

D.R. NO. 2001-2

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

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Public Employer,

-and-

Docket Nos. RO-2000-101 and  
RO-2000-102

IBEW LOCAL 1158 and  
IBEW LOCAL 1158 (FOREMEN'S UNIT),

Employee Representatives.

SYNOPSIS

The Director of Representation dismisses election objections finding that eligibility lists were properly provided to petitioners. Additionally, petitioners' objections regarding the method, date, time, place and location of elections were not supported by adequate evidence that voters' freedom of choice was infringed.

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Employee Representatives.

Appearances:

For the Public Employer  
Dorf and Dorf, P.C., attorneys  
(Gerald L. Dorf, of counsel)

For the Employee Representatives  
Carella, Byrne, Bain, Gilfillan,  
Cecchi, Stewart & Olstein, attorneys  
(Justine A. Niccollai, of counsel)

DECISION

On July 13, 2000, secret ballot elections were conducted by the Public Employment Relations Commission (Commission) among two units of employees of Bloomfield Township (Township). The Township's blue-collar maintenance employees and a separate unit of its maintenance supervisors voted by in-person balloting on whether to be represented for collective negotiations by IBEW Local 1158. A majority of the voting employees in each negotiations unit voted against representation.<sup>1/</sup> On July 19, 2000, IBEW filed timely

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<sup>1/</sup> N.J.A.C. 19:11-10.7.

post-election objections together with supporting documents.<sup>2/</sup>

IBEW objects to the elections and requests that they be set aside and new elections ordered. It contends the following:

1. The Township violated N.J.A.C. 19:11-10.1 when it failed to simultaneously file election eligibility lists with the IBEW when the lists were filed with the Commission and the election eligibility lists initially omitted full first names of eligible voters.
2. The method of balloting (in-person), together with the date, time and location of the July 13, 2000 elections were inappropriate due to the following:
  - A. Several employees were scheduled to be on vacation during the week of July 13, 2000.
  - B. The elections were conducted after employee's work hours.
  - C. The location of the elections - the Municipal Building - caused employees to be reluctant to appear and vote in the building which housed the Township's administration.

By letter dated July 21, 2000, I acknowledged receipt of the objections and advised the IBEW of its responsibility to furnish sufficient evidence to support a prima facie case demonstrating that conduct occurred which would warrant setting aside the July 13, 2000 election as a matter of law. The IBEW was invited to submit any additional affidavits or documentation no later than July 31, 2000; the time was subsequently extended to August 3, 2000 at IBEW's request. On August 2, 2000, IBEW advised that it would rely upon the documents submitted July 19, 2000.

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<sup>2/</sup> N.J.A.C. 19:11-1.3(h).

On August 3, 2000, the Township filed its opposition to the objections contending the following:

1. It properly provided the eligibility lists.
2. The Municipal Building was an appropriate election location and has been used by the Commission for previous elections.
3. The July 13th election date was mutually agreed-to and there is no requirement that elections be conducted during work hours.

The Township contends there is no prima facie case established that warrants the setting aside of the elections; it requests the objections be dismissed.

Based upon my review of the procedural history of these matters, together with the parties' submissions, I find the following facts:

#### FACTS

On April 3 and 4, 2000, IBEW filed Petitions for Certification seeking to become the majority representative of all full-time blue collar (RO-2000-101) and supervisory employees (RO-2000-102) employed by the Township's Department of Public Works, Maintenance Division. The incumbent employee organizations, Bloomfield Maintenance Employees Welfare Association and Bloomfield Maintenance Foremen's Association declined to intervene and disclaimed further interest in representing the petitioned-for employees.

On May 16 and May 17, the IBEW and Township, respectively, executed Agreements for Consent Elections providing for the conduct of mail ballot elections with ballots to be mailed June 1, 2000 and counted on June 21, 2000. I approved the Consent Agreements on May 18; on May 19 we advised the parties that the Consent Agreements were approved. The Agreements provided that the election eligibility lists were due May 22, 2000. The May 19 letter to the parties also noted that the Township previously submitted eligibility lists to the Commission. The lists were forwarded to IBEW on or about that time. The eligibility lists contained the first initials and last names of eligible voters, arranged alphabetically, together with titles and addresses of eligible voters. There were thirty-seven (37) names on the blue collar list and seven (7) on the supervisory list.

