

E.D. NO. 15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HACKENSACK

Public Employer

and

Docket No. R-26

LOCAL 1970, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election dated June 13, 1969, (PERC No. 6), a secret ballot election was conducted by the Commission's agent on July 15, 1969 among the employees in the unit described below.<sup>1/</sup> Following the election, the parties were served with a tally of ballots, which showed that of approximately 96 eligible voters, 67 votes were cast, of which 32 were for and 35 against the Petitioner. There were no challenged nor void ballots, On July 18, 1969, the Petitioner filed timely objections to the conduct of the election or conduct affecting the results of the election.

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<sup>1/</sup> "all employees of the Department of Public Works of the City of Hackensack including Laborer (heavy and regular), Heavy equipment operators, Truck drivers, Equipment Operator sweeper, Municipal dump caretaker, Garage attendant, Mechanical repairman, Body and fender repairman, Tree Trimmer, Building maintenance worker, Senior maintenance repairman, Tree climber, Police and fire signal system repairman, Maintenance repairman, Pumping station operator, Park maintenance man, Senior Park Maintenance Man, Gardener and Traffic maintenance man; but excluding part time employees, professional employees, craft employees and supervisors within the meaning of the Act."

Pursuant to a Notice of Hearing, a hearing was held on October 30, 1969 and December 5, 1969 before ad hoc Hearing Officer Frederick Freilicher at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to submit written briefs. Thereafter, on July 9, 1970, the ad hoc Hearing Officer issued a Report and Recommendations on Objections. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. I have considered the record and the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, and in the absence of Exceptions thereto, I adopt the Hearing Officer's Report and Recommendations pro forma.

Accordingly, as the tally of ballots shows that the Petitioner has not received a majority of the valid ballots cast and as the objections of Petitioner do not warrant setting it aside, I shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast for the employee representative appearing on the ballot, and that such organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of the Employer-Employee Relations Act of New Jersey.

  
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Louis Aronin  
Executive Director

DATED: August 25, 1970  
Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Public Employer

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Docket No. R-26

LOCAL 1970, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO

Petitioner

Robert E. Murray, Esq., of Metzler Associates,  
Newark, New Jersey, for the Public Employer  
Abraham L. Friedman, Esq., of Rothbard, Harris  
& Oxfeld, Newark, New Jersey for the Petitioner  
Pat D. Nardolilli, International Representative,  
AFSCME, for the Petitioner  
Ralph Taylor, International Representative,  
AFSCME, for the Petitioner

HEARING OFFICER'S REPORT AND  
RECOMMENDATIONS ON OBJECTIONS

Pursuant to a Decision and Direction of Election<sup>1</sup> of the New Jersey  
Public Employment Relations Commission (the Commission), a secret ballot election  
was conducted under the supervision of the Commission's election officer on July  
15, 1969, among the employees in an appropriate unit.<sup>2</sup> The Commission's  
election officer served upon the parties a tally of ballots, which showed that

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<sup>1</sup>The City of Hackensack and Local 1970, AFSCME, P.E.R.C. No. 6 (1969)

<sup>2</sup>The unit was described as: "All employees of the Department of Public Works  
of the City of Hackensack including Laborer (heavy and regular), Heavy equipment  
operators, Truck drivers, Equipment Operator sweeper, Municipal dump caretaker,  
Garage attendant, Mechanical repairman, Body and fender repairman, Tree Trimmer,  
Building maintenance worker, Senior maintenance repairman, Tree climber, Police  
and fire signal system repairman, Maintenance repairman, Pumping station operator,  
Park maintenance man, Gardener and Traffic maintenance man; but excluding part  
time employees, professional employees, craft employees and supervisors within  
the meaning of the Act." The Commission permitted employees in the classification  
"maintenance repairman plumber" to vote subject to challenge.

of 67 ballots cast, 32 were for, and 35 against, the Petitioner. There were no void or challenged ballots. On July 18, 1969, the Petitioner filed timely objections to the conduct and results of the election.

