, 7 NJPER 268 (¶12119 1981). Pursuant to this decision, a subsequent count ensued on April 30, 1981. The results of the count indicated the necessity of a runoff election in the Higher Level Supervisors Unit between CWA and AFSCME supervisory affiliates,[4/] and such election was directed.

Mail ballots for the runoff elections in the Professional Unit and Primary Level Supervisors Unit were sent out on May 7, 1981. Mail ballots for the runoff election in the Higher Level Supervisors Unit were sent out on May 11, 1981. The deadline for the return of the ballots was 4:30 p.m. on May 27, 1981.

3/ SEA/AFT requested review of the decision dismissing objections and stays of the runoff elections and the issuance of certification in the Administrative and Clerical Services Unit. On April 24, 1981, the Commission denied the Request for Review, thus mooting the request for the stays. In re State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 265 (¶ 12114 1981). SEA/AFT has appealed this decision. Appellate Division No. A-3275-80-TL. SEA/AFT also requested the Superior Court to grant a stay of the runoff elections and issuance of certification, but on April 30, 1981, the Court denied this request. Motion No. M-3092-80.

4/ Inasmuch as SEA/AFT did not receive sufficient votes to qualify for participation in the runoff elections, it is not a party to these objections.

Commission staff agents, witnessed by the parties' observers, retrieved the returned ballots from the post office at 4:30 p.m. on May 27, 1981, and then sorted and counted the ballots that night and the next day and evening. At the conclusion of the count, a Tally of Ballots issued for each unit. The tallies showed the following results:

Professional Unit

CWA	AFSCME	Void	Challenged
2,881	2,586	223	142

Primary Level Supervisors Unit

CWA	AFSCME	Void	Challenged
2,688	1,860	191	105

Higher Level Supervisors Unit

CWA	AFSCME	Void	Challenged
476	397	42	26

As these figures reveal, in each unit CWA received a majority of the valid votes cast plus challenged ballots, thus obviating the need to resolve challenged ballots, N.J.A.C. 19:11-9.2(1), and making certification of CWA appropriate, provided objections were not filed within five days of the furnishing of the Tally of Ballots.

On June 4, 1981, AFSCME filed seven objections to the elections.[5/] On June 12, 1981, AFSCME filed a brief and supporting documentation. No other party has filed objections. This decision will consider AFSCME's objections and supporting documentation.

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

5/ A copy of AFSCME's objections is attached hereto as "Appendix A".

> 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.

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 the immediate dismissal of the objections.

In applying the above standard and dismissing SEA/AFT's objections to the original elections, the undersigned emphasized that allegations of impropriety in this particular case had to be analyzed "...in the context of the year-long organizational and election campaign involving 32,000 employees [there are 21,000 employees excluding employees of the Administrative and Clerical Services Unit] working at numerous locations throughout the State and the extensive distribution of election information through the parties' own efforts and media coverage." In re State of New Jersey, D.R. NO. 81-35, supra, p. 7.[6/]

6/ For an extended discussion of the standards for reviewing election objections, the purposes underlying these standards, and their conformity with private sector precedent, see State of New Jersey, D.R. No. 81-35, supra, pp. 5-7 and P.E.R.C. No. 81-127, supra, at pp. 12-17. AFSCME has not challenged the applicability of these standards.

Accordingly, the undersigned will now determine whether the evidence which AFSCME has proffered in connection with the conduct of the three statewide runoff elections "precisely and specifically shows that conduct has occurred which would warrant setting aside the elections as a matter of law." If AFSCME has failed to submit evidence of this quality, the undersigned will dismiss the objections.

OBJECTIONS TO THE CONDUCT OF THE ELECTIONS

In its first objection, AFSCME states:

> Voter eligibility, as determined by the employer in the initial eligibility lists, in its April, 1981 revisions to the eligibility list (utilized in the February/March, 1981 election) and as established by the Public Employment Relations Commission ("PERC"), was highly inaccurate, arbitrary and improper under N.J.A.C. 19:11-9.2, 19:11-9.3 and 19:11-9.6 and other statutes and regulations. 7/

In its brief, AFSCME specifies the following complaints: (1) employees who worked in the Administrative and Clerical Services Unit on the eligibility date for the first election but who subsequently transferred or received promotions into one of the other runoff election units should not have been allowed to vote; (2) if such employees were properly allowed to vote, then employees who were hired after the eligibility cutoff for the first elections or who subsequently transferred or received promotions into one of the three units involved in the runoff elections should have been allowed to vote; (3) a substantial turnover of employees in the three runoff election units necessitated new eligibility lists; (4)

7/ Objection No. 3 duplicates, in part, Objection No. 1 and thus does not warrant separate treatment.

Judiciary employees with eligible job titles should have been included on the eligibility lists; (5) Intermittent Claims Examiners and Intermittent Interviewers should have been included on the eligibility lists; and (6) the State improperly discouraged Division of Budget and Accounting employees in the Professional Unit from voting.

In order to examine AFSCME's objection relating to its claim of inaccuracies in the voting eligibility lists, it is important to understand the Commission's rules concerning voter eligibility and how these rules were implemented in the circumstances of this particular case. In directing the original elections in these consolidated representation matters involving four units of state employees, the undersigned fixed the date for voter eligibility as December 12, 1980. Thus, in order to vote in an election, an individual had to be employed in one of the four units as of December 12, 1980 and had to remain an eligible employee as of the date of the Tally of Ballots. N.J.A.C. 19:11-9.2(c). Pursuant to a ground rule established in the initial elections, an employee who had been transferred or promoted from one of the units to another of the units during the intervening period from the eligibility date to the tally date would be treated as an eligible voter in the unit in which the individual was employed as of the date of the tally. The undersigned's determinations with respect to the challenges concerning voter eligibility in the initial elections reflected that those employees who had in fact been transferred during this intervening period were deemed eligible employees in the new units in which they were currently employed as of the date of the tally. Although SEA/AFT and AFSCME

filed requests for review of certain determinations concerning challenges, no party questioned the propriety of treating those employees who had been transferred during the intervening period as eligible voters in the units in which they were employed on the date of the tally.