On June 2, 2000, the Township submitted revised eligibility lists which included first names. The revised lists were provided to IBEW the same day.

The scheduled mail ballot election was voided. On June 27, 2000, I sent the parties a letter which, in part, stated:

The ballot counts scheduled for June 21, 2000 did not occur . . . . In light of this circumstance, and as the parties have discussed and agreed, expeditious in-person elections are warranted. The parties tentatively agreed to conduct the elections June 29, 2000 but could not agree on a time or location. I was subsequently advised that approximately 10 percent of the eligible voters will be away on vacation on June 29, 2000. The employees next pay day is July 13, 2000.

As to location, the Township proposed conducting the elections either before or after work hours at the Council Chambers in the Municipal Building which is approximately one mile from the voters' work site. The Township noted the following:

1. The DPW garage, where the voters work from, is essentially closed due to an asbestos abatement project and the employees are operating from temporary trailers at that site (230 Grove Street).
2. The trailers are small and cramped and would barely be large enough to set up a voting booth. Only 1 voter at a time could enter the trailer.
3. The Council Chambers at the Municipal Building have been used in the past for union elections and there is ample public parking adjacent to the building.

Petitioner contends the Municipal Building is too far from the work-site, that the DPW Superintendent's office is located in the Municipal Building and, therefore, voters may choose not to cast ballots. As to the time, petitioner contends that conducting the elections before or after work hours is calculated to limit voter turnout. It proposes conducting the elections during lunch hour. The Township contends that employees' lunch hours are dependent upon their daily job assignment and, therefore, can not assure their availability to vote. Employees work 7:00 a.m. to 3:30 p.m. On pay days the employees are generally released at approximately 3:15 p.m.

Pursuant to N.J.A.C. 19:11-4.1(b), I determine the following:

Date of Elections: July 13, 2000  
Hours: 3:30 p.m. to 4:30 p.m.  
Place: Municipal Building  
Council Chambers - 2nd Floor  
1 Municipal Plaza  
Bloomfield, NJ

The temporary trailers do not seem to be appropriate for the conduct of these elections. The Municipal Building is in close proximity to the employees' work-site and there is adequate

parking. As to the DPW Superintendent's office being in close proximity to the polling place, the Election Officer will establish a campaign-free area around the polling place and supervisory employees not voting in the election will be required to vacate the area. It is regular practice to conduct elections after the work day has ended.

The elections were conducted by in-person balloting on July 13, 2000. In the blue-collar unit (RO-2000-101), 36 of the 37 eligible voters voted: 15 votes were cast in favor of IBEW while 21 votes were cast against representation. In the election involving the supervisors unit (RO-2000-102), 6 of the 7 eligible voters voted: 2 votes were cast in favor of IBEW and 4 votes were cast against representation. The parties were served with the Tally of Ballots for each voting unit. IBEW's objections followed.

### ANALYSIS

Elections conducted by the Commission carry a presumption that the voter's choice in a secret ballot election is a valid expression of the employees' representational wishes. Thus, allegations of what may seem to be objectionable conduct must be supported by evidence that the alleged misconduct interfered with or reasonably tended to interfere with the employees' free choice. The objecting party must establish, through its evidence, that a direct nexus existed between the alleged objectionable conduct and the freedom of choice of the voters. City of Jersey City and Jersey City Public Works Employees, P.E.R.C. No. 43, NJPER Supp. 153 (1943 1970), aff'd sub nom. Am. Fed. of State,

County and Municipal Employees, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971), citing NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969); Hudson Cty. Schools of Technology D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999).

The standard of review of election objections contemplated by N.J.A.C. 19:11-10.3(i) were discussed in Jersey City Medical Center, D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). There, the Director found that:

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-prong test is not met, the objections will be dismissed. [Id. at 314.]

Applying the above standards to IBEW's two objections, I find that it did not meet the evidentiary or substantive component necessary to warrant further investigation. Accordingly, the objections are dismissed.

