

D.R. No. 2011-7

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

In the Matter of

PASSAIC VALLEY SEWERAGE
COMMISSIONERS,

Public Employer,

-and-

IBEW LOC 1158,

Docket No. RO-2011-025

Petitioner,

-and-

UNITED PUBLIC SERVICE
EMPLOYEES UNION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses an election objection filed by International Brotherhood of Electrical Workers Local 1158, asserting that an employer-escorted tour of the work site to the rival union minimally amounted to the employer appearing to endorse the rival union. Specifically, the Director finds that IBEW failed to supply certifications to support its allegations from witnesses with firsthand knowledge, and that no facts indicate how many employees observed the tour or how the tour interfered with the voters' free choice.

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UNITED PUBLIC SERVICE
EMPLOYEES UNION,

Intervenor.

Appearances:

For the Public Employer,
Chasan, Leyner, & Lamparello, PC
(Michael Witt, of counsel)

For the Petitioner,
Kroll Heineman, attorneys
(Curtiss Jameson, of counsel)

For the Intervenor,
Richard M. Greenspan, PC

DECISION

On January 14, 2011, the International Brotherhood of Electrical Workers Local 1158 (IBEW) filed timely objections to a secret mail ballot election conducted by the Public Employment Relations Commission (Commission). N.J.A.C. 19:11-10.3(h). The election was to determine the exclusive negotiations

representative, if any, for non-professional, non-supervisory white collar employees employed by the Passaic Valley Sewerage Commissioners (PVSC). IBEW initiated the election process when it filed a petition seeking Certification by Election and an amended petition on October 19 and October 25, 2010, respectively. On November 12, 2010, the then-Director of Representation approved the United Public Service Employees Union's (UPSEU) request to intervene on the petition. N.J.A.C. 19:11-2.7. On January 7, 2011, a Commission staff agent tallied the results of the election. UPSEU received a majority of the valid votes cast.

IBEW requests that the election be set aside and a new one ordered. It contends that when the PVSC provided a tour of its facilities to UPSEU -- in front of eligible voters -- that, at a minimum, it appeared as though PVSC endorsed UPSEU. In support of its objections, IBEW filed certifications of two of its employees, Business Manager Joseph Calabro and Business Agent Tony Valente.

On January 19, 2011, the UPSEU and PVSC were invited to respond to IBEW's objections. The PVSC filed a letter on February 3, 2011, writing that IBEW has represented more than half of PVSC's employees for over twenty years and, therefore, is familiar with the premises, and did not require the tour provided to UPSEU representatives. On February 3, 2011, the UPSEU filed a

statement accompanied by a certification from UPSEU representative Mark McCart, stating that the PVSC provided the IBEW unfettered access to employees during the election and that the tour was designed to show UPSEU the limited areas in which it could meet with employees during non-work time. In response to a request from the Commission for additional information, on February 16, 2011, the IBEW filed a supplemental certification from Joseph Calabro and PVSC filed certifications from Assistant Plant Superintendent Phil Habrukowich and PVSC Executive Director Wayne J. Forrest.

Based upon my review of the matter, together with the parties' submissions, I find the following facts:

The PVSC is a large, industrial complex covering approximately 173 acres, and consists of dozens of buildings, treatment and holding tanks, processing areas, pumping stations, and similar areas necessary to treat and release wastewater from the Passaic River Basin. It is a secure facility. During tours, visitors are escorted at all times. Habrukowich is responsible for overseeing the day-to-day operations of the PVSC plant. When tours of the facility are requested, he is usually the employee directed to give the tour.

In October and November 2010, UPSEU requested access to the petitioned-for employees. The PVSC provided UPSEU a specific location and times when it could meet with employees at the PVSC.

In early November 2010, prompted by concerns about the access IBEW-represented employees had to the petitioned-for employees, UPSEU requested equal access.

On or about December 7, 2010, Habrukowich escorted approximately five UPSEU representatives on a driving and walking tour of PVSC's facilities. During the tour, Habrukowich identified various areas of the plant and some of the interiors of buildings, including common areas where employees congregate, including lunchrooms, and locations where potential negotiations unit members were stationed. Habrukowich advised the UPSEU representatives that they could only meet with employees in the non-work areas during non-work time. On one or two occasions during the tour, employees asked Habrukowich whom he was escorting through the premises. Habrukowich replied that the visitors were from the "other union" and that they were looking at the plant as part of the union election. Habrukowich did not identify the union or the representatives by name to any employees.^{1/} Habrukowich did not suggest that any employee should support or vote for UPSEU.