N.J.A.C. 19:11-9.3(b) provides that only those employees who were eligible to vote in an original election and who are in an eligible category on the date of a runoff election may be eligible to vote in a runoff election. On April 15, 1981, a conference was convened among the parties to discuss the procedures concerning the runoff elections in the Primary Level Supervisors Unit and the Professional Unit. 8/ The parties were advised of the above rule concerning voter eligibility in runoff elections and agreed, at the conference, to establish voter eligibility with respect to employees who had been transferred or promoted since the initial eligibility date in a manner consistent with the procedure utilized in the initial election. The parties stipulated, therefore, that all those voters who were eligible to vote in the initial elections and who had subsequently been transferred or promoted into the units involved in the runoff elections would be deemed eligible to vote in the unit in which they were currently placed. 9/ The

8/ The Commission had not yet determined that a runoff election was necessary in the Higher Level Supervisors Unit.

9/ The Unions stipulated as follows:
AFSCME and CWA agree that individuals who were eligible to vote in the initial elections and who have since been transferred or promoted into the Professional Unit or Primary Level Unit shall be deemed eligible to vote in the unit in which they are currently placed on May 27 [the last date for voting in the runoff election].

parties were further advised by the Commission agent that pursuant to the aforecited Commission rule, employees wishing to vote in the runoff elections had to be eligible voters in the first election and that those voters who were no longer employed in one of the three units involved in the runoff elections could not vote.

Thereafter on May 5, 1981, the State provided the Commission and the Unions with a list of employees stating that its records revealed that these employees were either no longer employed in the units involved in the runoff elections or had been transferred or promoted within the units. The State's list identified each individual's unit placement as of December 12, 1980 and April 24, 1981. A conference was convened among the parties on May 11, 1981, in order to discuss the implementation of the list. At the conference, the Unions agreed to accept the list as generally accurate for voting eligibility purposes. However, both Unions reserved the right to challenge specific voters in individual instances where the challenging Union believed that the State's information with respect to a particular individual was incorrect.

AFSCME's April 15, 1981 stipulation provides a short and dispositive answer to its contention, raised now for the first time, that employees who worked in the Administrative and Clerical Services Unit at the time of the eligibility cutoff for the first elections but who subsequently transferred or received promotions into one of the three runoff election units should not have been allowed to vote. Further, AFSCME reconfirmed its commitment to

its stipulation at the May 11, 1981 conference when it accepted the general accuracy of the eligibility list and reserved only the right to challenge the eligibility of particular employees.[10/] Finally, at the May 27 and 28, 1981 count, AFSCME did not challenge the ballots of any of the employees who had been shifted into one of the runoff units from one of the four original election units. AFSCME cannot after the elections question for the first time the eligibility of employees it had agreed could vote at all times before and during the elections. Accordingly, the undersigned rejects this subpart of the first objection.

AFSCME next argues that employees who were hired after the cutoff date on the original list or who shifted into one of the three runoff election units from job titles outside the original election units should have been allowed to vote. For example, AFSCME maintains that approximately 350 employees who allegedly transferred from a statewide health care unit into one of the three runoff election units should have been included on the eligibility list.

This contention contravenes the requirement of N.J.A.C. 19:11-9.3 that only employees who were eligible to vote in the original election and who were in an eligible category on the date of the runoff election shall be eligible to vote in the

10/ Since no runoff election had been directed in the Higher Level Supervisors Unit at the time of the April 15, 1981 stipulation, that stipulation does not expressly include transfers or promotions into that unit. The State's submission of a list including the three employees who had shifted into the Higher Level Supervisors Unit from one of the other three statewide units and AFSCME's acceptance of this list at the May 11, 1981 conference evidence the intention of all parties to treat such transfers and promotions in accordance with the April 15, 1981 stipulation.

runoff election. All of the employees whom AFSCME identifies were not eligible to vote in the original election. In contrast to employees who had been in one of the four original election units and had subsequently shifted into one of the three runoff election units, none of the employees whom AFSCME identifies was agreed to be eligible pursuant to a written stipulation. Indeed, AFSCME never raised, before or during the runoff elections, the question of the eligibility of employees transferred or promoted into runoff election units from job titles outside the four original election units. Specifically, AFSCME never requested that such employees be included in the eligibility list or that they be sent challenged ballots. In sum, AFSCME's attempt to change the ground rules after the elections comes too late and violates the Commission's rules on voter eligibility. Accordingly, the undersigned rejects this subpart of the first objection.

In a slight variation of the previous argument, AFSCME next asserts that a substantial turnover in the three election units necessitated a new eligibility list which would identify new hires and employees transferred or promoted into one of the three runoff election units from a job title outside those units. AFSCME maintains that under NLRB precedent, see, e.g., Interlake Steamship Co., 178 NLRB No. 20, 72 LRRM 1009 (1969) an employer must provide a new eligibility list in a runoff election when there has been a substantial turnover in the composition of the bargaining unit since the initial election and a long period of time has elapsed. AFSCME estimates that between December 12, 1980 and April 24, 1981, 1,000 new hires joined the three election

units,[11] 350 former health care unit members transferred into one of the runoff election units, and 2,100 employees transferred into one of the three units from one of the four units involved in the first elections.[12] Thus, AFSCME calculates that of the 21,000 employees involved in the runoff elections, 3,450 employees (16%) had entered a new runoff election unit since the December 12, 1980 cutoff and were denied an opportunity to vote.

AFSCME concedes that a long period of time, within the meaning of NLRB case law, did not elapse between the December 12, 1980 eligibility cutoff and the May 7 - 27, 1981 runoff voting.[13] Further, its estimate of the number of additional employees joining the three runoff election units also is greatly exaggerated. All employees who transferred into a runoff election unit from another of the eligible units were included on the State's April 24, 1981 supplementary list and were allowed to vote. Thus, these employees cannot be included in AFSCME's calculations. Assuming the veracity of AFSCME's unsubstantiated claim of 1,000 new hires and assuming that 350 health care employees transferred into runoff election units, the number of employees who had joined runoff election units since December 12, 1980, but could not vote, totals only 6% of the 21,000 employees involved. Finally, if AFSCME believed that a new eligibility list was necessary, it should not have waited until after the elections to raise this contention. Accordingly, the undersigned rejects this subpart of the first objection.

