

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON - MEADOWVIEW HOSPITAL

Public Employer

and

Docket No. R-120

LOCAL 1959, AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

and

LOCAL 286, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Intervenor

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Consent Election Agreement, which was approved by the Executive Director, a secret ballot election was conducted under his supervision on May 14, 1970 among the employees in the unit described below. 1/ This was one of three elections conducted simultaneously but separately at the three County hospitals in Hudson County. No objections were filed in the cases of B. S. Pollock Hospital and Margaret Hague Hospital. An employee organization has been certified in each of these two hospitals. In the election held at Meadowview Hospital, a tally of ballots was served upon the parties showing that of approximately

---

1/ The unit is "All service and maintenance employees of Meadowview Hospital but excluding managerial executives, craft employees, policemen, professional employees, supervisors as defined in the Act, and clerical employees."

600 eligible voters, 193 voted for Intervenor, 139 voted for Petitioner, 7 voted for neither organization, 24 ballots were challenged, and 4 ballots were declared void. The challenged ballots do not affect the results of the election.

Objections to the conduct of the election and to conduct affecting the results of the election were timely filed by Petitioner on May 21, 1970. In support of these objections Petitioner submitted written statements from various witnesses. It should be noted that the objecting party bears the burden of proof under Section 19:11-19(i) of the Rules and Regulations of the Commission.

In accordance with the provision of the Consent Agreement, the Executive Director has caused an investigation to be made, the results of which are set forth below.

Objections Nos. 1 and 6 will be treated jointly because they relate to the behavior of a single individual. The other objections will be considered separately.

Objections Nos. 1 and 6

1) Mr. Frank Spinola, a foreman at Meadowview Hospital, who campaigned for, and was identified with, Teamsters Local 286 during the entire campaign, openly campaigned during the entire election period in the immediate voting area. During most of this time he was within five to forty feet of the polling place, in spite of a specific agreement before Mr. Tener that no one would campaign within 100 feet of the polling place. This activity was noted and called to the attention of Mr. Tener by myself and other persons during the voting time.

6) During the voting hours, Mr. Spinola, a foreman, placed a Teamster button upon a mental patient in the institution and placed him in a prominent position on a bench where voters had to pass.

That part of the objection relating to the contention that such behavior occurred "in spite of a specific agreement before Mr. Tener 2/ that no one would campaign within 100 feet of the polling place" is without relevance because neither Mr. Tener nor the Commission is alleged to have been, nor was it a party to any such agreement. Furthermore, the Commission, absent its express approval, is not bound by any separate agreement which the parties may have entered into.

Witnesses offered the following statements in support of these objections. It is alleged that Spinola was seen "stationed about 5 feet from the polling area speaking to voters." At the time, he was wearing a Teamster button. The statement does not indicate the content of his remarks. Another witness states that "I heard [Spinola] say to people that they should vote Local 286 Teamsters" and that Spinola was standing "near the steps near the polling room." Presumably the remarks were addressed to eligible voters - the witness implies this but does not so state. The witness does not indicate how many people were addressed by Spinola nor does he indicate the duration of time Spinola spent in the activity. Even assuming that Foreman Spinola is a supervisor within the meaning of the Act (and Petitioner offers no affirmative evidence establishing that Spinola has the authority to hire, discharge, discipline or effectively recommend same), there are too many significant gaps in the evidence to warrant the conclusion that his conduct prejudiced the opportunity of the employees to express a free and reasoned choice. Specifically, the evidence shows only that a foreman expressed a preference or an

---

2/ The Commission's agent who conducted the election.

opinion near the polls. 3/ Allegations of additional witnesses offer no evidentiary support, namely that Spinola "flagrantly demonstrated his campaigning for the Teamsters Union," that he "usurped his authority by influencing several employees under his jurisdiction into voting for the Teamsters Union which he openly campaigned for all day on Election Day and for the past several weeks prior to the voting," and that representatives of both the Teamsters and Petitioner had to have him evicted from the polling area on several occasions "because he was illegally campaigning." With one exception to be considered below, no where do these additional witnesses set forth the facts from which they draw their conclusions of improper influence or campaigning. The type of conduct generally alluded to would seem to be readily susceptible of proof, at least in a prima facie manner, if the facts exist. Standing alone, these additional allegations are not conclusive since, obviously such broad assertions conceivably may encompass that which is permissible as well as that which is objectionable. 4/ The

