

D.R. NO. 88-1

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

In the Matter of

LITTLE EGG HARBOR MUNICIPAL
UTILITIES AUTHORITY,

Public Employer,

-and-

Docket No. RO-87-137

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL NO. 71, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders that a mail ballot election be set aside and a new election be conducted among blue and white collar employees of the Little Egg Harbor Municipal Utilities Authority. Pursuant to objections filed by the Petitioner, AFSCME, Council No. 71, AFL-CIO, the Director found that the Utilities Authority was not in substantial compliance with Commission's rules regarding the submission of its official list of eligible voters. See N.J.A.C. 19:11-9.6.

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Appearances:

For the Public Employer
Joan D'Arcy, Executive Director

For the Petitioner
John P. Hemmy, Associate Director

DECISION

Pursuant to an Agreement for Consent Election, the Public Employment Relations Commission ("Commission") conducted an election by mail ballot to determine whether a majority of blue and white collar employees of the Egg Harbor Utilities Authority ("Authority") desire representation by American Federation of State, County, and Municipal Employees, Council No. 71, AFL-CIO ("Council 71"). The tally of ballots, issued May 8, 1987, indicates that a majority of the voting employees did not vote for such representation. Council 71 filed timely objections to the election on May 11, 1987.

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

We conducted an administrative investigation into the objections in accordance with N.J.A.C. 19:11-9.2(i). Based upon this investigation, we make the following findings:

The disposition of this matter is properly based upon our administrative investigation, for we have not found any substantial and material factual disputes which may more appropriately be resolved at a hearing. See N.J.A.C. 19:11-9.2(j).

On March 31, 1987, the Authority and Council 71 entered into an Agreement for Consent Election providing for a mail ballot election to be conducted by the Commission under its rules and procedures, N.J.A.C. 19:11-9. et seq. On April 9, 1987 the Authority furnished the Commission with a list of ten eligible voters. Ballots were mailed on April 22, 1987.

On April 30, 1987, the Authority notified the Commission election agent by telephone that two names had been inadvertently omitted from the list it had submitted on April 9. The Authority asserts that it simultaneously notified Council 71 of the additional names by phone and was told that no further written notice would be necessary. The Commission issued ballots to these persons, who subsequently voted and whose votes were included in the tally, which issued on May 8, 1987. The results were: 6 votes for representation by Council 71 and 6 votes against representation.

Council 71 raised objections to the conduct of the election because "at no time prior to May 8 did [it] receive in writing any notice of any change in the amount of eligible employees either from

the Authority or from P.E.R.C." N.J.A.C. 19:11-9.2(h).

It is undisputed that the additional names were not given to the Commission or Council 71 on or before 10 days prior to the beginning of the election, in this case, the date on which ballots were mailed, or April 22, 1987.

N.J.A.C. 19:11-9.6 provides:

(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 together with their last known mailing addresses and job titles. In addition, the public employer shall file a statement of services 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 prior to 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. (Emphasis added)

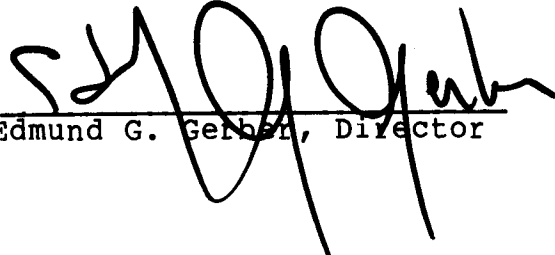
(b) Failure to comply with the requirements of this section shall be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-9.2(h).

Applying these principles to the facts here, I find that the Utilities Authority was not in substantial compliance with the Commission's rules. See also Monmouth County, P.E.R.C. No. 82-80, 8 NJPER 134 (¶13058 1982). The number of omitted voters formed 18 percent of the total number of eligible voters and the oral submission of the complete list was well after 10 days before the

ballots were mailed.

In view of the above and the consent of the parties to the conduct of a second on-site election, I direct that the election conducted on April 22, 1987, be set aside and a new election be conducted pursuant to N.J.A.C. 19:11-9.4 on July 29, 1987.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerben, Director

DATED: July 8, 1987
Trenton, New Jersey