11/ AFSCME has not submitted documentation to support this claim.

12/ AFSCME has not submitted documentation to support this claim. According to the list submitted by the State, as of April 24, 1981, 887 employees -- not 2,100 -- had switched from one of the four original election units to another of the three runoff election uni

13/ Contrast the five month passage of time here with the one and a half year hiatus in Interlake Steamship, Co., supra.

AFSCME next claims that 175 Judiciary employees with job titles ordinarily included in the three runoff election units should have been included on the April 24, 1981 "revised eligibility list." The original eligibility lists included approximately 350 employees in eligible job titles working for the Judiciary. Prior to the first elections, the State decided to challenge the eligibility of these Judiciary employees and did so at the March 9 - 12, 1981 count. The undersigned subsequently sustained these challenges, In re State of New Jersey, D.R. No. 81-34, supra, and the Commission denied SEA/AFT's request to review this determination. AFSCME did not seek review of that determination before the Commission at that time. In re State of New Jersey, P.E.R.C. No. 81-127, supra. Because Judiciary employees were deemed not eligible to vote in the original elections, these Judiciary employees were not eligible to vote in the three runoff election units, N.J.A.C. 19:11-9.3(b), and the State had no obligation to include their names on any subsequent list. Accordingly, this subpart of AFSCME's first objection is baseless.

AFSCME next argues that approximately 50 - 100 Intermittent Claims Examiners ("ICE") and Intermittent Interviewers ("II") should have been included on the April 24, 1981 "revised eligibility list" since the undersigned had previously determined, see In re State of New Jersey, D.R. No. 81-32, supra, that there was no basis to challenge the ballots of any intermittent employees other than Intermittent Claims Takers ("ICT").

AFSCME misreads the undersigned' s decision in D.R. No. 81-32. The positions of ICT, ICE and II are the subject of a Clarification of Unit Petition filed before the cutoff date of the original eligibility lists and pending before the Commission.

Accordingly, the State did not include employees in these positions on the original eligibility lists. Instead of disputing the exclusion of these employees from these lists, each competing employee organization requested challenged ballots for certain employees in these job positions who wished to vote. At the first election count, the State maintained its challenges to employees in ICT, ICE and II positions because of their allegedly temporary status. It also challenged certain other individuals whom it considered temporary or casual.

In the decision determining certain challenged ballots, the undersigned stated:

> The parties were advised, however, that the voters whose work averaged 20 or more hours per week appeared to be eligible, unless some evidence were presented in support of a claim that the individuals were not contractually included in the unit or otherwise ineligible. The State has indicated that certain of these employees, identified as "intermittent claims taker" (or related titles) are considered by the State as temporary employees because they may not work more than 315 hours in a yearly quarter. No evidentiary proffer has been submitted with respect to the other employees identified as averaging at least 20 hours of work per week. Accordingly, with the exception of the "intermittent claims taker" titles, there is no basis to question the eligibility of these voters, and their ballots shall be counted. (footnotes omitted) 14/ (Emphasis supplied), supra at pp. 11-12.

The ICE and II positions are indisputably "related titles" to the ICT positions. The quoted excerpt from D.R. No. 81-32 makes

14/ In one footnote, the undersigned observed that ballots in the "intermittent claims taker" category would remain challenged for the purposes of that decision.

clear that the undersigned would continue to treat the ICT title and related positions -- i.e., ICE and II -- as requiring challenged ballots, consistent with the pending Clarification of Unit Petition and the parties' practice in the original elections.

Further, AFSCME never protested the procedure for handling the ICT, ICE, II employees during the original elections or in objections after the elections. During the runoff elections, AFSCME operated according to the procedure all parties had utilized in the first elections. It did not request the inclusion of these titles on an eligibility list and instead requested challenged ballots on behalf of certain individual employees occupying these positions. Again, the undersigned rejects AFSCME's attempt to change the ground rules after the elections. Accordingly, the undersigned rejects this subpart of the first objection.

In the next component of its first objection, AFSCME contends that the State improperly discouraged Budget and Accounting employees in the Professional Unit from voting.[15/] All such employees received ballots in the original elections. AFSCME asserts, however, that on February 6, 1981, the Director of the Division of Budget and Accounting sent a memorandum to about 50 Budget and Accounting employees informing them that they were ineligible to vote. All these employees received ballots in the original elections. AFSCME did not object to the first elections on the

15/ This last complaint does not implicate the integrity of the eligibility list or the conduct of the election; it properly belongs in the category of conduct allegedly affecting the results of the election. Nevertheless, the undersigned will consider this contention in the order in which AFSCME has presented it.

basis of this memorandum. All these employees received ballots for the runoff elections. AFSCME now claims that the February 6, 1981 memorandum tainted the runoff elections. To support this claim, it contrasts the 60% level of total voter turnout in the runoff elections with its estimate that only 20% of Budget and Accounting professional employees (29 employees out of 152) voted.

AFSCME has waived this contention by failing to file an objection after the first elections. The National Labor Relations Board has held that objections filed after a runoff election, but concerning acts predating the initial election are untimely and hence invalid. Thus, in Charles T. Brandt, Inc., 118 NLRB 956, 40 LRRM 1298 (1957), the intervening union filed objections to a runoff election it lost to a petitioning union. The former claimed that the employer had illegally assisted the latter, but none of the claimed acts of favoritism occurred after the first election. Since the intervening union had failed to file objections to the first election on the basis of the prior acts of assistance, it waived its right to contest these acts further. See also, National Petro-Chemical Corp., 107 NLRB 1610, 33 LRRM 1443 (1954).

