

D.R. NO. 2015-2

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

In the Matter of

NEW JERSEY TRANSIT,

Public Employer,

-and-

Docket No. RO-2014-064

TRANSPORT WORKERS UNION,
LOCAL 100, AFL-CIO,

Petitioner,

-and-

LOCAL 419,

Intervenor.

SYNOPSIS

The Director of Representation dismisses an election objection filed by the Transport Workers Union, Local 100 (TWU) seeking to set aside the results of an election of non-supervisory employees of the New Jersey Transit's Fairview Depot (Depot). TWU contended that New Jersey Transit (Transit) and Local 419 coerced, harassed, intimidated and restrained employees at the Depot in order to influence the election. They also alleged that Local 419 had disproportionate workplace access to distribute leaflets and campaign in the Depot during work hours. They further claimed that Local 419's president removed TWU's posters from a bulletin board within the Depot and that a Transit manager proclaimed his support for Local 419's president in the presence of Depot employees. In dismissing these objections, the Director explained that TWU failed to present sufficient evidence to support a prima facie case that the non-supervisors' freedom to choose a majority representative was influenced by the purported e-mails and meetings. The Director noted that the certification submitted by TWU was speculative and was not based on first hand knowledge from a voter in the non-supervisors' election or a member of the non-supervisors' unit.

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Appearances:

For the Public Employer
John J. Hoffman, Acting Attorney General
(Kenneth Worton, Deputy Attorney General)

For the Petitioner
Colleran O'Hara & Mills, LLP
(William R. Reinken, of counsel)

For the Intervenor
Mets, Schiro & McGovern, LLP
(James Mets, of counsel)

DECISION

On August 26, 2014, we conducted a count of a contested secret mail ballot election among a collective negotiations unit of non-supervisory employees of New Jersey Transit ("Transit") at the Fairview Depot ("Depot"). On August 29, 2004, the petitioner, Transport Workers Union, Local 100 ("TWU") filed

timely objections to the election. N.J.A.C. 19:11-10.3(h). TWU alleges that Transit and the incumbent organization, Local 417, "coerced, harassed, intimidated and restrained employees" at the Depot in order to influence the election. It also alleges that Local 419 had disproportionately greater workplace access to "distribute leaflets and campaign in the Depot during work hours." It further claims that Local 419's president removed TWU posters from a bulletin board within the Depot and that Transit manager George Piper proclaimed his support for Local 419's president in the presence of Depot employees.

In support of its objections, TWU submitted a statement of position and legal argument and a certification of Dylan Valle, a TWU organizer. On September 2, 2014, the Director of Representation wrote to TWU, requesting "specific evidence in the form of affidavits or other documentation on which it relies in support of the claimed irregularity in the election process." TWU filed no other documents.

On September 11, 2014, the Director wrote to Local 419, inviting its response to TWU's objections. On September 18, 2014, Local 419 filed a letter seeking dismissal of TWU's objections. Local 419 maintains that TWU failed to submit authenticated evidence supporting its objections; that the evidence presented by TWU consists of "allegations based on hearsay, with no documentary evidence to support them." It

submits that TWU has "manifestly failed" to carry its burden of "showing evidence of conduct that directly interfered or reasonably tended to interfere, with the employee's freedom of choice" and urges that the objections must be dismissed.

Based upon my review of the matter, together with the parties' submissions, I find the following facts. N.J.A.C. 19:11-10.3.

On May 19, 2014, TWU filed a timely representation petition accompanied by an adequate showing of interest seeking an election among an existing unit of non-supervisory maintenance employees, operators and field salary employees employed by New Jersey Transit at the Fairview Garage. Local 419 properly intervened as the majority representative of the petitioned-for employees. On June 30, 2014, Transit, TWU and Local 419 signed a consent agreement for a secret mail ballot election.

On July 9, 2014, the Director of Representation issued a letter to the parties advising of the date that the ballots were to be sent out (July 25, 2014), as well as the time, place and date of the ballot count (August 26, 2014). The ballots were counted on August 26, 2014 as scheduled. Of approximately 230 eligible voters, 158 ballots were cast with the following results: votes cast for TWU: 65; votes cast for Local 419: 91; votes cast against participating employee representatives: 2. There were no void or unresolved challenged ballots.

