

D.R. No. 2009-2

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

In the Matter of

SOMERSET COUNTY PARK COMMISSION,

Public Employer,

-and-

Docket No. RO-2008-078

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL UNION NO. 469,

Petitioner.

SYNOPSIS

The Director of Representation dismisses election objections asserting that the election was tainted because PERC's election officer permitted Local 469 to use a supervisor as its election observer. The Director finds that where a petitioning labor organization's election observer is a supervisor who is also a member of the proposed bargaining unit, the selection of such a unit member as an observer is appropriate absent evidence that he intimidated other unit members.

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LOCAL UNION NO. 469,

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Appearances:

For the Public Employer,
Drinker Biddle & Reath, LLP
(Marion B. Johnson, of counsel)

For the Petitioner,
Michael L. Broderick, Vice President

DECISION AND CERTIFICATION
OF REPRESENTATIVE

On July 22, 2008, a Public Employment Relations Commission staff agent conducted a secret ballot representation election among fourteen foremen and assistant foremen of the Somerset County Park Commission (Park Commission). The election was conducted under the terms of a consent agreement signed by the petitioner, International Brotherhood of Teamsters Local Union No. 469 (Local 469) and the Park Commission. Eligible employees voted on whether they wished to be represented for purposes of collective negotiations by Local 469 or no representative. A majority of valid votes cast were in favor of representation.

On July 25, 2008, the Park Commission filed timely objections to the election. It contends that the election results should be voided because the election observer designated by Local 469, Rick Weber, "tainted the election" and the Commission agent's consent to his presence as an observer ". . . lent an appearance of impropriety and bias to the election process such that other voting employees may have understood the Commission to recommend that they vote for representation by the union . . ." The Park Commission requests that the election results be set aside and that a new election be conducted.

The Park Commission also filed a certification by Lesley Boyd, a Human Resources assistant, who served as the Park Commission's election observer. She certified that the Commission staff agent denied the Park Commission's request to allow Donna Van Deursen, Manager of Human Resources, serve as its election observer. Boyd certifies that Rick Weber ". . . a supervisor in the maintenance department and a member of the proposed bargaining unit . . ." was permitted to act as the union's election observer throughout the election.

On July 28, 2008, Local 469 filed a reply asserting that Rick Weber is a foreman included in the petitioned-for unit (which was stipulated by the parties) and that his name is listed among those on the Excelsior eligibility list provided by the Park Commission in advance of the secret ballot election. Local 469 contends that Weber had both the right to vote in the election and be designated as the union's observer.

The facts asserted by the parties are uncontested. On June 24, 2008, the Park Commission and Local 469 signed a consent agreement for an election setting forth this negotiations unit:

Included: All regularly employed foremen and assistant foremen employed by the Somerset County Park Commission.

Excluded: Managerial executives, confidential employees, and non-supervisory employees within the meaning of the Act; professional employees, craft employees, police, casual employees, and all other employees of the Somerset County Park Commission.

The agreement also specified that the Commission would conduct an on-site secret ballot election among the employees in the unit and that the Park Commission would provide a list of eligible voters.

On July 7, 2008, the Park Commission filed a list of 14 named employees and simultaneously sent a copy to Local 469. Foreman Rick Weber's name appeared on that list. On July 10, the consent agreement was approved by the Director of Representation and a Notice of Election describing the negotiations unit and providing other details was issued.

On July 14, the Park Commission asked the Commission election officer if its Human Resources Manager, Donna Van Deursen, could serve as its observer at the upcoming election. The Park Commission was advised that election observers must be non-supervisory and non-managerial personnel of the public employer.

On July 22, 2008, the Commission election officer conducted the on-site election. Local 469 and the Park Commission each provided an election observer. Foreman and unit employee Rick Weber acted as an election observer for Local 469. Lesley Boyd, a Human Resources assistant, served as an election observer for the Park Commission.

Thirteen of the fourteen employees on the eligibility list cast valid votes. Eight votes were cast in favor of representation. Five votes were cast against representation. There were no challenges to the eligibility of any voters.

ANALYSIS

Elections conducted by the Commission carry a presumption that the voters' choice in a secret ballot election is a valid expression of their representational wishes. An objecting party must establish, through its evidence, that a nexus existed between the alleged objectionable conduct and the voters' freedom of choice. City of Jersey City and Jersey City Public Works Employees, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd sub. nom. Am. Fed. of State, County and Municipal Employees, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971), citing NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969); see also Magnolia Bd. of Ed., D.R. No. 2001-5, 27 NJPER 116 (¶32042 2001); Hudson Cty. Schools of Technology, D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999).

