

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

In the Matter of

COUNTY OF OCEAN,

Public Employer,

-and-

COMMUNICATION WORKERS OF AMERICA,
AFL-CIO,

DOCKET NO. RO-78-112

Petitioner,

-and-

OCEAN COUNCIL #12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, ruling upon post-election objections determines that the CWA, the objecting party, has not furnished sufficient evidence to support a prima facie case and, therefore, dismisses the objections. Accordingly, the Director certifies Ocean Council #12, New Jersey Civil Service Association, which received a majority of valid ballots cast in a runoff election among County white collar employees, as the exclusive representative. CWA claimed that the County's conduct in not notifying the competing organizations and the employees of the creation of a Board of Health and its intent to assert challenges to the voting eligibility of health employees caused confusion, a carnival atmosphere at the election and interfered with a free and fair election. The Director finds that the evidence proffered by CWA does not support a claim of confusion, a carnival atmosphere or any interference with employee freedom of choice. The proffered evidence, additionally, did not support the allegation that the organizational rights and efforts of CWA were interfered with by the alleged conduct by the County.

D.R. NO. 79-34

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Appearances:

For the Public Employer
Berry, Summerill, Piscal, Kagan & Privetera
(John C. Sahradnik, of Counsel)

For the Petitioner
Kapelsohn, Lerner, Reitman & Maisel
(Sidney Reitman, of Counsel)

For the Intervenor
Fox & Fox
(David I. Fox, of Counsel)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Agreement for Consent Election, and in accordance with N.J.A.C. 19:11-9.3, a runoff election was conducted by the Public Employment Relations Commission (the

"Commission") on April 3, 1978 among nonsupervisory white collar employees of the County of Ocean (the "County") to ascertain whether the employees desire to be represented by the Petitioner, Communication Workers of America, AFL-CIO ("CWA") or by the incumbent representative, Ocean Council #12, New Jersey Civil Service Association ("Council #12"). The undersigned, having resolved challenges to the voting eligibility of certain employees ^{1/} and having caused the issuance of a revised Tally of Ballots, ^{2/} now turns to post-election objections filed by the CWA. CWA alleges that the County and Council #12 engaged in conduct affecting the results of the election and urges that the results of the runoff election be set aside. A copy of the objections is attached hereto and incorporated herewith.

Upon the filing of the objections, CWA was advised of its responsibilities pursuant to N.J.A.C. 19:11-9.2(i) ^{3/} and was

1/ In re County of Ocean, D.R. No. 79-25, 5 NJPER 128 (¶ 10076 1979), and correspondence dated April 11, 1979. Challenged ballots were of sufficient number to affect the results of the election.

2/ The revised tally reflects that of approximately 268 eligible voters, 108 ballots were cast in favor of Council #12, 106 ballots were cast in favor of CWA. Thirty-eight ballots have been ruled void. A majority of the 214 valid ballots have been cast in favor of Council #12.

3/ N.J.A.C. 19:11-9.2(i) provides:

Where objections as defined in subsection (h) of this section are filed, the director of representation shall conduct an investigation into the objections if the party filing said objections has furnished sufficient evidence to support a prima facie case. Failure to submit such evidence may result in the immediate dismissal of the objections.

provided an opportunity to present documentary and other evidence which would support a prima facie case. ^{4/} Thereafter, on June 7, 1978, the undersigned pended further processing of the objections until the disposition of the aforementioned challenge ballot issues. On April 11, 1979, a decision issued disposing of the challenge issues. On April 27, 1979, the undersigned notified the parties of the resumption of the processing of the objections. All parties were provided the opportunity to present briefs and/or statements of position with respect to the issues of whether the conduct alleged in the objections would or would not require the setting aside of the election as a matter of law.

The objections relate to circumstances involving the eligibility of certain "Health Department employees" to vote in the runoff election. The voting eligibility of these employees was not questioned in the first election conducted by the Commission on March 22, 1978. In accordance with the Commission's rules and policy, the election eligibility list prepared by the County for use during the first election was utilized for the runoff election. However, during the conduct of the election, the County's polling observers asserted challenges to the voting

^{4/} On April 24, 1978, the Commission received an affidavit in support of the objections from Edward Schultz, an International Representative of the CWA. Schultz is not a unit member, nor was he an election observer on behalf of CWA. Schultz's affidavit is dated the same date on which the Commission mailed its notice advising CWA of its responsibilities with regard to documentation. No other evidentiary material has been provided by CWA.

eligibility of "Health Department employees" claiming that, during the interval between the first election and the runoff election, their employment was assumed by a newly created, and autonomous, Ocean County Board of Health. In short, the County claimed that the "Health Department employees" were no longer employed by the County. The election agent recorded the assertion of this challenge, and the health employees were provided an opportunity to cast challenged ballots.