Accordingly, a majority of the valid votes counted were cast in favor of representation by Local 419.

On August 29, 2014, TWU filed timely objections to the election. TWU alleges that the following conduct affected the election:

- On August 6, 2014, a member of the TWU Local 100 Fairview Depot Committee ("Committee") was issued a five-day suspension by Transit Depot Manager Fisher for verbally threatening a Local 419 member. On August 13, 2014, another Committee member was issued a five-day suspension for using an electronic device while driving. A third Committee member was allegedly ordered to perform a 19-hour run by the Local 419 president. TWU submits that these three incidents prove that Local 419 and Transit were "acting in concert" against TWU supporters.
- As employees assigned to the Depot, Local 419 officials had access to unit members and were able to distribute leaflets and campaign during Depot hours, whereas TWU organizers were not granted access to campaign during working hours. TWU asserts that although Transit permitted both it and Local 419 to post campaign materials on bulletin boards within the Depot, on August 5, 2014 Local 419's president removed TWU's campaign poster from a bulletin board.

- Transit manager Piper stated his support for Local 419's president in the presence front of Depot employees.

ANALYSIS

In Bloomfield Tp., D.R. No. 2001-2, 27 NJPER 18, 20 (¶32011 2000), the Director of Representation wrote:

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 (¶43 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 Director must review the objections and supporting evidence to determine ". . . if the party filing objections has furnished sufficient evidence to support a prima facie case." N.J.A.C. 19:11-10.3(I). See also, Passaic Valley Sewerage Commission, D.R. No. 2011-7, 37 NJPER 122 (¶35 2011). The veracity of the proffered evidence is assumed. If the evidence does not sufficiently support a prima facie case, the Director may dismiss the objections immediately. Id. Only where

sufficient evidence is submitted will the Director investigate the objections. Id., citing State of N.J. and NJSEA a/w AFT, CWA, AFSCME and NJCSA, P.E.R.C. No. 81-112, 7 NJPER 189 (¶12083 1981), P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd NJPER Supp.2d 123 (¶104 App. Div. 1982).

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

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., 12 NJPER at 314]

I have reviewed TWU's objections and supporting documents and find that they have not established a prima facie case as required by N.J.A.C. 19:11-10.3(h), nor have they met the standard established by Jersey City Dept. of Public Works.

TWU has not established a prima facie case of objectionable conduct that interfered with or reasonably tended to interfere with the free choice of voters in the election. The Commission

and Director have repeatedly held that certifications not based upon personal knowledge of objectionable conduct which interferes with or reasonably tends to interfere with voter choice in an election are insufficient to make out a prima facie case. Ocean County Library, D.R. No. 2014-004, 40 NJPER 61 (2013), citing Passaic Valley Sewerage Commission, 37 NJPER at 124 (Deputy Director finds that certifications submitted in support of objections to an election did not make out a prima facie case since they were mere characterizations of events surrounding the election and were not based on the affiants' first-hand knowledge of those events). Certifications that merely set forth a party's characterization of events are not sufficient to overturn the results of an election. Id.; see also, Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 221 (1988).

TWU did not provide any certifications based upon personal knowledge. The only certification filed was that of TWU organizer, Dylan Valle, who is not an employee of Transit nor a voter or non-supervisory unit member. The certification of Mr. Valle is merely speculative. It asserts no facts from personal knowledge indicating that Transit or Local 419 interfered with or reasonably tended to interfere with the free choice of voters in the election. Similarly it asserts no facts showing how the voters' freedom to choose a majority representative was influenced by the purported discipline imposed on the three

members of the TWU Committee, even if one posited personal knowledge of the affiant.