N.J.A.C. 19:11-10.3(h) sets forth the initial standard for the Director's review of election objections:

A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election and shall produce the specific evidence supporting its claim of irregularity in the election process.

The Director of Representation must then review the objections and supporting evidence to determine "if the party filing objections has furnished sufficient evidence to support a prima facie case." N.J.A.C. 19:11-10.3(i). The truth of the specific evidence offered by the objecting party is assumed. If the evidence does not support a prima facie case, the Director may dismiss the objections immediately. If sufficient evidence is filed, the Director will investigate the objections. See State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd NJPER Supp.2d 123 (¶104 App. Div. 1982).

The standard of review of election objections contemplated by N.J.A.C. 19:11- 10.3(i) was discussed in Jersey City Medical Center, D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). The Director explained:

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence

of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-prong test is not met, the objections will be dismissed. [Id. at 314]

See also Essex Cty. Probation Dept., D.R. No. 87-20, 13 NJPER 170 (¶18076 1987).

Applying these standards, I find that the Park Commission has not shown that the conduct alleged warrants setting aside the election as a matter of law. The agreement for a consent election includes a provision by which the signator parties ". . . hereby waive a hearing and all issues that could properly be raised at said hearing . . ." Weber's status as a "supervisor" was not contested by the Park Commission; the inclusion of his title in the stipulated unit description and of his name on the employer's list bespeaks his eligibility as a unit employee and voter. Essex Cty. Probation Dept. The purpose for excluding supervisory or managerial employees from acting as observers is to prevent the intimidation of voters. But where, as here, the observer is a supervisor who is also a member of the proposed unit, the petitioning labor organization is entitled to select such a unit member as an observer. Weber was included in the unit, thus his selection as observer, absent evidence that he intimidated other unit members, was not inappropriate. I find as a matter of law that his designation as Local 469's election observer did not interfere with the voters' freedom of choice or otherwise taint the election.

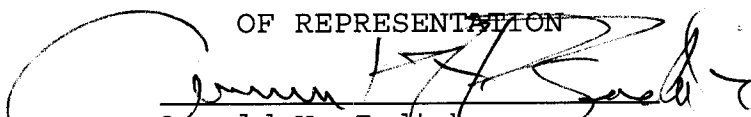
We have also held that in the interest of free and fair elections, “. . . persons closely identified with the employer may not act as observers” even though they may be non-supervisory employees. Hillsdale Borough, D.R. No. 81-20, 6 NJPER 511 (¶11260 1980). Although the Human Resources director may not directly supervise the petitioning employees, her title is probably managerial, but in any case is intimately aligned with the Park Commission. The election officer acted appropriately and within his discretion by disallowing the Human Resources director to serve as the Employer’s election observer.

The Park Commission did not meet its burden of demonstrating that any conduct warrants setting aside the election or invalidating its results. The objections are dismissed. I attach the appropriate certification of representative for the voting unit.

ORDER

The objections are dismissed. A certification of representative of the election is attached.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: August 15, 2008
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 25, 2008.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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Public Employer,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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CERTIFICATION OF REPRESENTATIVE

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. A majority of the voting employees selected an exclusive majority representative for collective negotiations. No valid timely objections were filed to the election.

Accordingly, **IT IS HEREBY CERTIFIED** that

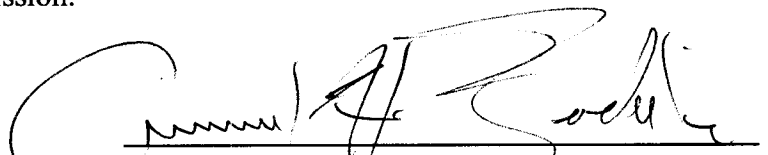
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 469

has been selected by a majority of the employees of the above-named 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 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. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed foremen and assistant foremen employed by the Somerset County Park Commission.

Excluded: Managerial executives, confidential employees, and nonsupervisory employees within the meaning of the Act; professional employees, craft employees, police, casual employees, and all other employees of the Somerset County Parks Commission.

DATED: August 15, 2008
Trenton, New Jersey



Arnold H. Zudick, Director of Representation

Attachment:

Certification of Representative dated: August 15, 2008

In the Matter of

SOMERSET COUNTY PARK COMMISSION

-and-

IBT LOC 469

Docket No. RO-2008-078

Service on the following:

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