#### Eligibility List Objections

N.J.A.C. 19:11-10.1 provides in relevant part:

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the



public employer is required to file simultaneously with the Director of Representation and with the employee organization(s) an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. In addition, the public employer shall file a statement of service with the Director of Representation. In order to be timely filed, the eligibility list must be received by the Director of Representation no later than 10 days before the date of the election. The Director of Representation shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

In these matters, there were two election dates; the originally scheduled mail ballot elections with ballots to be mailed June 1, 2000 and the on-site, in-person elections scheduled for July 13, 2000. IBEW objects to the election conducted on July 13, 2000 and argues in support thereof that the Township violated its N.J.A.C. 19:11-10.1 obligation to provide simultaneous service of the eligibility lists for the June 1, 2000 mail ballot elections.

The Township provided the Commission with its eligibility lists before May 19, 2000. The lists contained first initials, last names and mailing addresses. IBEW acknowledges it had the lists ten (10) days before the ballots were mailed on June 1, 2000 as required by N.J.A.C. 19:11-10.1(a). At some point between May 9 and June 1, IBEW does not state when, IBEW requested that the Township provide the first names of eligible voters. The Township provided such lists on June 2, 2000. Therefore, as of June 2, 2000, IBEW had the eligibility lists in the format it requested.

As noted above, the June 1, 2000 mail ballot elections were cancelled. The parties immediately entered into discussions regarding the expeditious conduct of elections. Thus, pursuant to my authority under N.J.A.C. 19:11-4.1(b), the July 13 in-person, on-site elections were scheduled. There were no changes to the eligibility lists. Consequently, by election day, July 13, 2000, IBEW had the eligibility lists, including full first names, for approximately forty days before the elections were conducted. By June 27, IBEW knew that the elections would be conducted on July 13. Therefore, it possessed the eligibility lists with full knowledge of all of the details of the on-site election, sixteen (16) days before the actual elections.

IBEW does not contend how, under the foregoing circumstances, it was prejudiced in these matters. Assuming, without finding, that the Township technically violated N.J.A.C. 19:11-10.1(a) when it served the lists on the Commission but not IBEW, and wrongfully provided only first initials rather than full first names, whatever prejudice which may have occurred was fully remedied by the fact that IBEW possessed complete eligibility lists in the format it requested at least 16 days before the actual elections; longer than the 10 days required by N.J.A.C. 19:11-10.1(a).

Based upon the particular facts of this case, I find that IBEW possessed complete eligibility lists a sufficient period before the July 13, 2000 elections and was not prejudiced by

receiving the lists from the Commission rather than the Township. Moreover, IBEW has not demonstrated that the purported delay in the delivery of the eligibility list formatted in the manner it requested prejudiced its participation in a free and fair election. Monmouth. Therefore, IBEW's eligibility list objection is dismissed.

Date, Time, Location, and Method of Balloting Objection

IBEW contends, without any supporting affidavits or certifications, that the date, time, location and method of balloting (on-site, in-person) tainted the election results. The only documents submitted in support of its contentions are a copy of the signature page of the blue-collar (RO-2000-101) Agreement for Consent Election and my June 27, 2000 letter.

Based on its submissions, IBEW has not established a nexus between the alleged objectionable conduct, the date, time, location and method of balloting, and the freedom of choice of the voters. Hudson Cty. Schools of Technology, 25 NJPER at 268; Jersey City (Public Works Employees).

IBEW merely alleges that "several employees" were scheduled to be on vacation the week of July 13th and the polling hours, after work from 3:30 p.m. to 4:30 p.m., were inappropriate. IBEW did not provide evidence that anyone's vacation plans or after-work plans actually interfered with the conduct of free and fair elections.

Importantly, 6 out of 7 (RO-2000-102 - supervisor's unit) and 36 out of 37 (RO-2000-101 - blue collar unit) eligible voters cast ballots on July 13th. The July 13 date was specifically chosen after it was discovered that approximately 10 percent of the eligible voters were scheduled to be on vacation June 29, 2000 - the first date the parties tentatively agreed to conduct the in-person elections.

