

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

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Intervenor,

-and-

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

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION,  
a/w AMERICAN FEDERATION OF TEACHERS,  
AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

DOCKET NOS. RE-81-2  
RE-81-3  
RE-81-4  
RE-81-5

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In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

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

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NEW JERSEY STATE EMPLOYEES ASSOCIATION,  
a/w AMERICAN FEDERATION OF TEACHERS,  
AFL-CIO,

Intervenor,

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NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

DOCKET NOS. RO-81-126  
RO-81-127  
RO-81-128  
RO-81-129

SYNOPSIS

The Director of Representation issues a determination concerning six challenged votes in the representation election involving higher level supervisors employed by the State. The Director voids a ballot cast by an individual who is found to be included in a different negotiations unit. He further finds that the ballots of three Division of Budget and Accounting employees should be counted since no party asserts the ineligibility of these voters. The Director further finds that a dispute concerning two Civil Service Department employees should be resolved through an evidentiary hearing.

D.R. NO. 81-37

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Docket Nos. RO-81-126  
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NEW JERSEY STATE EMPLOYEES ASSOCIATION,  
a/w AMERICAN FEDERATION OF TEACHERS,  
AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

Appearances:

For the State of New Jersey,  
Frank A. Mason, Director

For Communications Workers of America, AFL-CIO,  
Kapelsohn, Lerner, Reitman & Maisel, Esqs.  
(Sidney Reitman, of Counsel)

For the American Federation of State, County and  
Municipal Employees, AFL-CIO,  
Sterns, Herbert & Weinroth, Esqs.  
(John M. Donnelly, of Counsel)

For the New Jersey State Employees Association, AFT  
Fox and Fox, Esqs.  
(David I. Fox, of Counsel)  
Miller, Cohen, Martens & Sugarman, Esqs.  
(Nancy Schiffer, of Counsel)

DECISION

Pursuant to decisions issued on March 25, 1981<sup>1/</sup> and April 3, 1981<sup>2/</sup> in the above-entitled matters, which resolved certain challenged ballots in elections involving three units of State employees, revised tallies of ballots were issued by the undersigned's representative on April 6, 1981. The revised tally of ballots in the election involving the employees in the Higher Level Supervisors Unit revealed that further administrative investigation was necessary to resolve the remaining challenged ballots in that unit in order to ascertain whether the American Federation of State, County and Municipal Employees ("AFSCME") or the New Jersey State Employees Association affiliated with American Federation of Teachers ("SEA/AFT") will compete with the Communications Workers of America ("CWA") in a runoff election.<sup>3/</sup> The initial tally revealed that CWA led in the balloting, but could not possibly achieve a majority of the valid ballots cast even if all challenged ballots were resolved. Although AFSCME led SEA/AFT by three ballots for the second highest position, there were 71 outstanding challenged votes. Based upon the April 6, 1981 revised tally, AFSCME leads SEA/AFT for the second highest

<sup>1/</sup> D.R. No. 81-32, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1981), Req. for Rev. den. P.E.R.C. No. 81-112, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1981).

<sup>2/</sup> D.R. No. 81-34, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1981), Req. for Rev. den. P.E.R.C. No. 81-127, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1981).

<sup>3/</sup> Outstanding challenges no longer affect the results of the Administrative and Clerical Services Unit and the Primary Level Supervisors Unit. See, D.R. No. 81-35, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ April 10, 1981), Req. for Rev. den., P.E.R.C. No. 81-127, 7 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1981).

position by four votes, and there remain six unresolved challenged ballots.<sup>4/</sup>

At the conclusion of the April 6, 1981 tally, the parties were requested to consider and develop positions concerning the status of the remaining challenged voters. On April 10, 1981, the undersigned directed the parties to convene on April 15, 1981 to discuss these remaining, determinative challenge voters.

At the April 15, 1981 conference, each challenge was discussed. The State provided the results of its investigation into these voters, and the parties were provided an additional period of time, until April 23, 1981, to dispute the State's information and to submit any additional positional statements. Only SEA/AFT disputes the State's information, and it presented the results of its investigation, along with a positional statement on April 23, 1981.

Based upon the administrative investigation, the undersigned finds as follows:

1. Theodore Tucci, II - The State's payroll records reflect that Theodore Tucci, II, is employed as a Community Employment Services Worker. This title is assigned to the Health Care negotiations unit. The State, CWA and AFSCME agree that Tucci is ineligible to vote. SEA/AFT states that it has not had an opportunity to check out this claim.