Further, AFSCME has apparently confused the employment figures for Civil Service employees (Payroll #210) with those for Budget and Accounting employees (Payroll #103). While there are 153 professional employees in the former payroll classification, there are only 54 professional employees in the latter. Of these 54 employees, 29 voted (54%). This percentage slightly exceeds

the level (53%) of employees voting in the Professional Unit and dispels any suggestion that the February 6 memorandum may have influenced employees three months later, despite the subsequent receipt of ballots on two different occasions. Accordingly, the undersigned finds no basis for a determination that conduct has occurred which would warrant setting aside the elections as a matter of law.

The undersigned has now considered each subpart of the first objection and has found no instance of conduct which could have affected the results of the elections. Accordingly, the undersigned dismisses the first objection in its entirety.

Objection No. 2 states:

> The procedures utilized by the PERC for providing employees with ballots and for having those ballots returned and tallied improperly disenfranchised many eligible voters.

This objection has two subparts: (1) eligible voters were disenfranchised by not receiving ballots; and (2) eligible voters were disenfranchised by having the Commission not count their ballots.

AFSCME's support for its belief that eligible voters were disenfranchised by not receiving ballots consists of a solitary sentence in an affidavit: "Also, we requested a ballot from PERC for Michael Mrivichin, who was on the Professional Unit eligibility list, but he has still not received one." Commission records, which were supplied on a continuing basis to all parties, show that on May 21, 1981, AFSCME requested a ballot for a voter

named "Mirichin." Because this name was not on the eligibility list, a Commission agent issued a challenged ballot on May 22, 1981.[16/] In sum, AFSCME points to only one incident, an incident which a Commission agent handled in accordance with the information given, to support its claim that a number of eligible voters did not receive ballots. Accordingly, there is no specific factual basis showing that the Commission procedures for providing employees with ballots were improper.

AFSCME's support for its belief that eligible voters were disenfranchised by having PERC not count their ballots consists of one affidavit from an AFSCME supporter stating that he personally mailed the ballot of a professional employee, Aljita Ortiz, but this vote was not counted,[17/] and an affidavit from AFSCME's International Union Area Director stating that his conversations with people in the field and his examination of vote tallies revealed that three Professional Unit employees and three Primary Level Supervisors Unit employees mailed ballots back to the Commission, but none of these ballots was counted.[18/]

Commission records show that Ms. Ortiz voted, but do not establish whether the other six employees mailed their ballots. Assuming that these employees did mail their ballots on time, the

16/ While this information is not essential to the determination of this issue, it is noted that Commission records indicate that this ballot was received by the voter and returned with a postmark of May 29, 1981. The ballot thus was untimely.

17/ Instructions accompanying the ballot clearly provided that each voter should vote as if in a secret voting booth; mailing a ballot on behalf of another employee was highly improper.

18/ The latter affidavit lacks any specificity as to when and how the employees mailed their ballots.

undersigned believes that the lack of receipt of these few ballots could not possibly have affected the outcome of the elections. A mail ballot election can never be wholly free of the possibility of an occasional unreceived ballot which may become lost or delayed in the mails. An election is not per se invalid because this possibility becomes a reality. See, e.g., J. Ray McDermott & Co., Inc. v. NLRB, 98 LRRM 2191 (5th Cir. 1978) (Union properly certified even though three ballots lost in mail could have affected outcome of election). In runoff elections involving 21,000 employees, it is gratifying rather than cause for discontent that only six persons mailed ballots that may not have been properly received by the Commission.

Accordingly, the undersigned determines that AFSCME has not submitted evidence specifically and precisely showing that the procedures utilized by the Commission for providing employees with ballots and for having those ballots returned and tallied improperly disenfranchised many eligible employees. The second objection is herewith dismissed.

OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTIONS

AFSCME's fourth and fifth objections overlap. Objection No. 4 states:

> The employer discriminatorily enforced its rules concerning access to employees' work sites and posting of literature so as to hamper the AFSCME campaign and to promote employee contacts by the Communications Workers of America, AFL-CIO ("CWA").

Objection No. 5 states:

> The employer denied AFSCME access to employees and promoted CWA contacts with employees.

In its brief, AFSCME places these objections under the general rubric of impermissible collusion between the State and CWA and then breaks them down into several subparts: (1) the State allowed CWA to use its affiliation with Mercer Council #4, NJCSA and that organization's status as part of the "incumbent representative" to gain access to facilities for organizational purposes and to secure disparate leave treatment for employee sympathizers; (2) the State's posting rule was invalid on its face and was, in any event, disparately enforced; and (3) the State's rules with regard to holding meetings on State premises were unevenly enforced.

AFSCME acknowledges that CSA, as a joint employee representative with SEA, was entitled to hold meetings to conduct its representational duties, and that neither it nor the State acted improperly in making such arrangements. AFSCME, however, alleges that certain documentation which it submitted supports its claim that the State allowed CWA to use Mercer Council #4, NJCSA as a cover to gain access to facilities for organizational purposes.

AFSCME submitted a March 6, 1980 memorandum from the Director of Administration of the Department of Labor and Industry which states that access to the premises to address employees was limited solely to exclusive bargaining agents. This memorandum, issued before the filing of the representations petitions involved herein, comports with labor law precedent allowing exclusive

negotiations agents greater rights of access than their competitors until the onset of representation proceedings. See, In re Union Cty Reg. H.S. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976). Further, on its face, the memorandum does not discriminate in favor of CWA against AFSCME since neither one was an exclusive representative and therefore both were equally barred.[19/]

According to three affidavits, CSA called two meetings at the Labor and Industry Building in Trenton to discuss "disability" with interested employees, but only CWA organizational activities were discussed at the meeting. The first meeting was held in May, 1980. No date is given for the second meeting, but one affiant maintains that CWA asked attendees to sign authorization cards so it appears the meeting predated the filing of the representation petitions in October, 1980. According to one affiant, when he complained about the second meeting to a personnel official, the official responded that he could not stop these meetings since CSA called them. AFSCME has produced no evidence that meetings similar to the two discussed reoccurred in the Labor and Industry Building after the personnel official's alleged response, or that additional meetings occurred at a point in time more relevant to the runoff elections.