As to the polling times, there are no requirements that public employers make employees available during work hours for representation elections. See Morris, The Developing Labor Law, 381 (2d ed. 1983) ("The election may be held on company time with the employer's permission; otherwise it is held on the employees' own time."). The 3:30 p.m. - 4:30 p.m. time for voting was established to provide all eligible voters an adequate opportunity to vote and minimize workday interference. Based on voter turnout, almost 100 percent in both elections, the scheduled time clearly did not interfere with voters' ability to cast their ballots.

As to the location of the elections - Municipal Hall - IBEW merely alleges that eligible voters would either not vote or be intimidated by having to vote in the same building as Township administration personnel. IBEW did not provide any evidence in the form of certifications or affidavits to support its concern that eligible voters would not vote or would be intimidated. See generally, Atlantic Cty., D.R. No. 79-17, 5 NJPER 18 (¶10010

1979) (mere presence of union officials outside polling area, without evidence of interference with employees' free choice, not a basis to invalidate an election); see also Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 221, 223 (¶19080 1988) (Commission will not overturn the results of an election based solely on a characterization of events). Moreover, voter turnout, does not support IBEW's contention.

As to the method of balloting (on-site/in-person), as of June 27, 2000, IBEW acquiesced to the idea that expeditious in-person elections were warranted. It alleges that the elections were "tainted" by being conducted in-person but does not offer any evidence of how this method of balloting prevented voters from exercising free choice in the election.

Beyond mere allegations that the date, time, location and method of balloting on July 13 were inappropriate, there is no supporting evidence that the manner in which the elections were conducted interfered with, or reasonably tended to interfere with, the free choice of the voters. Hudson Cty. Schools of Technology.

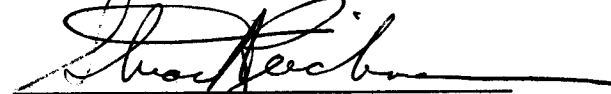
Based on all the foregoing, I find that IBEW did not meet the procedural or evidentiary standards set forth in Hudson Cty. Schools of Technology and Jersey City Med. Ctr. to state a prima facie case as to these objections.

For the above reasons, I dismiss all of the objections. Additionally, attached hereto I issue the appropriate Certifications of Results.

ORDER

The objections are dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman, Director

DATED: September 22, 2000  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	>	
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TOWNSHIP OF BLOOMFIELD,	>	
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Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2000-102
	>	
IBEW LOCAL 1158 (FOREMENS UNIT),	>	
	>	
Petitioner.	>	
	>	

CERTIFICATION OF RESULTS

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. No exclusive representative for collective negotiations was selected, and no valid timely objections to the election were filed.

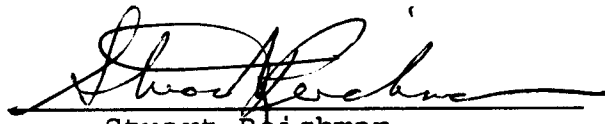
Accordingly,

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described below for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning of the New Jersey Employer-Employee Relations Act.

**UNIT: Included:** All regularly employed supervisory employees employed by Bloomfield Township in the Department of Public Works, Maintenance Division, including foremen.

**Excluded:** Managerial executives, confidential employees within the meaning of the Act; non-supervisors, craft employees, non-professional employees, police employees, casual employees, and all other employees.

DATED: September 22, 2000  
Trenton, New Jersey

  
Stuart Reichman  
Director of Representation

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	>	
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TOWNSHIP OF BLOOMFIELD,	>	
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Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2000-101
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IBEW LOCAL 1158,	>	
	>	
Petitioner.	>	
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CERTIFICATION OF RESULTS

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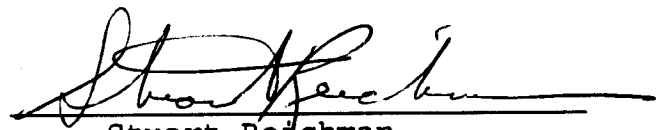
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**UNIT: Included:** All regularly employed blue collar employees employed by Bloomfield Township in the Department of Public Works, Maintenance Division.

**Excluded:** Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees, and all other employees.

DATED: September 22, 2000  
Trenton, New Jersey

  
Stuart Reichman  
Director of Representation