<sup>4/</sup> A seventh ballot of an eligible voter remains uncounted at this time and has been grouped with the challenges. This ballot was improperly requested in a unit other than the Higher Level Supervisors Unit, and is of a different color than ballots of the Higher Level Supervisors. The Commission prefers not to jeopardize the identity of this voter unless it is necessary.

The precise tally is now:

<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>
349	226	222	155	61	7

For the reasons expressed by the undersigned in his earlier March 25, 1981 decision, D.R. No. 81-32, sufficient time has been provided to SEA/AFT to submit any evidence to dispute the State's payroll records. The undersigned concludes, in the absence of a disputed position supported by an evidentiary proffer, that this vote is void.

2. Daniel Petchel; Larry Picatello - These individuals are employed by the State in the Department of Civil Service. On December 12, 1980, they both were Supervisory Training Technicians, which is an eligible title in the Higher Level Supervisors Unit. However, the State's records reveal that prior to the election, on December 27, 1980, both Petchel and Picatello moved into new positions, in the title of Regional Manager. The State submits that the Regional Manager title is a management title, and therefore Petchel and Picatello are ineligible voters. AFSCME and CWA agree that Petchel and Picatello are ineligible.

SEA/AFT states that the Regional Manager title has only recently been requested, and, if approved, would be a new title. According to SEA/AFT's evidentiary proffer, there has been no determination establishing the Regional Manager title as a management title. SEA/AFT therefore requests that Petchel and Picatello either be considered on the basis of their title as of December 12, 1980 and deemed eligible voters or that hearings be held to consider whether the Regional Manager title is a new title eligible for inclusion in the unit.

Because of the nature of the dispute herein, the undersigned shall not issue a determination regarding these two voters. There are material factual disputes regarding these voters which are appropriately the subject for an evidentiary hearing.

3. Dorothy Hudzina; Wayne Senkowski; Philip Wylie - These individuals are employed in the Division of Budget and Accounting; Hudzina is a Supervisor of Accounts; Senkowski is a Supervisor of Data Processing Machine Operator II; and Wylie is a Supervising Stock Clerk. None of the parties herein assert that these three employees, who occupy eligible titles in the Higher Level Supervisors Unit, are ineligible to vote. SEA/AFT alleges that the State intends to maintain the position -- which the State has not asserted -- that all employees in the Division of Budget and Accounting are confidential. For this reason, SEA/ AFT requests a "final adjudication that they are appropriate to the unit and not confidential."

The undersigned cannot accept the SEA/AFT's request herein to address a claim which has not been asserted by the State, particularly under the present circumstances. These employees were initially challenged by PERC because their names were not on the original eligibility list prepared by the State. However, neither the State nor any other party has pursued this challenge by asserting their ineligibility to vote. SEA/AFT asserts that these voters are eligible and the State does not quarrel with this position. As a result of the State's position not to assert a



claim of ineligibility, and in the absence of a claim by any union of ineligibility, these votes may be counted. Given the positions of the parties herein, and the issues presented to the Commission, the undersigned determines that the votes of Hudzina, Senkowski and Wylie shall be counted.<sup>5/</sup>

Accordingly, for the above reasons, the undersigned voids the ballot of Theodore Tucci and shall count the eligible ballots of Dorothy Hudzina, Wayne Senkowski and Philip Wylie. A tally shall be conducted on April 30, 1981 at 10:00 a.m., at the Commission's Trenton Offices, at which all parties may be present to observe. If, thereafter, remaining challenges are determinative, the undersigned shall issue a Notice of Hearing concerning the voting status of Daniel Petchel and Larry Picatello. If the revised tally

<sup>5/</sup> The Chairman, in denying a Request for Review of the undersigned's earlier determination in D.R. No. 81-32, fn. 1 supra, of certain challenges in this matter, stated:

The SEA/AFT and AFSCME assert that hearings should be held to "finally adjudicate" or establish "permanent unit placement" of these employees before there is a revised tally. Since the Director determined that these are valid ballots cast, it is without merit for a party having failed to assert a challenge or to have produced any evidence, to now request a hearing merely on a claim that at some time in the future the employer might assert a question of unit placement.

Equally without merit are assertions that the status of employees not on the list who received ballots should now be the subject of plenary hearings, after an administrative investigation has determined that their ballots should be counted and neither party seeking the hearing asserts their non-eligibility. P.E.R.C. No. 81-112, 7 NJPER \_\_\_\_ (¶ \_\_\_\_ 1981).

reveals that a runoff election is required, the undersigned directs that such election shall be conducted pursuant to N.J.A.C. 19:11-9.3.

BY ORDER OF THE DIRECTOR

  
\_\_\_\_\_  
Carl Kurtzman, Director

DATED: April 29, 1981  
Trenton, New Jersey