

E.D. NO. 76-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRICK,
Public Employer,

-and-

TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 225,
Petitioner,

Docket No. RO-76-21

-and-

OCEAN COUNCIL #12, NEW JERSEY CIVIL
SERVICE ASSOCIATION,
Intervenor.

SYNOPSIS

The Executive Director dismisses an objection to an election, finding that the objection is actually a challenge to voter eligibility which may not be raised through the post-election objection procedure. Accordingly, the Petitioner having received a majority of the valid ballots cast in the election, is certified as the majority representative of the employees (blue-collar and white-collar) of the Public Employer.

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DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Agreement for Consent Election, a secret ballot election was conducted on November 17, 1975 in a unit stipulated as follows: "Included: All employees employed by the Township of Brick. Excluded: Managerial executives, confidential employees, police, professional employees, craft employees and supervisory employees within the meaning of the Act." The Tally of Ballots reveals that the results of the election were not determinative and no certification could appropriately be issued.

In accordance with the agreement of the parties, the undersigned provided for a re-run election that was conducted on November 25, 1975. The Tally of Ballots reveals that of approximately 164 eligible votes, there were 75 votes cast for the Transport Workers Union of America, AFL-CIO, Local 225 and 70 votes cast for Ocean Council #12, New Jersey Civil Service

Association. There were no ballots cast against representation and no challenged ballots. Three ballots were voided.

Ocean Council #12, New Jersey Civil Service Association ("Intervenor") submitted the following letter within five days after receipt of the Tally of Ballots. It is repeated in its entirety:

"Please be advised that we are objecting to the re-run election between the Township of Brick Public Employer and Local 225, Transport Workers of America, Petitioner and Ocean Council #12, N.J.C.S.A. as Intervenor.

Docket No. being RO-76-21 election held 11/25/75.

We are objecting on the grounds that we feel that the CETA employees should not have been included in this election.

Kindly advise."

The undersigned has caused an investigation to be conducted into the matter alleged in the foregoing submission. On the basis of such investigation the undersigned finds and determines that the disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. This disposition is in accordance with the Agreement for Consent Election and the Commission's Rules. See Paragraph 6 of the former and N.J.A.C. 19:11-2.4.

The Intervenor's submission concerns the propriety of "C.E.T.A." (Comprehensive Employment and Training Act) employees

casting ballots in the election.

This objection is directed to the voting eligibility of these employees rather than to the conduct of the election, calling into play the general rule that allegations of ineligibility are to be presented through the challenge procedure and not through the filing of post-election objections.

The election mechanism provides that challenges are to be asserted at the polling place by a party's authorized observer. Paragraph 4 of the Agreement for Consent Election provides that an observer's function includes "...to challenge, for good cause, the eligibility of voters." The Notices of Election forwarded to the Township for posting contain the following provision:

CHALLENGE OF VOTERS	An agent of the Commission or an authorized observer may question the eligibility of a voter. Such challenge MUST be made before the voter has deposited his ballot in the ballot box."
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A copy of the Notice of Election was forwarded to the Intervenor.

Furthermore, pursuant to the Agreement for Consent Election the Township furnished the Commission, the Petitioner (Transport Workers Union of America, AFL-CIO, Local 225) and the Intervenor with an election eligibility list that included the names of "C.E.T.A." employees. The Intervenor thus had the opportunity to review the eligibility list and to determine whether it intended to challenge any voter whose name was included on the list.

Although the Intervenor had an authorized observer at the polling place, that observer failed to challenge "C.E.T.A." employees who appeared to vote. Once a ballot has been cast without being challenged, that ballot can no longer be identified. The purpose of the challenge procedure is to permit the isolation of the ballots of uncertain validity so that, if necessary, a determination can be made regarding their eligibility.

In Borough of Cliffside Park, E.D. No. 55 (1974), the Public Employer filed several objections to the conduct of the election including an objection that four "C.E.T.A." employees voted. In language relevant to the instant matter, the Executive Director stated:

"Not having asserted its right to challenge the 'C.E.T.A.' employees as they presented themselves at the polling place, when it was or should have been aware of that right, the Borough may not now do so through the post-election objection procedure." 2/ 3/

In addition to the foregoing, it is observed that the Intervenor has not provided proof of simultaneous service of its submission upon the other parties in accordance with Section 19:11-2.4(f) of the Commission's Rules.

2/ In the Matter of Borough of Cliffside Park and Teamsters Local No. 97 of New Jersey I.B.T., E.D. No. 55, pg. 4.

3/ Although not dispositive of this matter, it is noted that the undersigned has declined to approve consent elections in units excluding employees of the type in dispute herein. See, for example, Township of Dover, et al., E.D. No. 63 (1975).

Based on the above, the undersigned concludes that the objection should be and hereby is dismissed. Therefore, the Petitioner having received a majority of the valid ballots cast, the undersigned will certify the Petitioner as the majority representative of the employees in the specified unit.

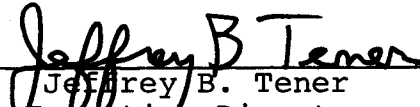
CERTIFICATION OF REPRESENTATIVE

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:

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that Transport Workers Union of America, AFL-CIO, Local 225 has been designated and selected by a majority of the employees of the Township of Brick in the unit of all employees employed by the Township of Brick but excluding managerial executives, confidential employees, police, professional employees, craft employees and supervisory employees within the meaning of the New Jersey Employer-Employee Relations Act, as their representative for the purposes 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 purposes 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.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
December 23, 1975