Pursuant to Chapter 303, New Jersey Public Laws of 1968, a hearing was held in the above-entitled matter in Newark, New Jersey, on October 30, 1969, and December 5, 1969, before the undersigned ad hoc Hearing Officer of the Commission. The Petitioner and Public Employer were represented by counsel and participated in the hearing. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues in the objections. Thereafter the Petitioner and Public Employer filed briefs.

The objections are as follows:

1. Joseph J. Squillace, City Manager of the City of Hackensack did threaten, intimidate, and coerce employees employed in the Department of Public Works for the City of Hackensack, threatening them with reprisals, loss of employees benefits and status because of their union activities.
2. On the day of the election, Mr. Squillace did require an employee, namely, George De Massina, an inspector and one of the eligible voters, and also chapter chairman of the Hackensack chapter of Local 1970, to become and act as an observer for the City of Hackensack during the entire period when the voting was taking place and at the counting of the ballots.
3. On the day of the election, while voters were waiting to cast their ballots, a man named Mike Cavallo spoke in Italian to Salvatore De Luca, an eligible voter being instructed in the use of the voting machine by the election officer, and said the word "No" to De Luca.
4. The City erred and deceived the AAA conducting the election by including two part-time employees on the eligibility list.
5. The Petitioner never received a copy of the eligibility list prior to the election.<sup>3</sup>

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<sup>3</sup>Objections No. 3, 4, and 5 were added at the hearing on October 30, 1969.

Objection 1--Threats, coercion, and intimidation of employees:

The Petitioner alleges that Joseph J. Squillace, City Manager, threatened employee George J. Di Massino in the presence of four other employees.

The record<sup>4</sup> shows that on Friday, June 13, 1969<sup>5</sup> the Acting Superintendent of Public Works called Wilbur Lind, Deputy City Manager, and informed Lind that an employee who was a member of the sewer gang, one Pruitt, would not drive a City truck assigned to that gang. Lind advised the Acting Superintendent that if there was a similar refusal to drive on the following Monday, Lind should be contacted. On Monday, June 16, Lind was called to the City garage where he was informed that no one in the sewer gang would drive the truck. Lind then contacted City Manager Joseph Squillace and was told by Squillace that if the men continued to refuse to drive they should be fired. Lind explained that the City took the position that driving a truck was a normal part of the job of each member of the sewer gang who had a drivers license and that, therefore, they could not refuse to drive the truck. Lind then called the employees involved into the office at the City garage, determined which ones had a drivers license, and asked each man individually if he would drive the truck. When each one refused, Lind directed him to wait outside the office. After consulting briefly with the Acting Superintendent, Lind instructed the Acting Superintendent to tell those with licenses who had refused to drive the truck to "leave the yard, and go home." This meant that Lind intended to discharge them. The employees sent home included Colon Du Boise, Ernest Beam, Jr., Hyman Meeks, and Charles Foss.

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<sup>4</sup>The following account is taken from the testimony of witnesses Du Boise, Beam, Meeks, Foss, Di Massino, Nardolilli, Squillace, and Lind. Where their testimony differs on a material point, it is separately discussed.

<sup>5</sup>All dates are in 1969 unless otherwise indicated.

At about 9:30 A.M. on June 16, upon learning that the employees had been suspended or discharged, Pat Nardolilli, Field Representative for the Petitioner, called City Manager Squillace to discuss the situation. Squillace initially took the position that the "Union had no say in" the matter and that it "was strictly an administrative Civil Service matter." Nardolilli then pleaded with Squillace to look at the situation the men were in. According to Squillace, Nardolilli asked "Why don't you give us a break, with the election coming up?" Squillace replied that, "Well, O.K. I will think about it. I will see them all [the discharged employees] at eleven o'clock."

