

D.R. No. 2013-8

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

In the Matter of

TOWNSHIP OF GALLOWAY,
Public Employer,

-and-

Docket No. RO-2013-12

GOVERNMENT WORKERS UNION
SUPERVISORS COUNCIL 10,
Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS UNION, LOCAL #210,
Intervenor.

SYNOPSIS

The Director of Representation dismisses an election objection filed by the International Brotherhood of Electrical Workers Union, Local 210 (Local 210). Local 210 objected to the fact that the results of a non-supervisor election conducted in the morning were released prior to the supervisors' election conducted in the afternoon on the same day of the non-supervisors' election. According to Local 210, the results of the non-supervisors' election influenced the outcome of the subsequent supervisors' election. In dismissing this objection, the Director explained that Local 210 failed to present sufficient evidence to support a prima facie case that supervisors were aware of the results of the non-supervisors' election and of how that knowledge interfered with or reasonably tended to interfere with the free choice of voters in the supervisors' election. The Director noted that the certifications submitted by Local 210 were speculative and were not based on first hand knowledge from a voter in the supervisors' election or a member of the supervisors' unit indicating that the non-supervisor election results interfered with or reasonably tended to interfere with their free choice in the election.

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Docket No. RO-2013-12

GOVERNMENT WORKERS UNION
SUPERVISORS COUNCIL 10,
Petitioner,

-and-

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS UNION, LOCAL #210,
Intervenor.

Appearances:

For the Township of Galloway
Arch Liston, Township Manager

For the Government Workers Union Supervisors Council 10
David Tucker, National President

For the IBEW Local 210
O'Brien, Belland & Bushinsky, LLC
(Jeffrey R. Caccese, of counsel)

DECISION

On November 5, 2012, the International Brotherhood of Electrical Workers Local 210 (IBEW) filed objections to one of two secret ballot elections conducted among employees of the Township of Galloway (Township). Both elections were conducted on October 24, 2012 among separate collective negotiations units of non-supervisory employees and supervisory employees.

The IBEW seeks to set aside the results of the election among supervisors, contending that the known results of the earlier-conducted election among non-supervisory employees improperly influenced the outcome of the later-conducted election among supervisors. I disagree that the disputed election should be set aside and certify the results of that election.

On September 3, 2012, Government Workers Union Supervisors Council 10 (GWU) filed a representation petition seeking to represent two existing collective negotiations units, comprised respectively, of non-supervisory and supervisory employees of the Township. Both units are represented by IBEW. The parties signed consent agreements for two secret ballot elections on October 24, 2012; the non-supervisors' election from 10:30 a.m. until 11:30 a.m. and the supervisors' election from 1:00 p.m. until 2:00 p.m. A majority of votes cast in both units was for the GWU.

On November 5, 2012, IBEW filed objections to the supervisors' election.^{1/} It seeks to set aside the supervisors' election, contending that the results of the non-supervisors' election influenced the outcome of the supervisors' election. According to IBEW, ". . . certain white collar/supervisor bargaining unit members had inquired as to whether their bumping

^{1/} The time period for filing was tolled until November 5, 2012 because State offices were closed from October 29 through October 31, 2012. N.J.A.C. 19:11-10.3.

rights as set forth in their collective negotiations agreement would continue if the Government Workers Union were successful in the blue collar [non-supervisors'] election." In support of its objections, IBEW filed certifications from its attorney, Jeffrey Caccese, and the IBEW's Business Manager, Charles R. Hill.

On November 16, 2012, GWU filed a letter seeking dismissal of IBEW's objections. GWU maintains that IBEW failed to submit relevant evidence supporting its objection. According to GWU, the certifications submitted by IBEW are not probative of whether the voters' choice in the supervisors' election was influenced by knowledge of the non-supervisor election results. Therefore, GWU contends that no evidence supports a prima facie case for setting aside the supervisors' election. GWU also asserts that N.J.A.C. 19:11-10.3(g) and paragraph five (5) of the signed and approved Consent Agreement for an Election forms require the Commission to furnish the parties with a tally of ballots, leaving the election agent without discretion to withhold election results at the conclusion of the non-supervisory election.

Based upon my review of the procedural history and the parties' submissions, I find the following facts.

On September 3, 2012, GWU filed two representation petitions together with adequate showings of interest seeking to represent a collective negotiations unit of all non-supervisory, white collar employees (RO-2013-11) and a unit of all supervisory

employees (RO-2013-12) of the Township. IBEW, the incumbent majority representative of both units, properly intervened in these matters on September 25, 2012. N.J.A.C. 19:11-2.7.

On September 26, 2012 and October 1, 2012, the parties executed two consent agreements for in-person secret ballot elections; one for the non-supervisors, and one for supervisors. IBEW requested on-site elections for both units. On terms set forth in those agreements, both elections were conducted by a Commission election agent on October 24, 2012 in the Township's municipal courtroom. The non-supervisors' election was conducted from 10:30 a.m. until 11:30 a.m. and the supervisors' election, from 1:00 p.m. until 2:00 p.m.

On or about October 18, 2012, counsel for IBEW called the Commission election agent and requested that the tally of ballots for the non-supervisors' election not be released to the parties until the supervisors' election was completed. The Commission election agent advised that we could not alter Commission procedures or terms of the approved consent agreements.