---

3/ We consider this case distinguishable from the Commission's findings in the Jersey City Department of Public Works, PERC No. 23 because there the objectionable activities involved an individual in a high level position, namely Assistant Director of Sanitation of the Department of Public Works. In the instant case the alleged supervisor, assuming arguendo, he was a supervisor within the meaning of the Act, is a foreman, one of many on a much lower rung of the supervisory ladder. In addition, the objectionable conduct in the Jersey City matter involved extensive campaigning and soliciting activities over a protracted period by an individual who was also President of the employee organization involved in that case. The facts in the Jersey City case are therefore distinguishable from those present in this matter.

4/ Which is to say that there is no absolute bar requiring a member of supervision to remain completely neutral in a representation campaign nor is there a provision holding that every intrusion of unauthorized personnel into the polling area will support a finding of interference with the election process. Moreover, as noted earlier, a "no electioneering" area agreed to by the parties but not established or approved by the Commission is an area of artificial restraint, the existence of which the Commission need not take cognizance of, and the breach of which need not be found prejudicial.

undersigned is reluctant to draw inferences from such a presentation of alleged facts and find that a prima facie case has been established.

Finally, it is alleged that Spinola placed a Teamster button on a mental patient's uniform and that he placed the patient in a conspicuous spot which voters would pass on the way to the polls. This same statement indicates that a security guard, after being informed, "immediately" had the patient removed; the statement does not indicate how long the patient remained before being removed by the guard. This alleged incident took place outside of the polling place. Assuming that it occurred, it obviously was in poor taste, but is scarcely a basis for setting aside this election.

The undersigned finds that the objecting party has failed to submit sufficient evidence of improper conduct on the part of Foreman Spinola and therefore overrules Objections Nos. 1 and 6.

Objection No. 2

2) Mr. Sims, an official observer for Teamsters Local 286, openly campaigned within five to thirty feet of the polling place during the voting hours, while wearing the official PERC observer button. This activity was personally observed by myself and others.

A witness alleges that Mr. Sims, who acted as an observer for Intervenor, campaigned both inside and outside the polling area. This allegation is simply a restatement of the objection rather than probative evidence in support of the objection. There is neither evidence nor indication of the nature of his activities. The mere statement that he campaigned is a conclusion insufficient to support this objection. It is also alleged that Mr. Sims "held the curtain back for voters and went inside of the polling booth after each voter had left." Absent a

showing that the secrecy of the ballot was destroyed, this activity has no particular significance in terms of the election's validity. Holding the curtain back for a voter entering or leaving the booth is not evidence that the privacy of the booth was infringed upon at the time the voter marked his ballot. Objection No. 2 is therefore overruled.

Objection No. 3

3) The voting area supplied by the Hospital was impossible to police, and all manner of unidentified persons were constantly in and out of the polling area during the voting hours. The polling area was accessible from a public street and was used as a waiting room for local public transportation patrons. The polling area further contained a public men's and women's room with continual traffic to and from these facilities by unidentified persons and members of the general public.

It should be pointed out that this election resulted from a Consent Agreement which clearly set forth the voting place and which was signed by all parties including the Petitioner. There is no allegation nor evidence that these "unidentified persons" voted or attempted to vote. Furthermore, although it is asserted that such persons were in the general area of the polls, there is no allegation or evidence that they physically interfered with the conduct of the election or that they otherwise engaged in improper conduct. Their mere presence, without more, though not particularly desirable, is not a sufficient basis for a finding of interference with the election process. In short, there is no evidence that the use of the Gate House as the polling place in any way prejudiced the election or affected its outcome. 5/ Accordingly, this objection is overruled by the undersigned.