Upon being informed of the eleven o'clock meeting, Du Boise, Beam, Meeks, and Foss proceeded to City Hall where they gathered in the lobby. They were joined there by George Di Massino, a senior maintenance repairman in the unit, who had been asked by Du Boise and Beam to represent the men. Upon the instructions of Squillace's secretary, they then all went to a conference room on the third floor adjacent to the City Council chambers where they were joined by Squillace, Lind, and Joe Casale.<sup>6</sup>

Some of what Squillace first said to Di Massino is in dispute and will be discussed later. But, the record is clear that after Squillace asked the employees to sit down, he asked Di Massino whether his being at the meeting had "anything to do with the Union"; and that if Di Massino was there "on behalf of the Union" he would have to leave. Di Massino replied that "it was in reference to the four men being suspended" and that, "through the organization, I, [Di Massino] am representing the men." Squillace testified that he also asked whether Di Massino

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<sup>6</sup>Casale has been identified at various places in the record as Acting Superintendent and as foreman.

had obtained the permission of his superior to be at the meeting, to which Di Massino replied, "No, but I plead with you, allow me to stay. They called me, and asked me to come and help them plead their case." Squillace agreed to permit Di Massino to stay and to represent the employees. There then followed a discussion between Squillace and Di Massino of the refusal of the employees to drive after which, according to Squillace, he decided to give each man a five-day suspension without pay. But, Di Massino pleaded with Squillace that the "men couldn't afford to be suspended that much." After some further discussion, Squillace agreed to cut the suspension to two days.

After the group meeting in the conference room Squillace spoke to each man individually in the City Council chambers, with Di Massino as a witness. Squillace asked each man if he wanted to go back and drive and informed each man that if he wanted to continue to be employed by the City he should return to work on Wednesday at the end of his two-day suspension. Then, the employees involved left City Hall.

As indicated above, there is a conflict in the testimony with respect to what Squillace said to Di Massino when everyone was first assembled in the conference room. According to Du Boise, Squillace told Di Massino that "if you [Di Massino] come in here about the Union, I don't want to hear that, because I put you where you are, and I can take you back where you started at." Beam testified that Squillace said "I put you [Di Massino] where you are now, and I can bring you back where you was." Meeks stated that Squillace warned Di Massino that "I made your job. I can bring you down." Foss testified that Squillace said "I made you [Di Massino]. You know, you can go back down again." In addition, Nardolilli testified that on Thursday, June 19, following the Monday suspensions, he spoke

to Di Massino on the telephone. According to Nardolilli, Di Massino stated that although he was taking credit for the fact that the men had not been discharged, "he did not want to have anything else to do with the union, because he had been raked over the coals . . . by Mr. Squillace." Nardolilli also testified that during the telephone conversation Di Massino stated that he "was threatened that if he [Di Massino] continued to . . . [be involved with the Union], he [Squillace] would put him [Di Massino] back where he was originally." Squillace denied making the above-described remarks attributed to him by Du Boise, Beam, Foss, and Meeks. Di Massino likewise denied that Squillace had ever made the statement that he had "made" Di Massino and that he could "break" Di Massino or put Di Massino "down". Similarly, Lind's testimony supported that of Squillace and Di Massino on this point.

In its brief, the Petitioner contends that the "greater weight of the evidence supports the contentions of the Union that the City Manager did, in fact, threaten Di Massino in the presence of eligible voters. . . ." I find, to the contrary, that an examination of the events at City Hall upon which there is no dispute supports the version of Squillace, Di Massino, and Lind. Thus, there was nothing objectionable in Squillace's question whether Di Massino's presence had anything to do with the Union since the Union was not the certified or recognized representative of the employees. Furthermore, it would have been inconsistent for Squillace to have threatened Di Massino with a demotion and then to have permitted Di Massino to remain to represent the employees, and particularly so after Squillace learned Di Massino did not have permission from his superior to leave his job. Moreover, Squillace's concession to Di Massino to reduce the suspension to two days is hardly the action of a man who has just threatened the very employee,



Di Massino, whose arguments he has found persuasive. Likewise, Squillace's request that Di Massino be a witness during Squillace's discussions in the City Council chambers with each employee would not make sense if Squillace had just threatened Di Massino in order to discourage him from engaging in union activity. In view of the above, and in consideration of the demeanor of Di Massino, Squillace, and Lind on the stand, I credit their testimony. I do not credit the testimony of Du Boise, Beam, Meeks, Foss, or Nardolilli on this point. Accordingly, I find that City Manager Squillace did not threaten George J. Di Massino.