Another affiant states that "last year" he attended a meeting at Ancora State Hospital which CSA called, but which unidentified CWA representatives used to ask people to sign authorization

19/ The same considerations make inappropriate AFSCME's reliance on an April 6, 1981 letter from the Chief of Personnel Services refusing requests for access to State facilities unless received from recognized representatives of the present statewide bargaining agents for purposes of consulting on current contractual obligations. The letter makes clear that this policy would be relaxed upon the scheduling of further elections. AFSCME does not dispute that the policy was subsequently relaxed, as soon as the runoff elections were ordered.

cards. This affiant also "...heard about a number of other instances during the end of 1980 when CWA people came to Ancora to organize, supposedly because they were there to conduct CSA business." The affidavit contains neither any indication that management knew of and condoned these meetings nor any specific information concerning the individuals involved and the alleged dates of the meetings the affiant did not attend.

AFSCME also submitted a letter from the Executive Director of Mercer Council #4, NJCSA which requested the holding of six two hour meetings during the period of January 12 - 22, 1981, at six different locations in Trenton. Neither this letter nor any other material submitted indicates in any way that the meetings would be organizational rather than representational in nature or would benefit CWA; further, there is no evidence that the State granted all or any of the requests.

Finally, an AFSCME International Union Representative states that during the time period after the original elections and before the announcement of the runoff elections, "...CWA had unrestricted access [to the Department of Motor Vehicles] by pretending that it was holding CSA meetings." This affidavit is conclusionary in nature and lacks any specific information concerning the names of any individuals involved or the dates of any alleged meetings.

A review of the above factual proffer reveals that the only instances of alleged favoritism for which AFSCME has provided any specific information apparently occurred prior to the filing of the representation petitions. Alleged misconduct which occurs before the filing of a representation petition cannot

constitute the basis for an election objection. See, In re Cty of Salem and OPEIU, Local #14, D.R. No. 81-30, 7 NJPER 182 (¶12107 (¶12080 1981), Request for Review denied, P.E.R.C. No. 81-121, 7 NJPER 239 (¶12107 1981), appeal pending App. Div.; In re Goodyear Tire & Rubber Co., 138 NLRB 453, 41 LRRM 1070 (1962); In re Ideal Elec. & Mfg. Co., 134 NLRB 1275, 49 LRRM 1316 (1961); In re Red's Novelty Co., 22 NLRB No. 145, 91 LRRM 1370 (1976); Developing Labor Law, Cummulative Supplement, 1971-1975, p. 446. In any event, given the remote and isolated nature of the alleged incidents about which AFSCME has offered any specific information, it is difficult to believe that these meetings could have had an impact on the runoff elections.[20/] Accordingly, the undersigned concludes that AFSCME has failed to produce evidence precisely and specifically showing that after the filing of the representation petitions, the State knowingly allowed CWA to hold organizational meetings under the guise of conducting CSA representational business. Additionally, as indicated earlier, in an election of this magnitude with heavy media and other organizational activity by all parties, conduct so far removed from the date of the runoff elections is not competent evidence to warrant setting aside these elections.

AFSCME presents the following evidence in support of its claim that the State allowed CWA to use the position of Mercer Council #4, NJCSA as an "incumbent representative" to secure disparate leave treatment for employee sympathizers.

On January 20, 1981, a Labor Relations Coordinator signed authorizations for three employees (two of whom were in

20/ AFSCME failed to file objections on this basis to the first elections. As previously discussed, supra, at p. 16, the failure to file objections thereto constituted a waiver of its right to raise objections to any allegedly impermissible activity which occurred before the original election.

the Administrative and Clerical Services Unit) to attend a one day NJCSA conference. There is no indication that this conference was not concerned with representational interests or that CSA was not connected with it.

An Assistant Social Worker Supervisor, Litigation Specialist requested a 30 day leave, effective April 13, 1981, to work for AFSCME; the request was turned down because during the time period of the requested leave, the employer, in accordance with a previously announced plan to decentralize the operations of Litigation Specialists, needed that employee to handle and coordinate all litigation work for a Newark District Office. AFSCME does not challenge the bona fides of the employer's reason for declining the request.

AFSCME also alleges that an employee at the Hammonton Division of Youth and Family Services requested, but did not receive leave. AFSCME does not document the reasons given for declining this request nor does it state when the employee requested the leave, for what period, or the unit for which she worked.21/

Finally, AFSCME alleges that approximately 20 employees received extended release time in order to work on the CWA campaign while AFSCME supporters took personal leave or vacation time. AFSCME does not specify which employees took leaves and the periods of time involved; thus, there is no factual basis for asserting that the State allowed employees to take release time for organizational rather than representational activity or that the State had reason to suspect that properly granted release time may have been abused.

21/ By contrast, the International Union Area Director for AFSMCE admits that the State allowed at least 18 employees to take full time leave to work for AFSCME.

There is nothing improper in granting employees release-time so that they may assist an incumbent employee representative in fulfilling its representational duties under a collective agreement. AFSCME has not produced any evidence specifically or precisely showing that the State knowingly allowed employees to take release-time to work on CWA organizational activities rather than CSA representational activities. Further, AFSCME has not produced any evidence specifically or precisely showing that the State denied requests from AFSCME supporters in order to thwart AFSCME electioneering rather than to serve business imperatives nor has AFSCME produced any other evidence which would establish that the alleged disparate treatment had any influence on the elections. Accordingly, the undersigned concludes that AFSCME has failed to adduce evidence of disparate leave treatment which would warrant setting aside the elections as a matter of law.

AFSCME next shifts its attention to an alleged modification of the State policy on bulletin board use. In particular, AFSCME finds the following clause overly restrictive on its face and, accordingly, objectionable:

> Bulletin board space should be made available in order to post information submitted by the employee organizations through the responsible management official provided that such material is approved in advance as to content by the administration. The posted material shall not contain anything profane, obscene or defamatory of the State or its representatives and employees, nor anything constituting election campaign material.

