

E.D. No, 76-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL SCHOOL DISTRICT,
Public Employer,

-and-

BUENA BUS DRIVERS ASSOCIATION,
Petitioner,

-and-

Docket No. RO-76-26

TEAMSTERS LOCAL 676, I.B.T.C.W.H.A.,
Intervenor.

SYNOPSIS

The Executive Director certifies the Petitioner as the majority representative of the bus drivers of the Public Employer after dismissing objections to the election which had been filed by the Intervenor. The objections were not substantiated although evidence was solicited and the Intervenor was advised that failure to provide such evidence could lead to the dismissal of the objections and the certification of the Petitioner.

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DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Agreement for Consent Election, a secret ballot election was held on October 17, 1975 for employees in an appropriate unit.^{1/} The tally of ballots reveals that of approximately 17 eligible voters, nine ballots were cast for the Buena Bus Drivers Association and eight were cast for Teamsters Local 676, IBT, the incumbent majority representative of the employees in the unit. There were two void ballots cast by employees who, pursuant to the Agreement for Consent Election, were excluded from the unit. No votes were cast against the participating employee organizations and there were no challenged ballots.

Teamsters Local 676 filed timely^{2/} objections to the election in the form of a letter dated October 22, 1975. The letter, in its entirety, reads as follows:

1/ The negotiating unit was defined in the Agreement for Consent Election which was approved by the undersigned as follows:

"Including: All bus drivers employed by the Buena Regional School District but excluding all substitute bus drivers

Excluding: All other employees including confidential employees, policemen, managerial executives, craft employees, professional employees, and supervisory employees within the meaning of the Act."

2/ While the objections were filed within the timely period, the Teamsters submission did not include proof of service on the other parties to the Agreement for Consent Election as required by N.J.A.C. 19:11-2.4(f).

"Please be advised that Teamsters Local Union No. 676 is filing a protest against the election held on October 17, 1975, under 19-11-24.

We feel there was a violation between some board members and drivers that filed petition to get Teamsters Local 676 voted out.

It is our belief that a high paying Board of Education job would be offered to one of the drivers or a close relative if the Teamsters were voted out."

Before commencing an administrative investigation, pursuant to the Agreement for Consent Election and the Commission's Rules, ^{3/} the undersigned, by letter dated November 7, 1975, advised Teamsters Local 676 that objections could not be processed or investigated until the union furnished specific evidence to support its allegations, as well as proof of service of the objections upon the other parties. ^{4/}

The November 7 letter reads, in relevant part, as follows:

The Commission requires you to serve a copy of your objections upon all other parties to the election within five (5) days after the tally of ballots has been furnished. If you have not already done so, you are directed to submit proof of such service to the assigned staff member. Failure to submit such proof may result in the immediate dismissal of your objections.

Normally the undersigned will conduct an administrative investigation into your objections. However, such investigation will not be conducted unless you have furnished sufficient evidence to support a prima facie case. Therefore you 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. Since you bear the burden of proof in this matter, you are required to produce the specific evidence which you rely upon in support of the claimed irregularity in the election process. This agency will not assume the burden of seeking out such evidence. The burden of bringing such evidence forward is upon you. In accordance with the above, if you have not already done so, you are directed to submit to the undersigned staff member specific evidence as outlined above within five (5) working days after receipt of this letter. Failure to submit such evidence may result in the immediate dismissal of your objections.

^{3/} Item 6 of the Agreement for Consent Election provides in part that: "The Executive Director shall conduct an investigation of the matters contained in the objections and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged... The objecting party shall bear the burden of proof regarding all matters alleged in the objections... The method of investigation of objections and challenges, including the question of whether a hearing should be held in connection therewith, shall be a final administrative determination unless the Commission shall have granted a request for review." (Emphasis added) N.J.A.C. 19:11-2.4 provides that: Where objections are filed..., the Executive Director shall conduct an investigation and shall, where appropriate issue a notice of hearing... The objecting party shall bear the burden of proof regarding all matters alleged in the objections..."

^{4/} The only indication the Commission has received as to whether the objections were served on any of the other parties is a letter from the attorney for the Buena Regional School District, Michael D. Capizola, Esq., in which he makes reference to the Teamsters' letter of October 22, 1975. There is no indication that the Buena Bus Drivers Association was served.

The objecting party failed to respond either orally or in writing to the November 7, 1975 letter and furnished no supportive evidence within the five-day period set forth or thereafter. No probative evidence supporting the objections has been submitted and the objections remain unsubstantiated.

Based upon the above and in accordance with the policy of the Commission,^{5/} the undersigned concludes that the objections should be and hereby are dismissed. It is not reasonable to further withhold the certification of the results of the instant election.

Therefore, the Petitioner, having received a majority of the valid ballots cast in the election held October 17, 1975 will be certified by the undersigned.

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 negotiation has been selected:

^{5/} See State of New Jersey et al., P.E.R.C. No. 76 (April 28, 1973) in which, at page 8, the Commission stated: "The Commission does not believe that the mere claim of objectionable conduct, unsupported in the investigative stage by any evidence should thereby entitle the objecting party to a hearing, or, alternatively, that a claim for which the evidence presented is found to be insufficient support for the objection, should create a right to a hearing. If there is to be protracted delay of the certification of the election's results, there should be some reasonable basis which would warrant such delay in the first instance. The Commission believes that the presentation of evidence raising substantial questions of fact is a reasonably imposed precondition to the holding of a hearing. The failure of the objecting party to satisfy such conditions should permit the Commission to proceed to certify the outcome of the election." See also Township of Stafford et al., E.D. No. 70, 1 N.J.P.E.R. 16 (1975).

Pursuant to the authority vested in the undersigned, IT IS HEREBY CERTIFIED that Buena Bus Drivers Association, has been designated and selected by a majority of the employees of the Buena Regional School District in the unit of all bus drivers employed by the Buena Regional School District excluding all other employees, including substitute bus drivers, confidential employees, police, managerial executives, craft employees, professional employees, and supervisory employees within the meaning of the Act, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the said representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: December 23, 1975
Trenton, New Jersey