With the exception of Beam, all the employees testified that in their individual conferences with Squillace on June 16 in the City Council Chambers Squillace did not mention the Union. According to Beam, Squillace told Beam that there will "never be a Union, and the Union will not give me [Beam] better things than what I got now." Beam testified that Squillace also said "the Union is not running the City of Hackensack." Squillace specifically denied making the statements concerning the Union attributed to him by Beam. Squillace's testimony was corroborated by Di Massino, who also testified that Beam kept insisting that Squillace had fired him and that Beam was going to "hold" Squillace to the discharge.

I have already found Squillace and Di Massino to be credible witnesses. Furthermore, in view of Beam's behavior at the conference in the City Council chambers it is evident that he maintained an intransigent approach to Squillace's offer of a two-day suspension. It is not unlikely, therefore, that Beam would embellish upon Squillace's remarks. In these circumstances, I do not credit Beam's testimony on what was said to him by Squillace. I credit Squillace and Di Massino on this point.

Having found no evidence of any threats, coercion or intimidation by the City Manager, I recommend that Objection No. 1 be overruled.

2. Objection No. 2--The selection of Di Massino as the City's observer

The Petitioner contends that George J. Di Massino was chapter chairman of Local 1970, the Petitioner, and that it was therefore improper for the City to select him as the City's observer at the election.

There is a threshold question whether Di Massino was in fact chapter chairman of Local 1970. The Petitioner contends that he was chapter chairman while the City argues that he did not hold office in Local 1970.

Ralph Taylor, International Representative for American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME) testified that sometime after January 17, 1969, a meeting was called by Dan Sullivan who was then attempting to organize the chapter for AFSCME. There were about 35 individuals present including Di Massino and Taylor. According to Taylor, at one point during the meeting Sullivan asked for nominations for chapter chairman. Di Massino was the only one nominated. Taylor testified that there was then a vote by show of hands and Di Massino was elected chapter chairman. Taylor's testimony concerning the vote was corroborated by Colon Du Boise, who was also at the meeting.<sup>7</sup> It was also Taylor's testimony that he congratulated Di Massino after the election. Taylor noted that Sullivan had a roster of the names of individuals attending the meeting and that next to Di Massino's name was written "Chapter Chairman." Taylor testified that Di Massino was active in soliciting authorization

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<sup>7</sup>The parties stipulated that it is customary for the individual from AFSCME who is organizing the chapter either to appoint officers pro tem, or to have an election with a show of hands.

cards for Local 1970, that Taylor had had two meetings with Di Massino and other employees before the election meeting, and that these two meetings were called for the purpose of obtaining the signatures of employees on authorization cards.

Di Massino testified that he was president of the City of Hackensack Employees Association (the Association) from January 1, 1968 to January 1, 1969, after which time he ceased to be a member of the Association. According to Di Massino, the Association, which was an independent organization limited to City employees, had informal recognition from the City for the period he was president for the purpose of processing grievances. Di Massino also testified that he had represented the employees with respect to grievances during his term as president because the men considered him to be a "good spokesman." Di Massino stated that he had signed an authorization card for Local 1970 while still president of the Association. But, according to Di Massino, he had never been elected or appointed chapter chairman of Local 1970 or to any other office. He admitted that he attended one meeting presided over by Sullivan, but stated that the only time Sullivan requested a show of hands was when Sullivan asked how many "wanted to have the AFL-CIO, Local 1970, represent them."

Pat Nardolilli, AFSCME field representative, testified that he was assigned to the Hackensack chapter in June. He stated that he had met with Di Massino shortly before the election "and asked him to be Chapter Chairman." Nardolilli further testified that is "regular practice" for an international representative to notify "the appointing authorities" of the names of officers elected by the chapter membership and that there would be a record of the appointment or election of officers. But, Nardolilli testified, he had checked his office files and

could find no written record of the election of Di Massino. Nardolilli also stated that Sullivan kept most of his files in his car but that Sullivan had been discharged by the International and could not be found.

