

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter

CITY OF ATLANTIC CITY

Public Employer

and

LOCAL 1975, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES

AFL-CIO

Petitioner

and

ATLANTIC CITY EMPLOYEES' ASSOCIATION

Intervenor

Docket No. RO-158

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Consent Election Agreement, a secret ballot election was conducted under the supervision of the Public Employment Relations Commission on July 8, 1970, among the employees in the unit set forth below. 1/ The Commission's election agent served upon the parties a Tally of Ballots, dated July 8, 1970, which revealed that of approximately 499 eligible voters, there were 194 votes for Local 1975, AFSCME, AFL-CIO, 209 votes for the Atlantic City Employees Association, 12 votes for neither organization, and eight challenged ballots. The challenged ballots are determinative.

Local 1975, AFSCME, AFL-CIO filed timely objections to the Conduct of the Election or Conduct Affecting the Results of the Election.

Pursuant to a Notice of Hearing on Objections, a hearing was held on September 3 and 4, 1970 and October 19 and 20, 1970 before Hearing Officer Jeffrey B. Tener. At this hearing all parties were afforded the opportunity to present evidence, to call, examine and cross-examine witnesses, to argue orally and to submit briefs. Thereafter, on March 17, 1971, the Hearing Officer issued a Report and Recommendations in which he recommended that all challenges be sustained except one. The Hearing Officer further recommended that objections 1, 3, 4, and 5 be overruled, that objection 2 be sustained and that the July 8 election be set aside and a rerun election directed.

1/ Included: Blue-collar employees of Atlantic City.
Excluded: Craft employees, professional employees, managerial executives, supervisors within the meaning of the Act and all employees at Convention Hall.

In the absence of timely exceptions the undersigned, having considered the record and the Hearing Officer's Report and Recommendations attached hereto and made a part hereof, adopts the findings and recommendations of the Hearing Officer pro forma. 2/

Therefore, the Executive Director sustains seven of the eight challenged ballots, overrules objections 1, 3, 4, and 5 and sustains objection 2 of the objections filed by Local 1975, AFSCME, AFL-CIO. Accordingly a rerun election is directed.

DIRECTION OF ELECTION

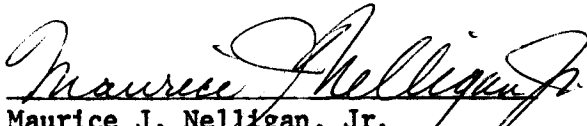
The Executive Director directs that a secret-ballot election shall be conducted in the unit described above. The election shall be no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Local 1975, AFSCME, AFL-CIO: Atlantic City Employees Association or Neither.

The majority representative shall be determined by a majority of the valid votes cast.

The election directed herein, shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.


Maurice J. Nelligan, Jr.
Executive Director

DATED: May 3, 1971
Trenton, New Jersey

2/ The consideration of information submitted after the close of hearing, as set forth in footnote 3 of the Hearing Officer's Report, is not adopted.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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CITY OF ATLANTIC CITY

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LOCAL 1975, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

and

ATLANTIC CITY EMPLOYEES' ASSOCIATION

Intervenor

APPEARANCES:

For the Public Employer:

Chaim H. Sandler, Esq., Assistant City Solicitor
(September 3 and 4, 1970)

John P. Miraglia
(October 19 and 20, 1970)

For the Petitioner:

Kopelman, Lerner, Leuchter, Reitman and Maisel, Esqs.
By Sidney Reitman, Esq.

For the Intervenor:

Harry Goldenberg, Esq.

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

Pursuant to a Consent Election Agreement, a secret ballot election was conducted under the supervision of the Executive Director on July 8, 1970 among the employees in the unit set forth below. 1/

The election officer served upon the parties a Tally of Ballots which revealed that, of approximately 499 eligible voters, there were 194 votes for Local 1975, AFSCME, AFL-CIO, 209 votes for the Atlantic City Employees Association, 12 votes for neither organization, and eight challenged ballots. The challenged ballots are determinative.