On or about December 10, 2010, Calabro met with Forrest and requested that PVSC provide IBEW the same tour. Although IBEW

^{1/} The factual findings are based on the certifications of those with firsthand knowledge of what occurred. Neither Valente nor Calabro was present during the tour; neither has firsthand knowledge of what transpired. Accordingly, I do not rely on Valente or Calabro's certifications.

has represented blue collar employees at the PVSC for more than twenty years, the blue collar employees and white collar employees do not work in the same areas. No PVSC official has ever provided IBEW a tour of the facility or offered to provide IBEW a tour. Calabro told Forrest that the tour amounted to an endorsement of UPSEU and that the only suitable cure was for PVSC to provide IBEW the same tour. Forrest denied Calabro's request on or about December 13, 2010, citing IBEW's more than twenty year presence at the PVSC and PVSC's desire to remain neutral during the election.

ANALYSIS

Elections conducted by the Commission carry a presumption that each voter's secret ballot choice is collectively, a valid expression of the employees' representational desires. Allegations of what may seem to be objectionable conduct must be supported by evidence that the alleged misconduct interfered with or reasonably tended to interfere with the employees' free choice. The objecting party must provide evidence of a direct nexus between the alleged objectionable conduct and the freedom of choice of the voters. Hudson County Schools of Technology, D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999); Jersey City Dept. of Public Works, 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).

The Director of Representation must 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 veracity of the proffered evidence is assumed. If the evidence submitted is not enough to support a prima facie case, the Director may dismiss the objections immediately. If sufficient evidence is submitted, then, and only then, will the Director 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). There, the Director found:

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., 12 NJPER at 314]

Applying the above standards to my review of IBEW's objection, I find that the IBEW did not meet the evidentiary or substantive component necessary to establish a prima facie case.

IBEW alleges that the tour Habrukowich provided to UPSEU representatives minimally provided the appearance to employees that PVSC endorsed UPSEU. Calabro's and Valente's certifications were offered in support of these allegations, but both concede that they were not present during the tour. At some undisclosed time during the tour, employees approached Habrukowich to inquire about the visitors. Calabro and Valente certify that Habrukowich introduced UPSEU representatives to potential voters. Neither of them has firsthand knowledge of what transpired when employees approached Habrukowich.

No facts in either Calabro's or Valente's certifications indicate the number of employees who were assertedly introduced to UPSEU representatives or how many observed the tour and were assertedly influenced by it. IBEW's description of the manner in which Habrukowich identified the visitors to potential voters and its purported effect are merely characterizations of what happened; they cannot be the basis to set aside an election. Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 222, 223 (¶19080 1988) and Trenton Bd. of Ed., D.R. No. 2000-7, 26 NJPER 148 (¶31058 2000).

The IBEW has presented no facts about how the tour influenced voters. Nor do any facts describe how the objectionable conduct interfered with or reasonably tended to interfere with the free choice of the voters. Hudson County.

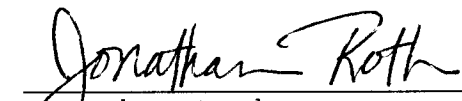
The IBEW has not demonstrated that the alleged conduct in fact occurred nor has it shown that such conduct, even assuming it had occurred, would interfere with voters' free choice. Trenton Bd. of Ed. Accordingly, I find that the IBEW has failed to establish a prima facie case, and dismiss the objection.

Attached hereto is the appropriate Certification of Representative.

ORDER

The objections are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Jonathan Roth
Deputy Director of
Representation

DATED: March 11, 2011
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 March 21, 2011.

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

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PASSAIC VALLEY SEWERAGE COMMISSION,	>	
Public Employer,	>	
-and-	>	DOCKET NO. RO-2011-025
LOCAL 1158, IBEW,	>	
Petitioner.	>	
-and-	>	
UNITED PUBLIC SERVICE EMPLOYEES UNION (UPSEU)->	>	
PVSC WHITE COLLAR UNIT,	>	
Intervenor.	>	

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

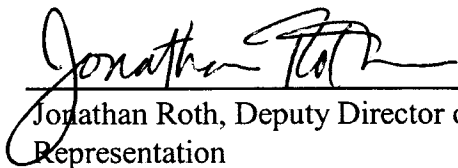
UPSEU - PVSC WHITE COLLAR UNIT

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 white collar, non-professional, non-supervisory employees employed by the Passaic Valley Sewerage Commission.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police employees, casual employees, professional employees, blue collar employees and all other employees employed by the Passaic Valley Sewerage Commission.

DATED: March 11, 2011
Trenton, New Jersey



Jonathan Roth, Deputy Director of
Representation

Attachment:

Certification of Representative dated: March 11, 2011

In the Matter of

PASSAIC VALLEY SEWERAGE COMMISSION

-and-

IBEW LOC 1158

-and-

UNITED PUBLIC SERVICE EMPLOYEES UNION

Docket No. RO-2011-025

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