It thus appears that the only evidence supporting the position that Di Massino was elected chapter chairman is the testimony of Taylor and Du Boise that Di Massino was elected at a meeting sometime after January 17. On the other hand, there is the testimony of Nardolilli that ordinarily there would be a written record of election of officers but none could be found and that he asked Di Massino to be chapter chairman shortly before the election. There is also the testimony of Di Massino denying he had ever been elected chapter chairman. In these circumstances, I credit Di Massino; I do not credit Du Boise or Taylor. Accordingly, I find that George J. Di Massino was never appointed or elected Chapter Chairman of Local 1970.

But, this finding does not dispose of the objection. For, the record is clear that, while Di Massino may not have been chapter chairman, he had represented the employees with respect to grievances and disciplinary matters on a number of occasions, including only one month prior to the election, and, less than seven months before the election, had been president of an organization to which many employees had belonged. The issue, then, is whether the City may designate as its observer a unit employee who has taken an active role in the Petitioner and as representative of the employees.

With respect to this issue, Lester Wolff, Assistant Elections Director of the American Arbitration Association, and the Commission's election officer, testified that at a pre-election meeting with representatives of the parties on

July 1 he had indicated that the Commission rule on observers was that "each party will be allowed to station an equal number of authorized Observers selected from the non-supervisory employees of the Public Employer at the polling places during the election. . . ." Wolff also advised the representatives that the observers should be employees "preferably within the unit. . . ." At the July 1 meeting, the parties agreed to have one observer each, but neither specified who the observer would be, nor was there any formal procedure for notification of the name of the observer for each side.

Wolff also testified that on July 10, Grace Ruffini, Administrative Secretary for the City, telephoned him and asked whether the observer had to be "someone in the unit, or outside the Department." Wolff explained that it "would be best to use an Observer who was not a direct Supervisor, or Manager over the men voting in the election. . . ."

The election was held on Tuesday, July 15, under the supervision of Wolff. According to Wolff, Di Massino, the City's observer, and the Petitioner's observer were given observer badges, but these badges did not identify whether a man was observer for the Public Employer or Petitioner and there was no way for a voter to distinguish one from the other. Wolff also testified that after the polls closed Nardolilli told Wolff he was "to some extent surprised that the City had asked their Observer to be at the polls," but that this "was not formed in the nature of a complaint. . . ."

City Manager Squillace testified that he had considered appointing as City observer either one of the Superintendents or the Deputy Chief of Police and that he had asked Miss Ruffini to telephone Wolff to determine whether these individuals

would be acceptable. According to Squillace, Ruffini reported that Wolff had suggested that Squillace not appoint a supervisor or someone from without the Department. Squillace then instructed Ruffini to give Squillace the name the City could choose as its "challenger." Later, Ruffini returned and suggested Di Massino, who she had met in the hall, as the observer. Squillace then gave his approval. Ruffini testified that she was under the impression that the observer should be someone who knew the employees. She stated that when she casually "bumped into" Di Massino while walking through City Hall on Monday, July 14, she told Di Massino the City needed an observer and asked Di Massino to see her the following morning. The next morning, Ruffini told Di Massino <sup>of</sup> the City's need for an observer and Di Massino agreed to do the job. Ruffini testified that she chose Di Massino because he had been in the department "many years" and could therefore identify employees.

Nardolilli testified that he was at the polling place at the time Di Massino <sup>Di Massino</sup> first arrived. / t b l d Wolff he was the City's observer but Nardolilli did not object to Wolff that Di Massino was the City's observer.