Subsequent to the election, objections were timely filed by Local 1975, AFSCME, AFL-CIO.

1/ Included are all blue-collar employees of Atlantic City but excluding supervisors as defined in the Act, policemen, craft employees, professional employees, and managerial executives. In accordance with the agreement of the parties, a telegram was sent to the employer (Exhibit C-11) specifying the exclusion of all Convention Hall employees and requesting that copies of that telegram be posted with the Notice of Election.

A hearing on the challenged ballots and on the objections was held September 3 and 4, 1970 and October 19 and 20, 1970 before the undersigned Hearing Officer at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. A memorandum as well as proposed findings and conclusions were submitted by petitioner.

CHALLENGES

As indicated above, the challenges are determinative. Accordingly, before considering the objections, the challenges should be resolved.

The names of the eight individuals whose ballots were challenged are as follows: 1) William Carey; 2) Anthony Librizzi; 3) Arthur Mason; 4) Hezekiah Robinson; 5) Angelo Rossi; 6) John Vinson; 7) Edward Washington; and 8) Forest Sturman. Of these eight, the first seven were challenged by the Commission Agent because the names could not be located on the eligibility list. Forest Sturman was challenged by the A.F.S.C.M.E. Observer because, according to the identification stub on the challenged ballot envelope, there was a question concerning the voter's identification.

The Public Employer and the Intervenor were prepared to stipulate that all eight challenges should be sustained. (Tr 221 and 222) Petitioner, however, declined to indicate a specific position regarding these eight challenges. Therefore, the undersigned requested that appropriate payroll records be introduced so that he could make a recommendation with respect to these eight challenges. Received in evidence as Exhibits PE-1, PE-2 and PE-3 respectively were the payroll sheets for May 3 to May 16, 1970, May 17 to May 30, 1970, and June 28 to July 11, 1970.

A question was raised at the hearing regarding the payroll period for eligibility. This arose because the payroll period specified on the Agreement for Consent Election signed by the parties June 23, 1970 (Exhibit C-6) provided for the use of the May 13, 1970 payroll period but this payroll could not be duplicated. Therefore, the payroll for the period ending May 30, 1970 was used as a basis for the preparation of the eligibility list. However, the Commission was never notified by any of the parties that the payroll period for eligibility had been changed from May 13, 1970. An amended Agreement for Consent Election (Exhibit C-8) and the Attachment to the Notice of Election (Exhibit C-9) which was to be posted prior to the election both provided for the use of the payroll period ending May 13, 1970.

Accordingly, the undersigned finds that the payroll period for eligibility is the payroll period ending May 13, 1970. Recommendations regarding the eight challenged ballots will be based upon, among other things, a consideration of whether or not the individuals were on the payroll as of May 13, 1970.

An examination of the payroll for the payroll period ending May 16, 1970 indicates that Angelo Rossi, John Vinson, Edward Washington, and William Carey were not on the payroll as of May 13, 1970. Accordingly, the undersigned finds those four individuals to be ineligible and finds

that the challenges should be sustained.

Payroll records indicate that Librizzi is a maintenance repairman, carpenter; that Mason is a maintenance repairman, painter; and that Robinson is maintenance repairman, plumber. All three were employed on May 13 and July 8. However, the job titles of these individuals suggest that they are craft employees, a group specifically excluded in the description of the negotiating unit. Furthermore, those job titles were not included in the list of blue-collar titles which all parties agreed to as part of the original consent agreement which was signed by the parties. This indicates that the parties did not intend for occupants of those titles to be eligible voters. Accordingly, the undersigned finds that Librizzi, Mason and Robinson were ineligible and that challenges to them should be sustained.

