

D.R. NO. 88-32

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

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Public Employer,

-and-

FAIRVIEW EDUCATION ASSOCIATION, NJEA

DOCKET NO. RO-88-113

Petitioner,

-and-

FAIRVIEW FEDERATION OF TEACHERS/AFT,

Intervenor.

SYNOPSIS

The Director of Representation dismisses objections to an election conducted among teachers of the Fairview Board of Education. He found that the Board failed to state enough facts to justify an investigation of the Board's allegation that the NJEA interfered with and coerced teachers hours before the election. Accordingly, he certified NJEA as the majority representative of the teachers unit.

D.R. NO. 88-32

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

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Public Employer,

-and-

FAIRVIEW EDUCATION ASSOCIATION, NJEA

DOCKET NO. RO-88-113

Petitioner,

-and-

FAIRVIEW FEDERATION OF TEACHERS/AFT,

Intervenor.

Appearances:

For the Public Employer
Richard Brovarone, Esq.

For the Petitioner
Klausner, Hunter & Oxfeld, Esqs.
(Stephen B. Hunter, of counsel)

For the Intervenor
New Jersey Federation of Teachers
(John Fallon, Rep.)

DECISION

On January 21, 1988, we issued a decision directing a representation election among certain employees of the Fairview Board of Education ("Board"). D.R. No. 88-28 directed an election among all regularly employed teachers, speech correctionists, school nurses, librarians, reading specialists, learning disability teachers-specialists, social workers and school psychologists,

permanent substitutes, and part-time teachers working less than one-half time or teachers employed on an hourly basis. The employees voted on whether they wished to be represented for purposes of collective negotiations by the Fairview Federation of Teachers/AFT ("AFT"), the Fairview Education Association, NJEA ("NJEA"), or no representative.

On February 18, 1988, a staff agent conducted a secret ballot election among employees at the Lincoln School in Fairview. The tally of ballots revealed that 43 ballots were cast for the Fairview Education Association, NJEA; 16 ballots were cast for the Fairview Federation of Teachers/AFT; and 2 ballots were cast for no representative. No void ballots were cast and no ballots were challenged.

On February 24, 1988, the Board filed post-election objections along with a supporting affidavit. See N.J.A.C. 19:11-9.2(h). The Board objects to the conduct of the NJEA on the day of the election. The Board essentially objects to NJEA conduct which allegedly prejudiced the results of the election by unduly influencing the vote of the teachers. It alleged that NJEA representatives "roamed the halls of the [election site] to be sure that their presence was made known to the employees." An NJEA representative allegedly refused the school principal's order to leave the building. The Board did not elect to forceably eject the representative from the premises. The Board instead informed the AFT that it could station a union representative in the building

prior to the election.

The Board enclosed an affidavit of the Secretary of the Board. The Secretary asserts that on the day of the election, he directed that the two employee organizations would be permitted to conduct discussions with eligible voters on school premises between 8 a.m. and 8:30 a.m., during lunch period and after 3:15 p.m. He specifically advised that union representatives must be off the premises by 8:45 a.m. The substance of the affidavit is that one of the NJEA representatives was found in the school after 8:45 a.m. and that he refused to leave the building. The affiant further noted that throughout the day NJEA representatives created an "atmosphere of intimidation and disruption in the school."

N.J.A.C. 19:11-9.2(h) sets the 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 conducted 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.

The Director 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." N.J.A.C. 19:11-9.2(i). If the evidence submitted is not enough to support a prima facie case, the Director may dismiss the objection

immediately. If sufficient evidence is submitted, then and only then may the Director investigate the objections. See State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd App. Div. Dkt. Nos. A-3275-80T2 and A-4164-80T3 (11/10/82).

The Commission's standards of review applicable to election objections was originally stated in Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970), aff'd sub. nom. AFSCME, Local 1959 v. PERC, 114 N.J. Super 463 (App. Div. 1971).

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employees' freedom of choice. Conduct, seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election.

[P.E.R.C. No. 43, slip op. at 10]

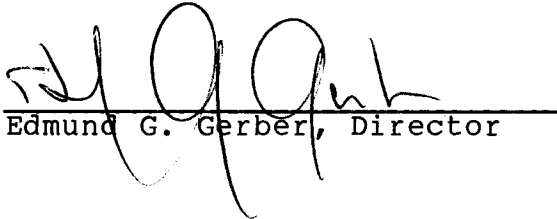
We find that the Board failed to establish a prima facie case. Neither the affidavit nor the objections specify facts which show that any NJEA representative had disrupted the school day or unduly influenced the teachers' votes. That an NJEA representative refused to leave the building when ordered is insufficient evidence of an "irregularity in the election process." N.J.A.C. 19:11-9.2(h). The documents show that the Board elected not to have the representative ejected from the building. The Board acknowledges that it informed the competing organization of the opportunity to station a representative in the teachers' room. The Board's action merely comports with the Commission rule that

employee organizations must be given equal access to communications facilities during pre-election campaigns. Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976).

The Board has produced no affidavits to substantiate its claim of NJEA interference and intimidation. The Commission will not overturn the results of a representation election based solely upon a party's characterization of events. That union agents and employees may have had minor conversations during the critical 24 hour period described in Peerless Plywood Co., 107 NLRB No. 427, 33 LRRM 1151 (1953), fails to violate the general rule prohibiting speeches at the workplace. See Associated Milk Producers, Inc., 237 NLRB No. 879, 99 LRRM 1212 (1978).

Over ninety percent of the eligible voters participated in the election. Considering the absence of specific facts connoting election interference and the high voter turnout at the election, we conclude that the Board has failed to carry its burden of showing a prima facie case that the election was improperly affected by NJEA conduct. Accordingly, we dismiss the objections and certify the results of the election.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 10, 1988
Trenton, New Jersey