

D.R. NO. 94-12

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

In the Matter of

BOROUGH OF FAIRVIEW,

Public Employer,

-and-

LOCAL 911, INTERNATIONAL UNION OF
PRODUCTION, CLERICAL AND PUBLIC EMPLOYEES,

Docket Nos. RO-94-37
and RO-94-38

Petitioner,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation dismisses objections filed by the intervenor RWDSU Local 29, AFL-CIO objecting to the secret ballot election conducted among blue collar employees employed by the Borough of Fairview. The Director finds that Local 29 failed to provide evidence which precisely and specifically shows conduct warranting the setting aside of the election. Local 29 also did not provide proof of service of its objections upon the employer or petitioner. Accordingly, the Director orders that the certifications be issued.

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Appearances:

For the Public Employer,
Ditkas & Habeeb, attorneys
(Christine Gillen, of counsel)

For the Petitioner,
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys
(Jacqueline Jassner, of counsel)

For the Intervenor,
Paul Freda, President

DECISION

On September 27, 1993, Local 911, International Union of Production, Clerical and Public Employees filed a petition with the Public Employment Relations Commission seeking to represent two separate units of white collar (Docket Number RO-94-37) and blue collar (Docket Number RO-94-38) employees employed by the Borough of

Fairview. The subject employees were previously represented in two separate units by Local 29, RWDSU, AFL-CIO. Local 29 was granted intervenor status. Pursuant to a consent agreement signed by the Borough, Local 911 and Local 29 on October 28, 1993, a Commission staff agent conducted elections for both units on November 18, 1993. The results of the white collar election were: 12 votes in favor of Local 29, no votes for either Local 911 or "no representative." The blue collar election results were: seven (7) votes in favor of Local 911, five (5) votes in favor of Local 29 and no votes for "no representative."

On Tuesday, November 23, 1993, Local 29 filed a letter with the Commission stating its objections to conduct surrounding the election. In its letter, Local 29 neither clearly stated whether it was objecting to both elections, nor filed proof that it had served the other parties simultaneously. N.J.A.C. 19:11-9.2(h). To date, no proof of service has been received. We wrote to Local 29 on November 24, 1993, informing it of its obligations to submit proof of service, asking that it declare to which of the elections it objected, and informing it of its burden of production of evidence and giving it until December 6, 1993, to reply. On December 6, 1993, by telefax, Local 29 informed us that it had been unable to locate our letter and requested that we send another copy; a copy of our letter was telefaxed to Local 29 on December 7, 1993. On December 9, 1993, by telefax, Local 29 informed us that it was objecting only to the blue collar election. It stated that the

basis for its objection was that Local 911 campaigned on the premises during the election. It stated that its witnesses were Sal Messiano and Rosalie Torrey, but attached no affidavits or other evidence relating to the alleged improper conduct.

* * * *

N.J.A.C. 19:11-9.2(h) sets forth the standard for reviewing election objections:

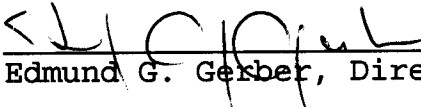
A party filing objections must furnish evidence such as affidavits or other documentation that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged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

An election conducted by the Commission is a presumptively valid expression of employee choice. An objecting party must show evidence of conduct that interfered with or reasonably tended to interfere with the freedom of that choice. The evidence must demonstrate a direct relationship between the improper activities and the interference with the voters' freedom of choice. An allegation of seemingly objectionable conduct, without more, will not be sufficient to set aside an election. Jersey City Dept. of Public Works, P.E.R.C. No. 43, (1970), aff'd sub. nom. AFSCME Local 1959 v. P.E.R.C., 114 N.J. Super 463 (App. Div. 1971). See also, Bor. of Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 64 (¶19021 1989).

With respect to its sole objection, Local 29 has not presented any evidence in support of the objection. No affidavits or documents were submitted. Although Local 29 notified our office promptly when it realized it had not received our letter of November 24, 1993, its only subsequent submission fails to include any affidavits. There is no evidence that precisely and specifically shows that conduct has occurred which would warrant setting aside the election. This objection must also be dismissed because no proof of service upon either the Borough or Local 911 was provided. N.J.A.C. 19:11-9.2(h).

Accordingly, no evidence of conduct which interfered with employees' free choice having been produced, I dismiss the objections and ORDER that the certifications of representative be issued.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 21, 1993
Trenton, New Jersey