Sturman was challenged for reasons of identification by A.F.S.C.M.E. At the hearing, however, counsel for A.F.S.C.M.E. indicated that he had been informed that the reason for the challenge was that Sturman was not on the list. An examination of the list (Exhibit C-3) reveals that Sturman was on the list. He was on the payroll on both May 13 and July 8. He is a laborer. No evidence was offered at the hearing which would support the challenge. Accordingly, the undersigned finds that the challenge should be overruled. However, if the recommendations of the Hearing Officer regarding the seven challenges or even six of those seven are accepted, then challenges no longer would be determinative and there would be no reason to count Sturman's ballot. If several of the challenges are overruled, then Sturman's ballot should be comingled among the other overruled challenges and counted with them.

OBJECTIONS

The objecting party contended that certain improper conduct by the Public Employer which occurred after the filing of the petition "...interfered with, restrained and coerced its employees and made a free election impossible." 2/

Specifically, A.F.S.C.M.E. listed five items. These will be quoted in full below and discussed in turn.

The first objection states that:

1- High ranking supervisors and forman (sic) excluded from the bargaining unit were officers and members of the Atlantic City Association. These supervisory personnel solicited Association support, induced employees to sign Association

2/ Page 1 of Objections to Conduct Affecting the Results of the Election and to the Conduct of the Elections.

authorization cards and otherwise, actively campaigned on a broad front on behalf of the Association. They also threatened employees with discharge, lay-off and loss of benefits unless the employees supported the Association.

There is no testimony or evidence to support the contention that "High ranking supervisors and foreman excluded from the bargaining unit were officers and members of the Association." The rest of the objection is dependent upon the first sentence. Accordingly, the Hearing Officer finds that the objection should be overruled.

The second objection indicates that:

2- Employees were threatened with disciplinary action and loss of benefits for supporting or continuing to support AFSCME. A sample of the type of threats by various supervisory personnel included:

a. If AFSCME won the election, employees would lose sick leave payment.

b. An AFSCME victory would result in a lay-off of seventeen men in each of the three "Ash & Trash" units.

c. The City would contract out trash collection to a private concern if AFSCME won.

These and other threats were delivered by many different supervisors to numerous employees throughout the unit.

One witness for the Union testified that an Assistant Foreman told him that "...if the Union came in, that I wouldn't get paid for any sick days, that they wouldn't pay for any sick days." (Tr 137) This remark allegedly was made on the day of the election. The witness had been ill the previous day. The Assistant Foreman testified that the employee was not in his department and that he did not tell the employee that he would not have any sick days if the Union won the election. (Tr 434 and 435) The Assistant Foreman also denied having any discussions with the employee concerning the election or indicating to him which way he wanted him to vote. (Tr 435) The record does not indicate whether the Assistant Foreman in question has the attributes of a supervisor within the meaning of the New Jersey Employer-Employee Relations Act. There is no indication that he has any authority over the employee. There is no other evidence to support the objection that employees would lose sick leave payment if AFSCME won the election. Accordingly, the undersigned finds that AFSCME has failed to meet the burden of proof. This objection should be dismissed.

The second aspect of the objection alleges that employees were threatened with a lay-off of seventeen men in each of the three so-called Ash and Trash Units.

Three witnesses testified that such a threat was made to some employees in one of the Ash and Trash units and one witness from another unit testified that his foreman made such a threat to him.

One witness testified that, on Friday, June 26, a payday, three days after the consent agreement was signed, a group of employees in one of the Ash and Trash units was told by the foreman that there would be a lay-off if the Union won. He described the situation as follows:

Well, we were all standing around the station, in front of the station, and he [the foreman] called those standing around to get together in a group on the side of the station and he told us that if the Union was to come through, then seventeen men in each unit would be laid off. (Tr 49)

This statement allegedly was made to a group of 25 or 30 men in the unit before the men went out on the trucks in the morning.

Another witness, a truck driver in the same unit, described the same alleged occurrence as follows:

[The foremen] had a congregation of employees that morning in front of the bus station, and we were assembled and standing there in a group, a group of men which I was a member of, stating that in this particular unit, and in other units, if the Union was successful, that seventeen men would be laid off out of each one of these units. (Tr 78)

This witness estimated the number of employees present at approximately forty to fifty.