Tracking both Commission procedures and the Agreement for Consent Election, the election agent counted the ballots of the non-supervisors' election and completed the Tally of Ballots form immediately following the close of the polls at 11:30 a.m. Of the approximately thirty one (31) eligible voters, twenty three (23) voters cast their ballots for GWU, two (2) voters cast their

ballots for IBEW, and one (1) voter cast his or her ballot for no representative.^{2/}

After the non-supervisors' election was completed and before the supervisors' election commenced, a specified Township employee emailed the results of the non-supervisors' election to Township employees. No facts indicate if the recipients were supervisors or non-supervisors.

Again tracking Commission procedures and the respective Agreement for Consent Election, the election agent, at or around 2 p.m. on October 24, counted the ballots of the supervisors' election and completed the Tally of Ballots form. Of the seventeen (17) eligible voters, nine (9) voters cast their ballots for GWU and seven (7) voters cast their ballots for IBEW.

ANALYSIS

In Bloomfield Tp., D.R. No. 2001-2, 27 NJPER 18, 20 (¶32011 2000), the Director of Representation wrote:

Elections conducted by the Commission carry a presumption that the voter's choice in a secret ballot election is a valid expression of the employees' representational wishes. Thus, 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 establish, through its evidence, that a direct nexus existed

^{2/} On November 7, 2012, the Director of Representation issued a Certification of Representative for the non-supervisors' election.

between the alleged objectionable conduct and the freedom of choice of the voters. 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); Hudson Cty. Schools of Technology, D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999).

The Director 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). See also, Passaic Valley Sewerage Commission, D.R. No. 2011-7, 37 NJPER 122 (¶35 2011). The veracity of the proffered evidence is assumed. Passaic Valley Sewerage Commission. If the evidence does not sufficiently support a prima facie case, the Director may dismiss the objections immediately. Id. Only where sufficient evidence is submitted will the Director investigate the objections. Id., citing State of N.J. and NJSEA a/w AFT, CWA, AFSCME and NJCSA, P.E.R.C. No. 81-112, 7 NJPER 189 (¶12083 1981), 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 wrote:

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 these standards to IBEW's objection, I find that IBEW did not meet the evidentiary or substantive component necessary to warrant further investigation for two reasons.

First, IBEW's submissions do not establish any objectionable conduct warranting our setting aside the supervisors' election as a matter of law. IBEW characterizes as improper the election agent's refusal to accommodate its request to withhold the results of the non-supervisors' election. It does not however, cite authority for that position or for its contention that the supervisors' election should be set aside. The Commission election agent merely complied with Commission procedures and the terms of the consent agreements signed by the parties in conducting the supervisors' election.

Second, IBEW does not support a prima facie case of objectionable conduct that interfered with or reasonably tended to interfere with the free choice of voters in the supervisors'

election. The Commission and Director have repeatedly held that affidavits not based upon personal knowledge of objectionable conduct which interferes with or reasonably tends to interfere with voter choice in an election are insufficient to make out a prima facie case. Passaic Valley Sewerage Commission, 37 NJPER at 124 (Deputy Director finds that certifications submitted in support of objections to an election did not make out a prima facie case since they were mere characterizations of events surrounding the election and were not based on the affiants' first-hand knowledge of those events); Bloomfield Tp., 27 NJPER at 21 (Director dismisses objections alleging election was "tainted" because it was conducted in-person, since no evidence was presented explaining how that method prevented voters from exercising their free choice or reasonably tended to interfere with their free choice). Affidavits that merely set forth a party's characterization of events are not sufficient to overturn the results of an election. Id.; see also, Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 221 (¶19080 1988).


IBEW has not filed certifications based upon personal knowledge. Neither certification is authored by a voter or unit member indicating that the non-supervisor election results interfered with or reasonably tended to interfere with the free choice of voters in the supervisors' election. Nor do the certifications set forth facts indicating that any supervisor

knew the results of the non-supervisors' election, or how, even assuming that knowledge, the supervisors' freedom to choose a majority representative was influenced by that knowledge. The certifications are only speculative.

Accordingly, I find that IBEW has failed to establish a prima facie case, and dismiss its objection. The appropriate Certification of Representative is attached.

ORDER

The election objection is dismissed.



Gayl R. Mazuco
Director of Representation

DATED: December 18, 2012
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 December 28, 2012.

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

In the Matter of	>	
	>	
TOWNSHIP OF GALLOWAY,	>	
Public Employer,	>	
-and-	>	DOCKET NO. RO-2013-012
GOVERNMENT WORKERS UNION	>	
SUPERVISORS COUNCIL 10,	>	
Employee Representative,	>	
-and-	>	
IBEW LOCAL 210,	>	
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

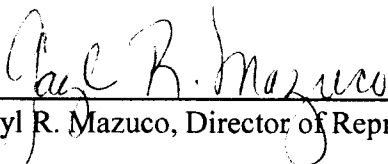
GOVERNMENT WORKERS UNION SUPERVISORS COUNCIL 10

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 supervisory employees employed by the Township of Galloway.

Excluded: Managerial executives, confidential employees, non-supervisors, police, casual employees; professional employees and all other employees employed by the Township of Galloway.

DATED: December 18, 2012
Trenton, New Jersey



Gayl R. Mazuco, Director of Representation

Attachment:

Certification of Representative dated: December 18, 2012

In the Matter of

TOWNSHIP OF GALLOWAY

-and-

GOVERNMENT WORKERS UNION SUPERVISORS COUNCIL 10

-and-

IBEW LOCAL #210

Docket No. RO-2013-012

Service on the following:

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