

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

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,
NEW JERSEY EDUCATION ASSOCIATION,

DOCKET NO. RO-81-92

Petitioner,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation sets aside an election among custodial and maintenance employees on the basis of an objection alleging that the Petitioner reproduced and distributed among employees, copies of a Commission Notice of Election and Sample Ballot which was altered by it to show favoritism for that employee organization. A Commission rule prohibits alteration of the Commission Notice in such a manner. The objecting party established a prima facie case attributing the distribution of material to a representative of the Petitioner. The Petitioner declined the opportunity to present rebuttal evidence.

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

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,
NEW JERSEY EDUCATION ASSOCIATION,

DOCKET NO. RO-81-92

Petitioner,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer
John Miraglia, Consultant

For the Petitioner
Schneider, Cohen, Solomon & DiMarzio, attorneys
(Bruce D. Leder of counsel)

For the Intervenor
Osterweil, Wind & Loccke
(Manuel A. Correia of counsel)

DECISION AND DIRECTION OF ELECTION

Pursuant to a Decision and Direction of Election, D.R. No. 81-22, 7 NJPER 81 (¶ 12029 1981), a secret ballot election was conducted among custodial and maintenance employees of the Englewood Board of Education ("Board") on February 19, 1982, for the purpose of providing employees with an opportunity to designate

the Englewood Teachers Association, New Jersey Education Association ("Association"), Local 29, RWDSU, AFL-CIO ("Local 29"), or neither, as their exclusive representative for the purpose of collective negotiations. A majority of ballots were cast for the Association. However, on February 25, 1982, post-election objections were filed by Local 29 asserting that certain improper conduct affecting employee free choice occurred prior to the election and urging that the election be set aside.

In its first objection, Local 29 maintains that the then impending strike by the Association had a chilling effect on the election. Secondly, Local 29 argues that the Association improperly reproduced a Commission Notice of Election as campaign literature.

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

Where objections as defined in subsection (h) of this section are filed, the director of representation shall conduct an investigation into the objections if the party filing said objections has furnished sufficient evidence to support a prima facie case.

Upon receipt of the above objections, the undersigned, by letter dated March 1, 1982, advised Local 29 that, in the absence of sufficient evidence to support a prima facie case, the investigation noted in N.J.A.C. 19:11-9.2(i) would not be initiated. The undersigned further advised Local 29 that, pursuant to N.J.A.C. 19:11-9.2(h):

... 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.

In response, Local 29 presented documentary evidence and affidavits in support of its claim that a specified Association representative had distributed to certain custodians as campaign material, a reproduction of a Commission Notice of Election which was altered to show support for the choice of the Association on the ballot. ^{1/}

N.J.A.C. 19:11-9.1(b) provides:

The reproduction of any document purporting to be a copy of the commission's official ballot which suggests either directly or indirectly to employees that the commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

The Commission's rule is patterned after Allied Electric Products, 109 NLRB 1270, 34 LRRM 1538 (1954) in which the National Labor Relations Board noted that it was:

^{1/} The Commission's Notice of Election was altered in the following manner:

The sample Official Secret Ballot contained in the Notice of Election had an "X" placed in the box for the Association along with a solid black arrow transecting the perimeter of the ballot and pointing to the "X" and the word "VOTE" handprinted next to the arrow. In addition, at the bottom of the Notice of Election there appeared a hand-printed adjuration - "Vote ETA/NJEA - 'Unity/Strength'."

... concerned with the protection of its procedures designed to provide fair elections. The Board particularly looks with disfavor upon any attempt to misuse its processes to secure partisan advantage [citations omitted], and especially does it believe that no participant in a Board election should be permitted to suggest either directly or indirectly to the voters that this Government Agency endorses a particular choice. [emphasis added] Id.

The Board went on to state that:

... it will not permit the reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face ... [citations omitted] Id. at 1539

The Board has held that any alteration of a Board document which falls within the purview of the Allied Electric rule constitutes a per se violation. ^{2/}

The concern of the Board for the integrity of its processes is equally shared by the undersigned in regard to the Commission's election procedures. Further, we look to the Board's policies for guidance, Lullo v. IAFF, Local 1066, 55 N.J. 409 (1970), as it affords consistency and predictability, particularly in the area of election misconduct. ^{3/} The undersigned can discern no valid distinguishing reason why the Commission should

^{2/} Superior Knitting Corp., 112 NLRB 984, 36 LRRM 113 (1955); The DeVilbiss Co., 114 NLRB 945, 37 LRRM 1061 (1955); GAF Corp., 234 NLRB 1209, 97 LRRM 1417 (1978); Mercury Industries, Inc., 238 NLRB 896, 99 LRRM 1391 (1978); contra, Member Penello's dissent, GAF, supra and Mercury, supra, in which Penello objects to the rule being applied in a "mechanical" fashion.

^{3/} See In re Tp. of East Windsor, D.R. No. 79-13, 4 NJPER 445, (¶ 4202 1978), applying principles of Peerless Plywood Co., 107 NLRB 427, 33 LRRM 1151 (1953).

deviate from the rule set forth in Allied Electric, supra, which is designed to protect the integrity of the election process.

It appearing that the requirements of N.J.A.C. 19:11-9.2(h) had been met, the undersigned advised all parties of his intent to commence an investigation under N.J.A.C. 19:11-9.2(i). The Association and the Board were requested to respond to the claims raised in Local 29's objections.

On March 25, 1982, the Commission received a letter from the Association in which it did not admit that it illegally altered, reproduced, or distributed the Commission's Notice of Election, but instead, requested that a second election be conducted in the instant unit so that the matter would be concluded as rapidly as possibly. The Board has not responded with a statement.


As noted above, the undersigned initially determined that Local 29 had furnished sufficient evidence to support a prima facie case warranting that the election should be set aside. Since the Board and the Association do not seek to rebut such evidence, the undersigned determines that there is no need for the conduct of an evidentiary hearing. In re Town of West New York, D.R. No. 81-29, 7 NJPER 166 (¶ 12074 1981).

Accordingly, since the prima facie case established by Local 29 is not to be rebutted, the undersigned finds that improper conduct affecting the election has occurred and that the election should be set aside. ^{4/}

^{4/} Since the election is set aside because of the alteration and reproduction of the Commission's Notice of Election, we do not reach the objection raised by Local 29 with regard to the influence on the election of impending strike activity. However, in passing, we note that there is not now a strike involving the parties herein.

The undersigned directs that a new election among custodial and custodial and maintenance employees be held within thirty (30) days hereof and that custodial and maintenance employees be provided with the opportunity to determine whether they wish to be represented by the Englewood Teachers Association, NJEA, Local 29, RWDSU, AFL-CIO, or neither.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: March 26, 1982
Trenton, New Jersey