Generally, the objections state that the County prevented a "free and fair election" by creating an atmosphere of confusion and by improperly stationing observers at the polling places to challenge "Health Department employees." More specifically, CWA, in its post-election objections and in the affidavit of Edward Schultz, asserts the following as the claimed objectionable conduct: (1) the County had no standing to have observers or to challenge the eligibility of voters; (2) the Ocean County Director of Employee Relations publicly stated that all employees who were eligible to vote in the first election would be eligible to vote in the runoff election; (3) the Asbury Park Press, a local newspaper, published an article in which it was reported that the Council #12 president stated that only those employees who voted in the March 22 election would be eligible to vote in the runoff election; (4) the County failed to adequately inform the competing organizations of the alleged establishment of the Ocean County Board of Health; and (5) the County failed to provide notification

of its intent to challenge the health employees.

All parties have submitted statements of position with respect to the issues raised in the objections.

On May 2, 1979, the Commission received a statement of position from CWA which reiterates CWA's position that the "lack of notice of the challenges to Health Department employees created confusion and a carnival atmosphere at the runoff election which destroyed the laboratory conditions of the election and it interfered with the right of employees to [a] free and fair election" and that "the lack of notice of the changes in status of said employees interfered with the organizational rights and efforts of CWA." CWA states that "it was incumbent on the County or the newly created Board of Health to notify the parties and your agency of the changes which had occurred ... "

On May 8, 1979, a statement was received from Council #12 stating that "it is also apparent from the failure of the Objections and Affidavit in support thereof to allege any prejudice (other than the mere allegations of prejudice), that no prejudice resulted to the CWA or any voter due to this change." Council #12 asserts that the objections do not set forth grounds requiring the setting aside of the election.

On May 10, 1979, the Commission received a statement of position from the County stating that it had the right to station observers at the polling places and to assert challenges, and that CWA failed to carry the burden of proof to establish a

prima facie basis for its claim that the County's failure to provide notification interfered with a free and fair election.

The applicable standard for evaluating post-election objections is whether the objecting party has demonstrated that conduct has occurred which has interfered with or reasonably tended to interfere with employee freedom of choice. In this regard, the Commission has stated:

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice. Conduct, seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election. The foregoing rule requires that there must be a direct relationship between the improper activities and the interference with freedom of choice, established by a preponderance of the evidence. 6/

Further, the Commission may issue a determination dismissing the objections without conducting an administrative investigation where the objecting party fails to proffer sufficient evidence to support a prima facie case. 7/

Accordingly, consistent with the above standard, the undersigned shall consider the objections in seriatim.

6/ In re Jersey City Department of Public Works, P.E.R.C. No. 43 (1970), aff'd sub nom A.F.S.C.M.E. Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971)

7/ N.J.A.C. 19:11-9.5(i)

1. County's Standing to Assert Challenges
Through Observers

CWA's position that the County should not have been entitled to assert challenges through election observers is based upon the misplaced premise that the public employer represents a "no vote" (i.e., no union) position on the ballot. ^{8/} The public employer is a party to all election proceedings and is entitled under Commission policy to have appropriate observers present to challenge voters due to its unique status and ability to ensure that only properly identified, eligible voters cast valid ballots. No probative evidence has been offered by CWA to support its conclusory statement that voters were confused by the presence and activities of the County's observer(s) and, accordingly, there is no basis upon which it may be maintained that the employer's stationing of observers and their challenging of individuals interfered with freedom of choice.

2. Statements by Director of
Employee Relations

Although no documentary evidence has been accompanied therewith, CWA has claimed that the County's Director of Employee Relations publicly stated that all employees who were eligible to vote in the first election were eligible to vote in the runoff election. According to the CWA, the County, notwithstanding these

^{8/} The "neither" position on the ballot in the first election was removed from the ballot in the runoff election.

statements, failed to provide notice to the employees of its intent to challenge health employees, "thereby creating an atmosphere of confusion which prevented the holding of a free and fair election." The statement attributed to the County's Director of Employee Relations could not have discouraged any potential voters from appearing at the polls, or caused pre-election confusion, or affected the outcome of the election. CWA has not proffered any evidence of voter confusion before or during the election, nor has CWA proffered any evidence that individuals were discouraged from voting. No evidentiary proffer has been made that an individual, confronted by a challenge assertion, refrained from casting a challenged ballot. Accordingly, there is no basis upon which it may be maintained that the employer's statements interfered with freedom of choice.

3. Statements made by the
Council #12 President

CWA claims that a newspaper article attributes a statement to the Council #12 president that "only those employees who voted in the March 22 election would be eligible to vote in the runoff on April 3." CWA has not submitted a copy of that article, nor has it proffered any evidence or document showing that any eligible voter was dissuaded or prevented from voting thereby. Accordingly, there is no basis upon which it may be maintained that the alleged statement of the Council #12 president interfered with freedom of choice.

