

D.R. NO. 86-17

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

In the Matter of

BERKELEY TOWNSHIP,

Public Employer,

-and-

TEAMSTERS LOCAL 97 OF
NEW JERSEY,

DOCKET NO. RO-86-101

Petitioner,

-and-

BERKELEY TOWNSHIP MUNICIPAL
EMPLOYEES ASSOCIATION,

Intervenor.

Synopsis

The Director of Representation orders that an election be set aside and a second election be conducted in a stipulated unit of blue and white collar employees of Berkeley Township. The Director found that a Commission agent's forty-minute late opening of the polls required that a second election be conducted, especially when eligible employees who did not vote in the first election could have affected the results of the election.

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Appearances:

For the Public Employer
Goldberger & Finn, Esqs.
(Howard A. Goldberger, of counsel)

For Petitioner
Oxford, Cohen & Blunda, Esqs.
(Mark J. Blunda, of counsel)

For the Intervenor
Murray & Granello, Esqs.
(Stephen E. Trimboli, of counsel)

DECISION AND DIRECTION OF ELECTION

On February 25, 1986, the Public Employment Relations Commission ("Commission") conducted a secret ballot election in a stipulated unit of blue and white collar employees of the Township of Berkeley ("Township"), pursuant to an Agreement for Consent

Election ("Agreement").^{1/} Following the election, the Commission election agent gave the parties a Tally of Ballots which revealed that of approximately 105 eligible voters, 95 ballots were cast; 46 ballots were cast for the incumbent majority representative, Berkeley Township Municipal Employees Association ("Association") and 49 ballots were cast for the petitioner, Teamsters Local 97 of New Jersey ("Teamsters"). No void or challenge ballots were cast.

The Association timely objected to the conduct of the election and to conduct affecting the results of the election. Specifically, it alleged that in violation of the Agreement stating that the polls shall be open from 1 p.m. to 5 p.m., the Commission election agent did not open the polls until 1:40 p.m. It alleged that the ten voters who failed to vote in the election were sufficient to affect the outcome of the election.

I authorized an investigation of the matters raised in the objections in order to determine the facts. See, N.J.A.C.

19:11-9.2. I make the following findings:

^{1/} The stipulated unit was clarified as follows: "Included: All blue and white collar employees of the Township of Berkeley and the following positions, part-time clerk typists, police records clerk, school traffic guard (excluding substitutes), part-time rangers (golf course), cashiers (golf course), court attendant, one recreation aide (Sharon Vassallo). Excluded: Policemen, confidentials, professionals, craft, supervisors, managerial employees within the meaning of the Act and the following titles, special police officers, senior mechanic fire apparatus, recreation aide, bus driver, substitute crossing guards."

1. The administrative investigation has revealed no substantial and material factual issues which are more appropriately resolved after a hearing.^{2/}

2. The Agreement for Consent Election stated that the election was scheduled between 1 p.m. and 5 p.m. The Commission agent assigned to conduct the election arrived late at the polling place and opened the polls at 1:40 p.m. The polls closed at 5 p.m.

3. The unit contained approximately 105 eligible voters; 49 employees voted for the Teamsters and 46 voted for the Association. Nearly 10% of eligible employees did not vote. The votes of the 10 employees could very well have affected the results of the election.

4. The Township took no position concerning the objections filed by the Association. The Teamsters averred that even if the polls opened late, the Association did not allege that any eligible voters arrived at the polls between 1 p.m. and 1:40 p.m. Consequently, the Association did not prove that the 10 employees who did not vote failed to vote because of the late starting time.

^{2/} Paragraph 6 of the Agreement for Consent Election states in part: "The Executive Director shall conduct an investigation of the matters contained in the objections and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged....The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Executive Director whose decision shall be a final administrative determination unless the Commission shall have granted a request for review." cf., N.J.A.C. 19:11-2.2(1).

The Commission is statutorily empowered to "resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees (emphasis added) N.J.S.A. 34:13A-6(d). In Somerset County College and S.C.C.S.C.F., Local 3254, E.D. No. 59 (1974), the Executive Director set aside a Commission election and directed a second election among unit employees because the Commission agent assigned to supervise the election arrived late at the polling place and the employees who did not vote could have affected the results of the election.

Commission policy governing the conduct of secret ballot elections closely parallels that of the National Labor Relations Board. In re Englewood Board of Education, D.R. No. 82-47, 8 NJPER 251 (¶13111 1982), req. for rev. den. P.E.R.C. No. 82-98, 8 NJPER 275 (¶13120 1982). See also Lullo v. IAFF, Local 1066, 55 N.J. 409 (1970). In Nyack Hospital and Local 200, SEIU and Local 363, IBEW, 238 NLRB No. 39, 99 LRRM 1362 (1978), the Board held that a Board agent's forty minute late opening of a polling place required that a representation election be set aside. The Board's rationale is particularly appropriate in resolving the issues raised in the objections to the election filed in this case:

"[I]t is frequently impossible to determine to what extent a substantial departure by the Board agent from scheduled election voting hours has affected the outcome of the ensuing election. In this case, the votes of those possibly excluded from voting could have been determinative.

Moreover, the ensuing votes may have been affected by the conduct of the Board agent. To preclude such occurrences as this, which cast doubt on the results of elections which we are responsible for certifying, and to carry out our responsibility for assuring properly conducted elections and maintaining our own standards, we see no alternative but to set aside this election and direct a second election."

That employees may not have arrived at the polling place at a time when the polls were scheduled to open is wholly beside the point: the Commission cannot sacrifice its duty to properly conduct elections. Accordingly, I find that the late arrival of the Commission agent so disturbed the conditions necessary "to ascertain the free choice of the employees" as to require the election be set aside and a second election be directed in the stipulated unit within thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

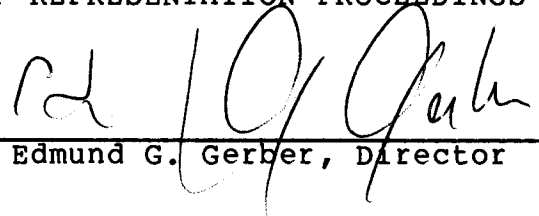
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with me and with the Association and the Teamsters, an election eligibility list consisting of an alphabetical listing

of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Association and the Teamsters with statement of service to the Commission. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by the Berkeley Township Municipal Employees Association of Teamsters Local 97 of New Jersey or no union.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION PROCEEDINGS



Edmund G. Gerber, Director

DATED: March 25, 1986
Trenton, New Jersey