In its brief, the Petitioner contends that when the voters "came to the polling place to vote and observed Di Massino standing there and performing the duties of an observer on behalf of the City (in an anti-Union legal position), they then and thereby received a message ~~that~~ the City and their superior did not want them to vote for the Union that day in that election." I find no merit in this contention, for the following reasons: 1) The record is clear, and I find, that the City did not deliberately choose Di Massino to be its observer to confuse the voters. Rather, the choice of Di Massino was the result of

a chance meeting between Ruffini and Di Massino and because Di Massino knew the employees in the unit. <sup>Ruffini</sup> / was told by Wolff to select someone preferably from within the unit. 2) There was no way a voter could know Di Massino was representing the City since the observer badge did not identify him as the City's observer. 3) If some voters did know Di Massino was representing the City, the inference is not warranted that these voters would be coerced thereby. Assuming Di Massino had changed his mind and decided to support the City, certainly this could be evaluated by the voters as an independent decision by Di Massino to vote "No". 4) Although Nardolilli, a representative of the Petitioner, knew at the start of the election that Di Massino was the City's observer, he made no objection to Wolff, although he had an opportunity to do so. 5) The rules for the election provide only that the observer be a nonsupervisory employee. The Commission did not have a rule prohibiting an active union member from being observer for the public employer.

The Petitioner argues, however, that something occurred between the City Manager and Di Massino which caused Di Massino "to turn against the Union and that this was an unfair labor practice by the City warranting setting aside the election." But, there is no credible evidence in the record to support this allegation.<sup>8</sup> or, for that matter, any clear evidence that Di Massino ever gave up his membership in Local 1970.

I find that the ~~selection~~ of George J. Di Massino to be observer for the City at the election was not per se objectionable.<sup>9</sup> Accordingly, I recommend that Objection No. 2 be overruled.

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<sup>8</sup> Nardolilli did state that Di Massino might have favored C.W.A., but Nardolilli also testified that he was not a bit annoyed with Di Massino, and that Di Massino had signed a Union card.

<sup>9</sup> It appears that the NLRB takes a similar approach under the Labor Management Relations Act, as amended. Thus, in Pacific Gas and Electric Company, 89 NLRB 938, 941(1950) the Board held that it was not objectionable for members of the petitioning union to be observers for the employer at an election. The Board also held that union officers or active union members can be observers for the union at the election. See, for example, United States Gypsum Company, 81 NLRB 197 (1949); Rubin, d/b/a Dallas City Packing Company, 110 NLRB 8,9-10 (1954); Stokely Foods, Inc., 81 NLRB 449, 451 (1949)

Objection No. 3--Instructions to voter waiting to vote

The Petitioner contends that Mike Cavallo spoke in Italian to Salvatore De Luca, an eligible voter, while De Luca was being instructed in the use of the voting machine by the election officer, and that Cavallo said the word "No" to De Luca. The Petitioner argues this was improper conduct.

The eligibility list utilized at the election shows that there are eligible voters named Michael Ravallo and John Cavalo, but no Mike Cavallo is listed. Likewise, there is no Salvatore De Luca on the list or any name close to it in sound or spelling.

Colon Du Boise, observer for the Petitioner at the election, testified that a Mike Caballo spoke in Italian to Salvatore De Luca while De Luca was waiting to vote and that the one English word Du Boise heard Caballo say was "No". Du Boise could not identify De Luca other than that he was "an old fellow doing some cleaning" around the bus terminal and that he was a short, stout man who walked with a stick.<sup>10</sup>

Wolff testified that he explained to one voter, who he could not identify, how the voting machine worked by pointing and motioning. Wolff stated that the voter had great difficulty with the English language. According to Wolff, another voter standing behind the voter to whom he was explaining the machine appeared to be trying to repeat what Wolff said in another language. Wolff requested the voter not to explain anything, whereupon the man "stopped discussing it." Wolff did not recall any English words spoken by the man doing the explaining.