Another witness, who was a truck driver in the unit, testified that he was late with his truck so he missed the gathering described above but that he was told by the same foreman what he had missed:

Well, when I pulled up in my truck and parked it, he said to me, "[name of employee] I just related to these men what was going on. You weren't here, so I will explain it to you." So I said, "okay." He says, "You can vote for the Union, or vote for the Association, that is up to you, it doesn't make any difference. If you vote for the Union, there will be seventeen men in each unit laid off. In other words, if the Association--if the Union wins, there will be a layoff, and if the Association wins, it will continue as it is."

Finally, another witness testified that July 1, 1970, one week before the election, he and his foreman had a conversation which he proceeded to describe:

Well, me and [the foreman] began to talk. We were talking about the Union, and he said to me, "If the Union gets in, there will be a layoff."
 From there, we kept on talking, so he said--I asked him, I said, "Where does the layoff come from, why?" He said to me, "Well, from the Union coming in."
 He says, "A money problem, and so on."
 That's when I had to leave, because the truck driver was ready to go. (Tr 123 and 124)

The above testimony relates to the alleged behavior of two foremen. The record indicates that both of the foremen are supervisors within the meaning of the Act in that they have the authority to hire, discharge, discipline, or to effectively recommend the same. (Tr 450, 451, 452, 462, 479, 480, 481, 482, 483)

The foreman of the Third Ash and Trash Unit disputed the testimony of the three witnesses. He denied telling these men on June 26, 1970 that there would be a lay-off of seventeen men if the Union won the election. (Tr 452) He denied saying anything to that effect at any time. (Tr 453) However, on cross examination the witness contradicted himself by first denying that he had ever participated in any conversation of any kind with the men in his unit concerning the election but by later admitting that he had such a conversation. (Tr 454 and 455) He stated that, the day before the election, July 7, 1970, when all the men were assembled as they do customarily, he said:

"Men, you have an election tomorrow and everyone is twenty-one years old." And that was it. That's what I said. (Tr 455 and 456)

The foreman of the First Unit denied threatening the witness employed in the First Unit whose testimony has been quoted above that he would be discharged if the Union won the election. (Tr 459) However, the employee did not allege that he had been threatened with discharge. He testified that the foreman told him that there would be a lay-off if the Union won the election. The foreman did not deny this allegation specifically although he did testify that he never told the employee "...anything to influence him to vote for the Atlantic City Employees Association." (Tr. 459)

Based upon his careful observation of the four employee witnesses and the two foremen witnesses during their testimony, the Hearing Officer finds credible the testimony of the employees and discredits the testimony of the two foremen. Accordingly, this element of the objection should be sustained.

There is no evidence that the City or any supervisors of the City threatened to contract out trash collection to a private concern if AFSCME won the election. Therefore, Objection 2-c should be dismissed.

Several witnesses testified that they were subjected to some pressure by supervisors to sign Association cards. One witness alleged that an Assistant Foreman threatened him with a loss of his job if he didn't sign an Association card. (Tr 181) However, it developed that the witness had already signed an Association card at the time of this alleged incident. (Exhibit I-1) Furthermore, the supervisory status of the Assistant Foreman was not established. Another witness said that his foreman gave him an Association card and told him to sign it. (Tr 210) However, he didn't sign the card and he testified on cross examination that he was "Not in any way" threatened with anything if he did not sign the card. (Tr 216) Finally, a witness stated that his foreman had an Association card in his hand and asked him, "Why didn't I sign a card for the Association." (Tr 144) He stated that other men in his group then got into a conversation with the foreman about the Union and that he heard the foreman say to one of the employees that he would give him a "W", i.e. a day without pay. But this discussion took place under very noisy conditions and the witness testified that he could not hear everything. In the opinion of the undersigned, this incident should be discounted.