SEA/AFT raised this contention in its objections to the first elections. The undersigned discussed and rejected this contention in D.R. No. 81-35, supra, at pp. 18-19, and the Commission denied

SEA/AFT's Request for Review. AFSCME, relying on the same two cases which SEA/AFT cited, has raised no new arguments contradicting or distinguishing the earlier analysis. Accordingly, the undersigned finds that AFSCME has failed to provide specific evidence establishing that the bulletin board policy on its face discriminated against it or that the policy prevented employees from obtaining information relevant to their choice in the elections. Further, AFSCME's failure to object to the modified bulletin board policy after the first elections constitutes a waiver of this claim.

AFSCME presents evidence of seven incidents in support of its contention that the State discriminated against AFSCME in enforcing its posting rule.

These scattered incidents, even if true, hardly suggest a State-orchestrated campaign to permit posting of CWA organizational literature and to prevent the posting of AFSCME literature. Only one affidavit directly links a personnel official at one location to a discriminatory refusal to remove CWA literature while removing AFSCME literature; no other affiant even complained to personnel officials about the removal of AFSCME literature or posting of CWA literature. The other affidavits established at most that some named individuals here and some unnamed individuals there removed AFSCME literature (an act not improper in itself under the State's bulletin board policy) and posted or did not disturb CWA literature. At no point does any affiant describe

the content of the alleged CWA "literature." In an election campaign where the parties repeatedly bombarded the voters with extensive coverage of issues over a one-year period, the isolated and unavoidable removal of a few posters, unconnected to a State policy of suppressing one point of view while fostering another, does not rise to the level of conduct warranting the setting aside of the elections as a matter of law.

AFSCME concedes that State rules with respect to requests to schedule informational meetings were neutral and permissible on their face. However, AFSCME asserts that "the rules with regard to holding meetings on State premises were disparately enforced." AFSCME's proffered evidence consists of a number of affidavits describing events occurring at different locations around the State. The undersigned has carefully examined the proffered evidence, assuming the verity of each allegation, and concludes that the evidence fails to establish a prima facie basis for setting aside the election as a matter of law.

Some of the incidents -- for example -- two unconfirmed February meetings in a Newark office building and meetings at a Vineland Residential Center -- preceded the first elections and thus cannot support an objection to the runoff elections. Other affidavits alleged incidents -- for example, the unavailability of rooms, the use of a hallway and the assignment of a room in the back of an office at the Division of Water Resources -- which lack any specificity concerning the dates of the occurrences which would provide a nexus to the instant elections.

Apparently, the availability of meeting room facilities (time and location) did not always suit AFSCME's desires, but in no instance was AFSCME precluded from meeting with employees at State facilities while CWA alone was allowed to meet with employees. Almost all of the alleged restrictions appear trivial -- for example, a less desired section of a cafeteria, a scheduled meeting during a breaktime during which employees apparently chose to attend an employee's birthday party, the posting of notices in some, but not other, locations of a work site, and orders to terminate meetings which exceeded the allotted time.

Four instances are cited to support specific claims that AFSCME meeting notices were not posted. In one of these instances, AFSCME states that its notice was posted on the second floor of a building, as requested, but not on a third floor where most employees apparently work. In another of the cited instances, two meetings in two buildings of a facility were scheduled, but it is claimed that the notice was posted in only one of the buildings.

In several affidavits AFSCME representatives complain generally that the State's access rules were rigidly enforced as to them, but that CWA representatives always seemed to enjoy free access to campaign with employees. One of the complaints alleged that CWA literature was left overnight on employee desks by unnamed persons, but there is no evidence to involve the State in this occurrence. In less than a handful of instances it is specifically alleged that State representatives knew of and permitted unauthorized conduct to continue.

The undersigned concludes that the evidence does not indicate that AFSCME suffered a discernible harm or that CWA received a detectable benefit in their attempts to convey their messages to State employees through disparate enforcement of the employee access procedures. AFSCME has failed to submit evidence precisely and specifically establishing a statewide pattern of officially approved favoritism in the scheduling and publicizing of meetings. At best, the allegations implicate only a few local personnel officials in a few different locations. Finally, both CWA and AFSCME received extensive television, radio and newspaper coverage during the prolonged organizational campaign and both ensuing election campaigns; both parties circulated numerous brochures and documents to State employees; and both held repeated work-site meetings with employees throughout the State. In extensively reported and hotly contested elections involving 21,000 employees in numerous locations throughout the State, it strains credibility that the isolated incidents of alleged State favoritism in granting access to employees could have affected the outcome of the elections.

Having disposed of all the subparts contained in the fourth and fifth objections, the undersigned rules that none of these subparts, even if all the facts alleged therein are true, precisely and specifically evidences conduct which would warrant the setting aside of the elections. Accordingly, the undersigned

dismisses the fourth and fifth objections.[22/]

In its sixth objection, AFSCME argues: "CWA representatives and organizers sought to influence voters by improper means, including threats and promises of rewards." In support of this objection, AFSCME offers affidavits concerning only two threats and one promise of reward for a vote.

According to one affidavit, on May 7, 1981, a State employee on release time for CWA implied in a conversation with an AFSCME supporter, an employee of the Division of Youth and Family Services in Newark, that "...she would fix it so that AFSCME wouldn't be anywhere in Newark, that her cousin Herbie was a cop, and AFSCME people would not be safe in Newark." According to two other affidavits, on May 1, 1981, two AFSCME supporters were at the Division of Youth and Family Services in Essex County in order to discuss AFSCME with employees; after the meeting terminated, a CWA supporter who was a social worker approached the same AFSCME supporter who received the previously described threat and stated: "You touched me that other time. Nobody ever touches me. I'll get back at you by doing something to you that'll make me lose my

22/ In its brief, AFSCME alleges one instance of employer coercion. According to an unsworn letter, on May 7, 1981, several Department of Taxation employees leafletted for CWA in front of the Raymond Boulevard office in Newark after reporting to work. One Taxation employee told an AFSCME representative that he supported AFSCME, but had a boss to live with so the employee had no choice but to help CWA. This incident, even if true, is isolated and could not have affected the outcome of the elections in and of itself. Further, the objections which AFSCME filed within five days of the elections do not raise the issue of employer coercion; hence, this issue has been untimely presented.

job."[23/] Finally, a Primary Level Supervisor at the Children's Residential Center in Vineland states that on or about May 20, 1981, she overheard a Cottage Training Supervisor say to a Social Worker I, a supporter of CWA who hopes to become a shop steward: "Sure my vote is worth $10.00. That'll buy me a bunch of drinks."

