D.R. NO. 86-25

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

In the Matter of

OCEAN COUNTY JUDICIARY,

Public Employer,

-and-

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 14, AFL-CIO,

DOCKET NO. RO-86-93

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 103, AFL-CIO,

Intervenor.

Synopsis

The Director dismisses objections to an election conducted among certain Judiciary employees. The objections, which were filed by CWA, allege that during the election campaign period, the OPEIU was unequally permitted access to the voters at the workplace during working hours.

The Director found that the objecting party failed to demonstrate that it had been denied equal access at any point in the campaign period.

D.R. NO. 86-25

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

In the Matter of

OCEAN COUNTY JUDICIARY,

Public Employer,

-and-

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 14, AFL-CIO,

DOCKET NO. RO-86-93

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 103, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer
Administrative Office of the Courts
(Joan Kane Josephson, Chief of Labor Relations)

For the Petitioner
Gerald Iushewitz, Int'l Vice President

For the Intervenor
Edward Sabol, Staff Representative

DECISION

Pursuant to an Agreement for Consent Election entered into by the parties on February 3, 1986, a representation election was conducted on March 12, 1986 by the Public Employment Relations Commission ("Commission") among approximately 84 employees of the Ocean County Judiciary ("Judiciary"). Employees were provided the

opportunity to choose a representative, either the Office and Professional Employees International Union Local #14, AFL-CIO, ("OPEIU") or the Communications Workers of America, AFL-CIO ("CWA") or to choose not to be represented. The tally of ballots reveals that 44 valid ballots were cast for OPEIU; 25 valid ballots were cast for CWA; no valid ballots were cast against representation and no ballots were challenged.

On March 17, 1986, pursuant to N.J.A.C. 19:11-9.2(h), CWA filed post-election objections alleging that the OPEIU enjoyed regular and frequent access to the voters during work hours at their work stations; C.W.A. contends that similar access was denied to its own representatives. Thus, CWA alleges that the employer provided an unfair advantage to OPEIU in the election as well as created an appearance of employer preference for OPEIU.

In support of these allegations, CWA submitted the following documentation: (a) a statement signed by four employees indicating that they were approached by two OPEIU representatives, Lenny Roe[1/] and Mike Reavy, on February 6, 1986, during work hours at the employees' Judiciary offices; (b) a statement signed by another employee stating that she was approached on several occasions by two OPEIU representatives during work hours, the last such occasion being the last week in February; (c) a letter dated March 3, 1986, from CWA to Joan Josephson of the Administrative

---

1/ Lenny Roe is an employee of the County.

Office of the Courts, complaining to the Judiciary that OPEIU representatives were allegedly enjoying access to voters at the workplace during work hours; (d) a statement from CWA organizer Edward Sabol indicating that he was told on March 3, 1986 that CWA representatives would not be permitted into the work areas to address workers during work time.

The Ocean County Judiciary takes the position that it never granted permission to any union representatives to campaign or solicit employee support during work hours at the work place and that if either organization was able to gain access to the workers, it was not with the employer's permission. The Judiciary has provided the Commission with a copy of a memorandum dated March 4, 1986, from Trial Court Administrator Frank Kirkleski to the Judiciary's supervisory staff; the memo advises the supervisors that it is the Judiciary's policy not to permit representatives to solicit employees during work hours at their work stations and requests supervisors to actively discourage such activity.

N.J.A.C. 19:11-9.2(h) sets forth the initial standard for the Director's review of 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)

Thereafter, pursuant to N.J.A.C. 19:11-9.2(i), the Director of Representation must review the objections and supporting evidence to determine "if the party filing said objections has furnished sufficient evidence to support a prima facie case." The Director will assume the veracity of the specific evidence proffered by the objecting party. If sufficient evidence has not been submitted to support a prima facie case, the Director may dismiss the objections immediately. If sufficient evidence has been submitted, then, and only then, will the Director conduct an investigation into the objections. See In re State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd App. Div. Dkts. No. A-3275-80T2 & A-4164-80T3.

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-pronged test is not met, the objections will be dismissed.

* * *

The statements signed by employees and submitted by CWA assert that OPEIU representatives campaigned among employees at

their work place during working hours during the second and fourth weeks of February, 1986. However, there is no evidence, nor has CWA alleged, that it was denied similar access during the month of February, 1986, or that CWA representatives even tried to gain such access during that period. There has been no evidence presented which supports the CWA's contention that the employer, the Ocean County Judiciary, permitted the OPEIU to have such access. In fact, the Judiciary asserts that the reverse is true - that the Judiciary's policy is to forbid outside representatives from soliciting employees during work time at their work stations. Immediately after CWA brought the matter to the Judiciary's attention, Kirkleski issued the Judiciary's March 4 policy memo instructing supervisors to enforce the no-solicitation rule.

Both the Probation Office and the County Courts Building are open to the general public and access to the various offices is unrestricted. It appears that OPEIU representatives Roe and Reavy simply walked into the building without permission and talked to voters.

While the CWA alleges that it was denied access to the employees after March 3, it does not allege that OPEIU had access after the issuance of Kirkleski's March 4 memo. In effect, the CWA's allegations are consistent with the Judiciary's enforcement of the no solicitation memo. The CWA was denied access only after it complained about the OPEIU. At that time, the Judiciary uniformly enforced its no solicitation rule.

The CWA has not proffered sufficient evidence to support its claim that the OPEIU was granted access to the voters during the election campaign, either before or after the formal no-soliciation ban was imposed on March 4.

The facts as submitted by the CWA, are simply that the CWA objected to OPEIU campaigning in the Judiciary offices prior to March 3. It is not alleged that the CWA was denied access prior to March 3 nor does the CWA address whether or not it also campaigned on the premises.

The NLRB held[2/] in LaPointe Machine Tool Company, 113 NLRB 172, 36 LRRM 1273 (1955), that

> It is not an interference with an election to permit one of two unions to solicit support on company time and property where there is no showing that the other union involved had requested, and had been denied similar privileges. 36 LRRM at 1274.

In the present case, CWA failed to make out a prima facie case on both the substantive and the evidentiary components of the tests. There is no evidence that would support the allegation that the Judiciary permitted access to the OPEIU at a time when it denied access to the CWA. The CWA failed to demonstrate it was denied equal access at any point in the election campaign

---

2/ See, Lullo v. I.A.F.F., 55 N.J. 409 (1970).

period.[3/] In this case, the threshold standard has not been met and therefore the objections are hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber, Director

Dated: June 23, 1986
Trenton, New Jersey

3/ I note also that access to the voters at the workplace is not the only avenue of access to the voters; each party to the election is, pursuant to N.J.A.C. 19:11-9.6, entitled to a voter eligibility list which includes the home addresses of voters. In the instant matter, the eligibility list was received by both organizations at least six (6) weeks prior to the election. Thus, alternative access to the voters was available to the organizations. See In re County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).