In summary, parts a. and c. of this objection have been found to be either unsupported or insufficiently supported to require setting the election aside. However, having concluded that the alleged threats of layoff to seventeen men in each unit did in fact occur on a large scale in one unit and in at least an isolated fashion in another unit, the undersigned finds that these threats of economic reprisal were sufficiently general and substantial in their impact on employees as to have interfered with the free choice of employees in the selection of their negotiating representative. On this basis, the election of July 8, 1970 should be set aside.

The third objection provides that:

3 - In violation of the agreement between the parties and accepted by P.E.R.C, AFSCME was not given a list of names and addresses (sic) of eligible employees. The Association had such a list, thereby creating an imbalance of communication which prevented a free and informed choice of the eligible voters.

The original Agreement for Consent Election (Exhibit C-6) which was signed by the parties June 23, 1970 had as an attachment a two page document entitled "Agreement for A Consent Election between AFSCME, AFL-CIO and the ACEA for Atlantic City, New Jersey (Blue Collar Unit)." Item 11 of that attachment provided that:

Each party will be given an up-to-date list of all the eligible voters, by job titles, and in alphabetical order with the name and address of each employer (sic) and a copy of the "Blue Collar" payroll list of eligible voters as of May 13, 1970.

This attachment was received by P.E.R.C. but there is no evidence that it was "accepted" in any sense other than the physical sense of having been received in the mail. This original consent agreement was not approved by the Executive Director. Furthermore, the attachment was not part of the amended Agreement for Consent Election (Exhibit C-8) which was sent to the parties. It is the opinion of the undersigned that the Public Employment Relations Commission is under no obligation or responsibility to enforce agreements made by the parties. The act of the parties in agreeing that a list of names and addresses would be given each party does not obligate P.E.R.C. to enforce such an agreement. Both the Union and the Association received a copy of the May 30, 1970 payroll from the Comptroller upon request shortly after the Consent Agreement was signed June 23, 1970. They used this list because copies of the payroll covering the period which included May 13, 1970 were not available. The record reveals that both AFSCME and ACEA received a copy or copies of the eligibility list on the Thursday or Friday before the election (Tr. 432). According to ACEA President Colanzi, Colanzi's unchallenged recollection was that he handed a copy of the eligibility list to Rodriguez the day that he received it. (Tr. 433) Thus, both parties received copies of the list at substantially the same time and, in the case of the eligibility list, five or six days before the election. There was no showing that this situation in any way created an imbalance in communication which had any effect on voters. It should be noted that P.E.R.C. generally requests that copies of the eligibility list be given to the parties (Exhibit C-7) but, to the knowledge of the undersigned, is without authority to compel that such lists be given to the parties. The Hearing Officer finds that the objection should be overruled.

The fourth objection claims that:

4 - Contrary to Item #2 of PERC's agreement for a CONSENT ELECTION, signed by the parties, PERC Executive Director was not supplied with, and did not require, the parties to supply him with a list of eligible voters at any time prior to the election. The PERC agent conducting the election used an eligibility list supplied by the Association on the day of the election which was so inaccurate as to result in many ineligible persons voting. The inaccuracy of the list prevented either AFSCME or PERC from making timely challenges. Facts learned subsequent to the election (sic) revealed that many persons voted unchallenged who were not employed by the City, who had been discharged subsequent to the payroll eligibility date, who were supervisors and who were not within the unit spelled out in the consent agreement.

The pertinent provision of Item 2 of the Agreement for Consent Election provides that "At a date fixed by the Executive Director, the parties, as requested, will furnish to the Executive Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility."

By letter (Exhibit C-7) to the parties dated July 1, 1970, the undersigned requested that an eligibility list be sent as soon as possible. No such list was received by mail prior to the election. It should be noted that the time between the date of the request and the date of the election was only seven days, a period which included the Fourth of July weekend. However, the Commission officer who conducted the election did receive a copy of the eligibility list upon her arrival at the site of the election approximately 20 minutes before the polls opened. This list was presented to her by Mr. Colanzi who was asked by City Comptroller McGowan to deliver it to her. (Tr 380) This list was the eligibility list - identical to the lists received by Colanzi and Rodriguez the Thursday or Friday before the election.