Further, TWU has not produced sufficient evidence to show that it had unlawful and disproportionately less workplace access to unit members than Local 419 during the course of the election cycle. In Ocean Cty. Judiciary, D.R. No. 86-25, 12 NJPER 511 (¶ 17191 1986), it was held that where the objecting party has not shown that the employer permitted access to one union while denying similar access to the other, an objection alleging unequal access will not be sustained. Here, TWU asserts, but does not demonstrate, that Local 419 campaigned during work time as a result of their access to the workplace. The assertion and certification was made by an individual who does not work at the Depot and is not present during work hours. Mr. Valle's certification concludes that "as a result of their access to the workplace, Local 419 officials distributed leaflets, handbills and campaigned during both work and non-work hours." This statement lacks precision and sets forth only unsubstantiated hearsay. Moreover, TWU does not submit any proof that Transit knew about the alleged campaigning by members of Local 419 and permitted it to occur. It failed to produce sufficient evidence to show that Local 419 actually campaigned among employees while they were working, or that Transit knew about or permitted Local 419 officials to campaign on its property. I therefore find that

the evidence presented is insufficient and does not demonstrate that Transit permitted Local 419 to campaign among employees during working time while discriminatorily denying such access to TWU.

Mr. Valle certifies that Local 419's President removed TWU's poster from a billboard within the Depot. Again, the assertion is conclusive and lacks specific first-hand knowledge. In response to this allegation, Local 419 submits an affidavit of Kyle Dickson, President of Local 419. Mr. Dickson explains that "on one occasion [he] observed a flyer on the Local 419 bulletin board which [he] considered a personal attack on a Local 419 member, and [he] was concerned about such content. In an effort to determine the propriety of the flyer, [he] temporarily removed it from the Local 419 bulletin board and brought it to George Piper, NJT northern Division Director, so that he could review it." (Dickson affidavit, pg. 3, number 14-15). Upon review, Piper determined that the flyer was appropriate and it was re-posted on the bulletin board. Dickson certifies that the flyer was removed for a period of "not more than fifteen (15) minutes." (Dickson affidavit, pg. 3, number 17). TWU has not established that the removal of the poster for less than fifteen (15) minutes had any nexus to employees' freedom of choice which would warrant setting aside the election results.


Lastly, Mr. Valle submits in his certification that "upon information and belief" Transit manager Piper proclaimed his support for Local 419's president in front of Depot employees. This allegation is not based on personal knowledge, and is merely based on hearsay. The assertion is insufficient to meet the procedural and evidentiary burden required under Jersey City Medical Center.

For the reasons set forth above, I find that TWU has failed to establish a prima facie case showing that conduct occurred which warrants setting aside the election as a matter of law. Accordingly, I dismiss the election objections filed by TWU. The appropriate Certification of Representative is attached.

N.J.A.C. 19:11-10.3(h).

ORDER

The election objection is dismissed.



Gayl R. Mazuco
Director of Representation

DATED: October 3, 2014
 Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by October 14, 2014.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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TRANSPORT WORKERS UNION,	>	
LOCAL 100, AFL-CIO	>	
Petitioner.	>	
	>	
-and-	>	
	>	
LOCAL 419	>	
Intervenor.	>	

CERTIFICATION OF REPRESENTATIVE

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. A majority of the voting employees selected an exclusive majority representative for collective negotiations. No valid timely objections were filed to the election.

Accordingly, **IT IS HEREBY CERTIFIED** that

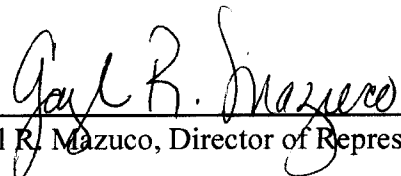
LOCAL 419

has been selected by a majority of the employees of the above-named Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the 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. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed full and part time maintenance employees, operators and field salary employees, including, but not limited to operators, mechanics, repairmen, servicemen, cleaners, custodians, depot masters, depot clerks, starters, inspectors and stock clerks employed by New Jersey Transit at the Fairview Garage.

Excluded: Managerial executives, confidential employees, supervisors within the meaning of the Act; police, professional employees, craft employees and all other employees employed by New Jersey Transit at the Fairview Garage.

DATED: September 8, 2014
Trenton, New Jersey



Gayl R. Mazuco, Director of Representation

Attachment:

Certification of Representative dated: September 8, 2014

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NEW JERSEY TRANSIT

-and-

TRANSPORT WORKERS UNION,
LOCAL 100, AFL-CIO

-and-

LOCAL 419

Docket No. RO-2014-064

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