4. Failure of the County to Inform the Competing Organizations of the Establishment of the County Board of Health
5. Failure of the County to Inform the Competing Organizations of the Intent to Challenge Health Employees

The above two objections may be considered in conjunction. Assuming their factual accuracy, it is reasonable to conclude that the assertion of challenges by the County at the time of the election surprised the observers for the competing organizations. However, CWA has not proffered facts that would translate such surprise into confusion, a carnival atmosphere, or interference with freedom of choice. There is no claim or factual proffer that any individual was dissuaded or prevented from voting by the County's conduct. There is no evidence or claim that both organizations were other than equally "disadvantaged" by lack of such knowledge, and there is no allegation of an improper motive on the part of the County in not notifying the organizations. Likewise, the factual affidavit supplied by CWA does not proffer evidence in support of the claim that the County's lack of notice interfered with CWA's organizational rights and efforts.

In his earlier decision, the undersigned noted that, if the Commission had been notified of the change in composition of the proposed unit, it would have had an opportunity to clarify the status of eligible voters before the election thus obviating the need for time-consuming litigation concerning post-election

challenges. However, the undersigned does not determine that the County's failure to so notify the Commission has either created confusion or destroyed the laboratory conditions required of the election.

Accordingly, since the CWA has failed to provide facts which would establish a direct relationship between the County's activities and interference with freedom of choice of voters, the undersigned finds that there is not a sufficient basis to invalidate the election conducted herein.

Accordingly, for the above reasons, the undersigned dismisses the CWA claims of objectionable conduct. CWA has not furnished sufficient evidence to support a prima facie case. ^{9/}

It therefore appearing from the Tally of Ballots, that Council #12 has received a majority of the valid ballots cast, the undersigned shall record and issue the appropriate certification of Council #12 as the exclusive representative.

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the undersigned in accordance with the New Jersey Employer-Employee Relations Act, as amended, and Chapter 11 of the Commission's Rules and Regulations; and it appearing from the Tally of Ballots that an exclusive representative for collective negotiations has been selected;

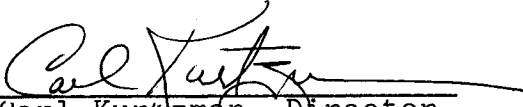
^{9/} CWA's request for oral argument, contained in its statement received May 2, 1979, is denied.

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that Ocean Council #12, New Jersey Civil Service Association has been designated and selected by a majority of the voting employees of the above-named Public Employer, in the unit described below, as their representative for the purpose of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the said representative 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. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

Unit: All white collar employees employed by the Ocean County Board of Freeholders, but excluding Managerial Executives, Professional Employees, Craft Employees, Policemen, Confidential Employees, Seasonal Employees, and Supervisors within the meaning of the Act.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

DATED: May 18, 1979
Trenton, New Jersey


Carl Kurtzman, Director

4/19/78:lh

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In the Matter of :
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: OCEAN COUNCIL #12, N.J.C.S.A., :
Intervenor, :
: - and - :
COMMUNICATIONS WORKERS OF AMERICA - :
A.F.L. - C.I.O., :
Petitioner. :

OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS
OF THE RUN-OFF ELECTION

Pursuant to Section 19:11-9:2(h) of the Rules and Regulations of the New Jersey Public Employment Relations Commission, the Communications Workers of America, A.F.L. - C.I.O. (hereinafter C.W.A.), hereby files objections to conduct of the Public Employer herein which affected the results of the run-off election held on April 3, 1978.

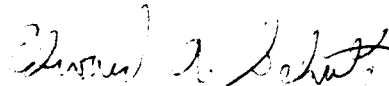
The Public Employer, County of Ocean, prevented a free and fair election by:

1. Failing to adequately inform the parties to the run-off election of the alleged establishment of a County Board of Health, immediately prior to said run-off election, to allegedly provide the services that had been provided by the County Health Department employees, and that said County of Ocean intended to challenge the right of said employees to vote in said run-off election despite the fact that these employees were on the eligibility list submitted by the County of Ocean and did vote without challenge in the first election, and despite the fact that the County of Ocean had publicly announced that all employees that had voted in the first election were eligible to vote in said run-off election, thereby creating an atmosphere of confusion which prevented the holding of a free and fair election.

2. Stationing observers at the polling places for the run-off election and challenging the eligibility of voters that had voted without challenge in the first election likewise created an atmosphere of confusion because the Public Employer had publicly asserted that all employees who were eligible to vote in the first election would be eligible to vote in the run-off election, and the Public Employer had no standing to have election observers at the run-off election or to challenge the eligibility of voters, as the County of Ocean was not a party to the run-off election which was solely between Communications Workers of America, A.F.L. - C.I.O. and Ocean Council #12, New Jersey Civil Service Association.

By the foregoing and other acts and conduct, the Public Employer destroyed the laboratory conditions necessary for a free election and made the holding of a free and fair election impossible. Accordingly, it is respectfully requested that the run-off election held on April 3, 1978, be set aside and a new election ordered.

Respectfully submitted,



EDWARD A. SCHULTZ
International Representative
COMMUNICATIONS WORKERS OF AMERICA
A.F.L. - C.I.O.

DATED: April 19, 1978.

4/19/78:lh

BEFORE THE NEW JERSEY
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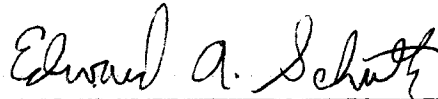
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