The objection states that many ineligible people voted, that the inaccuracy of the list prevented AFSCME or PERC from making timely challenges, and that facts learned subsequent to the election revealed that "...many persons voted unchallenged who were not employed by the City, who had been discharged subsequent to the payroll eligibility date, who were supervisors and who were not within the unit spelled out in the consent agreement."

The only evidence 3/ in support of this contention that many ineligible people voted is the testimony of two witnesses of AFSCME who named four individuals as having voted who were ineligible. Of these, two in fact did not appear on the payroll as of July 8, 1970. These two were included among the individuals discussed in footnote 3 below. Both of the others were listed on the eligibility list as occupying titles which should be included. AFSCME contended, however, that one was

3/ In a letter to the undersigned dated November 12, 1970 and received November 13, 1970, counsel for AFSCME stated that certain people not on the payroll as of May 13, 1970 had voted and that others on the voting list were not on the payroll as of July 8, 1970. This information was received after the deadline for such submissions and counsel for the ACEA did not agree to have it made part of the record. Nevertheless, the undersigned is of the opinion that ~~this information should be~~ considered. It is contended that five named individuals voted in the election who were not on the payroll as of May 13, 1970. Of these, two were challenged by the Commission because they were not on the eligibility list. These were discussed above. There is no record of two of the others having voted at all. One individual apparently did vote who was hired subsequent to the cutoff date. The letter also indicates that 13 individuals were on the list who were not on the payroll as of July 8, 1970. Of these, one name does not appear on the list. Nine others did not vote. Three evidently did vote. Of these three, at least two were not on the payroll as of July 8, 1970. In summary, an examination of the eligibility list in conjunction with the letter reveals that no more than four individuals voted who were not eligible. There is no showing as to why these individuals were not or could not have been challenged at the time of the election.

really a supervisor who should not have been eligible and that the other one was a liaison or public relations man for the Mayor who should not have been eligible. Neither the testimony of Mr. Rodriguez nor that of any other witness explains why the observer for the union could not have challenged these and any other allegedly ineligible employees when they appeared at the polls. The union had the eligibility list five or six days before the election and therefore had a reasonable opportunity to go over that list and either to attempt to have the list corrected prior to the election or to challenge any voters whose eligibility was questioned.

There is no evidence that the Commission agent who conducted the election permitted any one to vote an unchallenged ballot whose name was not on the eligibility list. There was no showing as to what information learned subsequent to the election could not have been learned prior to the election.

The undersigned finds that PERC was supplied with an eligibility list prior to the election and that both employee organizations received copies of this list five or six days before the election. Both organizations, therefore, had a reasonable opportunity to attempt to have the list corrected or, failing that, to challenge any voters whose eligibility was questioned. Accordingly, the objection should be overruled.

The last objection follows:


5 - A supervisor served as an observer for the Association, in violation of Item #4 of PERC's agreement for a CONSENT ELECTION. By these and other acts, the employer and the Association interfered with the free choice and participation of the employees. Accordingly, it should be set aside, without further hearing.

There is no evidence in support of the contention that a supervisor served as an observer for the Association. The objection should be overruled.

RECOMMENDATION

It is recommended that all challenges be sustained except the challenge to Sturman. If these seven challenges are sustained, then the remaining challenge would no longer be determinative. A revised Tally of Ballots should be issued. No runoff would be indicated.

The undersigned further recommends that objections 1,3,4 and 5 be overruled and that objection 2 be sustained. Accordingly, the July 8, 1970 election should be set aside because of various threats against employees by supervisors. A rerun election should be directed in accordance with the Rules and Regulations of the Commission.



Jeffrey B. Tener
Hearing Officer

DATED: March 17, 1971
Trenton, New Jersey