The undersigned's previous decision dismissing SEA/AFT's objections reviewed a contention that two threats had poisoned the election atmosphere. The undersigned rejected this contention because the threats were isolated in the extreme when considered in the context of an election campaign involving thousands of State employees working at multiple locations throughout the State. Further, no evidence suggested that CWA had deliberately adopted the tactics of fear and coercion as a campaign tool. See, D.R. No. 81-35, supra, at pp. 25-27. The Commission, in denying SEA/AFT's request for review, ruled that the undersigned acted properly in determining that the alleged threats, even if true, did not warrant setting aside the elections since they were of an extremely isolated nature. P.E.R.C. No. 81-127, supra, at 19.

Even assuming the truth of all pertinent allegations, AFSCME's evidence of two threats and one promise falls far short of the mark of conduct which could have affected runoff elections involving 21,000 employees working at sites throughout New Jersey.

23/ This threat is somewhat strange. It appears tied to an incident of physical contact rather than union rivalry. AFSCME offers no help in understanding what the reference to previous touching means. Further, the one who is making the threat expects to lose his job, not to make his antagonist lose his position.

One AFSCME supporter received two threats, one of which was overheard by another AFSCME adherent. One Primary Level Supervisor told one CWA supporter that his vote was worth $10.00. No evidence suggests that CWA officials sanctioned any of these incidents or that their perpetrators enjoyed any role other than that of an overzealous partisan. In sum, the proffered evidence, even if proven, does not establish that the threats and promises of reward permeated the election to such an extent that the outcome of these elections could conceivably have been affected. Accordingly, the undersigned dismisses the sixth objection.

In its last objection, AFSCME alleges:

> CWA representatives and organizers made numerous and substantial misrepresentations during the course of the campaign, thereby preventing the voters from exercising a full and free choice for their election representative.

In support of this objection, AFSCME proffers copies of CWA literature which it alleges contains six alleged misrepresentations.

The first brochure, apparently mailed to a State employee on an unknown date, contains only one allegedly objectionable sentence: "CWA now represents more public employees in New Jersey than AFSCME." A second brochure, mailed to a State employee on April 30, 1981, states that CWA represents 25,000 public employees in New Jersey while AFSCME represents 19,000 employees. AFSCME purportedly represents approximately 28,000 employees.

Another two-page document contains three allegedly objectionable comments. While the document is undated, it apparently precedes the original elections since SEA/AFT positions are

included. Further, AFSCME provides no indication of how extensively the document was circulated. AFSCME objects to one sentence which states that in 1977, it negotiated away some increments. AFSCME asserts that the contract it sent to its membership for ratification that year contained no provision eliminating increments. AFSCME denies another sentence which states that its New Jersey District Council is not a membership organization, that members cannot vote on contract ratifications, and that the District Council, rather than the locals, exercises all real power. Finally, AFSCME disputes a statement that the national union does not assign national staff or pay legal costs for local cases.

The next document is also undated, but again refers to SEA/AFT positions and thus presumably predated the initial election. No indication of the manner and extent of circulation appears. The allegedly objectionable part of the document states that AFSCME dues averaged $200 per year and that the national union's share of every dues dollar rises automatically with the cost of living; AFSCME asserts that the average dues figure is $105 per year and that the yearly increase depends on how a local sets up its dues structure.

Another document, again undated and without accompanying identifying information, reiterates the statements concerning dues described above and adds that AFSCME locals keep only 10 percent of their dues. AFSCME rejoins that the 10 percent limitation on a local's dues retention only arises when a local adopts a certain

dues structure. The document reproduces a clause from the AFSCME International Constitution on the annual adjustment of dues in relation to an increase in the cost of living. AFSCME does not contest the genuineness of this clause.

Finally, AFSCME submits an advertisement placed in The Trentonian on April 30, 1981. This advertisement contrasts AFSCME campaign organizers who allegedly come from outside New Jersey with CWA organizers who allegedly are New Jersey State employees. AFSCME asserts that it had numerous New Jersey citizens working for it while CWA had numerous out-of-State organizers, including its campaign director.

In Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980), the Commission recently considered a contention that alleged factual misrepresentations required the setting aside of an election. There, the employee organization which lost the election objected that the employer had circulated false and misleading statements regarding the payment of union dues. The Commission endorsed the following test borrowed from the NLRB's decision in Hollywood Ceramics Co., 140 NLRB 221, 51 LRRM 1600 (1962):

> An election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. 24/

24/ In Shopping Kart Food Markets, Inc., 228 NLRB No. 190, 94 LRRM 1705 (1977), the Board temporarily abandoned the Hollywood (continued)

Applying this test, the Commission concluded that the document was disseminated sufficiently in advance of the election to permit the union to respond to any information it believed misleading. Since the document thus did not reasonably tend to interfere with the results of the election and since the union did not introduce any evidence of actual interference with the results of the election, the Commission affirmed the undersigned's determination dismissing the objection. See also, County of Salem and OPEIU, Local No. 14, P.E.R.C. No. 81-121, 7 NJPER 239 (¶12107 1981); In re Jersey City Medical Center, P.E.R.C. No. 49 (1970).