---

5/ There is also an allegation that one employee left the polling place with a ballot in her hand. However, the witness's statement also indicates that the voter returned to the polling area when told to do so. It is evident that this deviation from normal procedure was corrected and further evident that no harm resulted.

Objection No. 4

4) Teamsters Local 286 passed out a leaflet within two days of the voting purporting to be an official ballot, and marked in the Teamsters box in such a manner as to give the unsophisticated voter the impression that the Commission advocated the Teamsters.

Assuming without finding that Intervenor authored and distributed the leaflet as alleged, the undersigned concludes that the ballot referred to in this objection, a copy of which is attached hereto along with a copy of the official sample ballot, is not one which violated Section 19:11-18 of the Rules and Regulations of the Commission regarding the use of sample ballots. Although the undersigned has some concern because the sizes and headings of the two ballots are similar, the differences are substantial enough that, in the opinion of the undersigned, the leaflet in question could not reasonably be interpreted as an indication of preference for Teamster Local 286 by the Public Employment Relations Commission. The leaflet allegedly distributed by Teamsters Local 286 is written in Spanish as well as in English, urges voters to vote for Local 286 rather than to "mark an 'X' in the square of your choice," and is identifiable as partisan campaign propaganda by the words in both Spanish and English which appear in large letters across the bottom of the ballot requesting that voters "Vote Teamsters Local 286."

The undersigned finds that the ballot used is not a facsimile of the official ballot and that the use of this ballot did not suggest directly or indirectly that the Commission endorsed a particular choice. Accordingly, this objection is overruled.

Objection No. 5

5) Local 1959 was denied a fair chance to campaign and to answer the attacks upon it because the public employer did not designate by name the persons it felt were

eligible to vote in the election, and in fact did not even designate the appropriate titles to the Commission's representatives until the afternoon preceeding the election. This placed an impossible burden upon Local 1959, particularly because we were the original Union in the situation, and were subjected to attack which falsely attempted to blame our union for delays and the non existence of a union contract.

To answer this kind of attack requires extensive personal contact with individuals especially among the unsophisticated workers who cannot be expected to understand the intricacies of legal delays and recognition procedures. Since the employer did not even supply a specific list of eligible voters, let alone addresses where they could be contacted, Local 1959 was denied any fair chance to campaign.

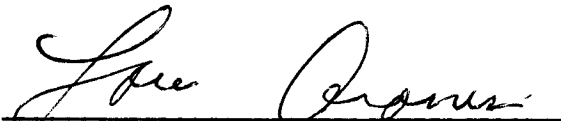
Neither the Rules and Regulations of the Commission nor the Consent Agreement require submission by the public employer of an eligibility list to employee organizations. The Consent Agreement provides only that, on request, an accurate list of eligible voters is to be given to the Executive Director. The failure to provide such a list to Petitioner, when none is required, is not a valid objection. Moreover, we note that the Petitioner initiated this case before the Commission in August 1969 and presumably began its organizing effort well before that time. In fact, in April 1969 Petitioner made a written request for recognition upon the Public Employer claiming that it represented a majority of all professional and non-professional employees (with certain exclusions not material here). The unit it later petitioned for was not radically different, in terms of general job classifications, from that finally agreed to by all parties. It is not unreasonable to conclude from the background facts that the Petitioner should have been, or at least had the opportunity to become, sufficiently familiar with the electorate at large to permit an adequate expression and dissemination of its views. For the above reasons, the undersigned overrules this objection.



In summary, the undersigned overrules each and every objection filed by Petitioner. Intervenor, having received a majority of all valid votes cast, plus challenged ballots, will therefore be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Local 286, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described in footnote 1 above, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act of 1968, the said organization is the exclusive representative of all the employees in such unit for the purpose of collective negotiations with respect to terms and conditions of employment.

  
\_\_\_\_\_  
Louis Aronin  
Executive Director

DATED: August 14, 1970  
Trenton, New Jersey