There was no evidence that the man alleged to be Mike Cavallo or Caballo was a supervisor or representative of management, that he had an extended discussion

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<sup>10</sup>The parties could not identify De Luca from this description.



with the voter alleged to be De Luca, that he continued to talk after Wolff told him to be quiet, or that he was engaged in electioneering. The man alleged to be Cavallo or Caballo may simply have been repeating Wolff's instructions about the use of the voting machine, including the "No" choice on the ballot. I find, therefore, that the Petitioner has not met its burden of showing there was objectionable conduct involved.<sup>11</sup> Accordingly, I recommend that Objection No. 3 be overruled.

Objection No. 4--part-time employees on the eligibility list.

The unit description specifically excludes part-time employees (see footnote 2, supra). The Petitioner contends that two part-time employees, Albert Maier and Rosario Squillace, both of whom were in the classification of Traffic Maintenance Man, were placed on the eligibility list by the City in an effort to deceive the Commission's elections officer, and in violation of the rights of the Petitioner. The City contends Maier and Rosario Squillace are not part-time employees.

In support of its position, the Petitioner has submitted an eligibility list received from the City and taken from the Petitioner's files which shows the notation "(part-timer)" written in next to the name of Rosario Squillace. But, neither the list submitted by the City nor the list used by Wolff at the election, which was sent to him by the City, contains the written notation. Accordingly, in the absence of evidence to show that the "part-timer" notation was actually written by a representative of the Public Employer, I find that the notation was entered by someone other than a representative of the City after

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<sup>11</sup>The NLRB takes a similar position on brief discussions by nonsupervisory employees on the voting line. See, for example, United States Gypsum Company, 92 NLRB 1661, 1662 (1951); Eastern Metal Products Corporation, 116 NLRB 1382, 1383 (1956); Equitable Equipment Co., Inc., 178 NLRB No. 50 (1969). Cf. Milchem, Inc., 170 NLRB NO. 46 (1968).

the list was received at the Petitioner's office.

The only testimony that either Squillace or Maier were part-timers was that of Nardolilli who said that a clerk at the Civil Service office had shown him a card indicating that Rosario Squillace was earning \$2.50 an hour and that anyone on an hourly rate was a part-timer. On the other hand, Aurelio Mangione, Director of Classification for Local Government Services for the New Jersey Department of Civil Service, testified that there was no distinction made between a part-time and full-time employee on the basis of the hourly rate. He further testified that a temporary employee could be a full-time employee.<sup>12</sup> A sworn statement of C. Robert Featherstone, Auditor-Comptroller-Treasurer of the City of Hackensack indicates that Maier and Rosario Squillace were employed full-time during the eligibility period and at the time of the election.

On the basis of the evidence presented, I find that the Petitioner has not proved that neither Maier or Rosario Squillace were part-time employees, or that the City deceived the Commission's election officer in including their names on the eligibility list. Furthermore, if the Petitioner had a doubt about the status of these two employees it could have exercised its right to challenge these employees at the election. This it did not do. Accordingly, I recommend that objection No. 4 be overruled.

Objection No. 5--furnishing an eligibility list.

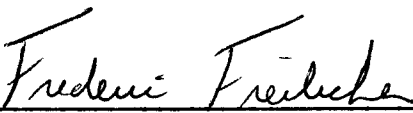
At the hearing the Petitioner first contended that it had not received an eligibility list. The City contended that one had been sent to the Petitioner. Later in the hearing, counsel for Petitioner stated that he had "rounded up" the eligibility list, that he got it from AFSCME's Trenton office directly, and that it "may be the Union inadvertently forgot to send it to the man in the

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<sup>12</sup>A letter from Mangione to the undersigned dated December 5, 1969, indicates that Maier was temporarily in the classification of Traffic Maintenance Man.

field working on the election." I have compared the eligibility list used at the election and the one obtained by Petitioner's counsel. Upon the basis of this comparison, and the statement of Petitioner's counsel, I find that the City did send Petitioner an eligibility list. Accordingly, I recommend that Objection No. 5 be overruled.

I have recommended that Objections Nos. 1, 2, 3, 4 and 5 be overruled. Accordingly, I recommend that the results of the election be certified.

  
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Frederic Freilicher, Hearing Officer

Dated: June 30, 1970  
Ithaca, New York