In the instant case, AFSCME has failed to produce specific evidence that any of the allegedly distorted statements were circulated so near the mail ballot runoff elections as to preclude its opportunity to respond. To the contrary, many of the documents appeared before the original elections in February and March, 1981, and thus cannot serve as the basis for an objection to the runoff elections. None of the other documents contained a date of issuance later than April 30, 1981, a week before ballots were mailed in the elections. Further, AFSCME has not provided the Commission with specific information concerning the extent of distribution of the disputed statements. Again, and

24/ (continued)
Ceramics test and announced that it would no longer set aside elections on the basis of misleading campaign statements in the absence of such unusual circumstances as using forged documents or involving the Board or its processes in duplicity. However, in General Knit of California Inc., 239 NLRB No. 101, 99 LRRM 1687 (1978), the Board reinstated the Hollywood Ceramics test. The test is still applied today.

perhaps most significantly, in the context of a statewide runoff campaign involving 21,000 employees who had been exposed to a steady stream of election information from all parties and the media over the course of a one year organizational and election campaign, the statements which AFSCME has proffered are truly isolated in nature. Indeed, they constitute only a small portion of the documents in which they appeared and do not appear of such a character as to warrant setting aside the elections. In any event, AFSCME had ample opportunity to refute any alleged misrepresentations with its own campaign literature. Thus, applying the standards set forth in Passaic Valley Sewerage Commission, supra, and recently affirmed in County of Salem and OPEIU, Local No. 14, supra, the undersigned concludes that the alleged factual misrepresentations could not reasonably have been expected to have an impact on the election. Compare, D.R. No. 81-35, supra, at pp. 27-28 (AFSCME advertisement published one month before original election could not have affected election outcomes). AFSCME has not presented any evidence of actual interference with voter choice. Accordingly, the undersigned dismisses AFSCME's last objection.

Based upon the foregoing, the undersigned dismisses the election objections filed by AFSCME. In accordance with the rules of the Commission, the undersigned shall issue the appropriate certification of representative (attached hereto and made a part hereof) to CWA, AFL-CIO in the Professional Unit, to CWA Supervisors, AFL-CIO in the Primary Level Supervisors Unit, and to

CWA Supervisors (Higher Level), AFL-CIO in the Higher Level Supervisors Unit.

BY ORDER OF THE DIRECTOR

Carl Kurtzman, Director
of Representation

DATED: June 25, 1981
Trenton, New Jersey

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STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY

Petitioner

- and -

COMMUNICATIONS WORKERS OF AMERICAN, AFL-CIO,

Intervenor/Petitioner

- and -

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Intervenor,

- and -

NEW JERSEY STATE EMPLOYEES ASSOCIATION, a/w AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Intervenor,

- and -

NEW JERSEY CIVIL SERVICE ASSOCIATION

Employee Organization.

DOCKET NOS. RE-81-2
RE-81-3
RE-81-4
RE-81-5
RE-81-126
RE-81-127
RE-81-128
RE-81-129

OBJECTIONS TO THE ELECTIONS AND TO CONDUCT AFFECTING THE RESULTS OF THE ELECTIONS

PLEASE TAKE NOTICE that the undersigned attorneys for the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), pursuant to N.J.A.C. 19:11-9.2 (h), hereby file the following objections to the conduct of the elections and to conduct affecting the results of the elections in the above captioned cases:

OBJECTION NO. 1:

Voter eligibility, as determined by the employer in the initial eligibility lists, in its April, 1981 revisions to the eligibility list (utilized in the February/March, 1981 election) and as established by the Public Employment Relations Commission ("PERC"), was highly inaccurate, arbitrary and improper under N.J.A.C. 19:11-9.2, 19:11-9.3 and 19:11-9.6 and other statutes and regulations.

OBJECTION NO. 2:

The procedures utilized by the PERC for providing employees with ballots and for having those ballots returned and tallied improperly disenfranchised many eligible employees.

OBJECTION NO. 3:

The substantative rules utilized by PERC in determining voter eligibility was improper and incorrectly applied.

OBJECTION NO. 4:

The employer discriminatorily enforced its rules concerning access to employees' work sites and posting of literature so as to hamper the AFSCME campaign and to promote employee contacts by the Communications Workers of America, AFL-CIO ("CWA").

OBJECTION NO. 5:

The employer denied AFSCME access to employees and promoted CWA contacts with employees.

OBJECTION NO. 6:

CWA representatives and organizers sought to influence voters by improper means, including threats and promises of rewards.

OBJECTION NO. 7:

CWA representatives and organizers made numerous and substantial misrepresentations during the course of the campaign, thereby preventing the voters from exercising a full and free choice for their election representative:

Respectfully submitted,

STERNS, HERBERT & WEINROTH, P.A.

BY: _____

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186 W. State Street
Trenton, N.J. 08607
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_____

WINN NEWMAN
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_____

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STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

State of New Jersey,

Public Employer,

-and-

C.W.A., AFL-CIO,

Employee Organization,

-and-

A.F.S.C.M.E., AFL-CIO,

Employee Organization.

DOCKET NO. RE-81-5

Professional

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; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefore;

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

Communcations Workers of America, AFL-CIO

has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described below, 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.

UNIT: All professional employees employed by the State of New Jersey excluding managerial executives, confidential employees, craft employees, policemen, and supervisors within the meaning of the Act.

Carl Kurtzman, Director
of Representation

DATED: Trenton, New Jersey
June 25, 1981

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

State of New Jersey,

Public Employer,

-and-

C.W.A., AFL-CIO,

Employee Organization,

-and-

A.F.S.C.M.E., AFL-CIO,

Employee Organization.

DOCKET NO. RE-81-3
RO-81-127

Primary Level

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; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefore;

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

CWA Supervisors, AFL-CIO

has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described below, 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.

UNIT: All primary level supervisors employed by the State of New Jersey excluding managerial executives, confidential employees, professionals and craft employees, policemen, all other supervisors within the meaning of the Act.

Carl Kurtzman, Director
of Representation

DATED: Trenton, New Jersey
June 25, 1981

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

State of New Jersey,

Public Employer,

-and-

C.W.A., AFL-CIO,

Employee Organization,

-and-

A.F.S.C.M.E., AFL-CIO,

Employee Organization.

DOCKET NO. RE-81-4
RO-81-128

Higher Level

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; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefore;

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

CWA Supervisors (Higher Level), AFL-CIO

has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described below, 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.

UNIT: All higher level supervisors employed by the State of New Jersey excluding managerial executives, confidential employees, professionals and craft employees, policemen, all other supervisors within the meaning of the Act.

Carl Kurtzman, Director
of Representation

DATED: Trenton, New Jersey
June 25, 1981