

D.R. NO. 81-30

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

In the Matter of

COUNTY OF SALEM,

Public Employer,

-and-

DOCKET NO. RO-81-34

O.P.E.I.U., Local #14,

Petitioner,

-and-

SALEM COUNCIL 21, C.W.A.,

Intervenor.

SYNOPSIS

The Director of Representation, having conducted an investigation into objections filed in a Commission conducted election, dismisses the objections and issues a certification of majority representative.

The Director found that the actions objected to did not rise to the level of objectionable conduct which would warrant the setting aside of the election. In addition, the Director found that the conduct complained of did not meet the rule established in Hollywood Ceramics Co., 140 NLRB 221, 51 LRRM 1600 (1952).

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Appearances:

For the Public Employer
William J. McGinnis, Jr., Consultant

For the Petitioner
Schneider, Cohen, Solomon & DiMarzio, attorneys
(Bruce D. Leder of counsel)

For the Intervenor
Kapelsohn, Lerner, Reitman & Maisel
(Melvin L. Gelade of counsel)

DECISION

On September 4, 1980, the Office and Professional Employees International Union, Local #14, (the "OPEIU") filed a Petition for Certification of Public Employee Representative with the New Jersey Public Employment Relations Commission (the "Commission") seeking to represent certain employees of the County of Salem (the "County") who were, at that time, represented by Salem Council 21/Communication Workers of America (the "CWA").

Pursuant to a Consent Election Agreement, which was signed on December 17, 1980, the Commission conducted a secret ballot election herein on January 22, 1981. The final revised tally of ballots, which was issued on February 4, 1981, showed that a majority of the voters had selected the CWA as their exclusive representative. By letter dated February 4, 1981, the OPEIU raised several objections to the conduct of the election citing both pre-election misconduct as well as misconduct on the day of the election. In support of its objections, the OPEIU submitted the affidavits of the business manager of the OPEIU and an observer at the election.

N.J.A.C. 19:11-9.2 outlines the procedure and standard utilized by the Commission in determining the disposition of objections to an election.

(h) Within five days after the tally of ballots has been furnished, any party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. 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 conduct 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.

(i) Where objections as defined in N.J.A.C. 19:11-9.2 (h) are filed, the Director of Representation shall conduct an investigation into the objections if the party filing said objections has furnished sufficient evidence to support a prima facie case. Failure to submit such evidence may result in the immediate dismissal of the objections.

(j) Where an administrative investigation has been conducted into the objections that have been filed as defined in N.J.A.C. 19:11-9.2 (h), a hearing may be conducted where the investigation reveals that substantial and material factual

issues have been placed in dispute which, in the exercise of the reasonable discretion of the Director of Representation, may more appropriately be resolved after a hearing. After the administrative investigation has been completed, an administrative determination will be rendered with regard to the objections either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

Accordingly, the undersigned has studied the objecting party's proffer in order to make an initial determination as to whether sufficient evidence has been furnished to support a prima facie case warranting the conduct of an investigation into the objections.

OPEIU's objections to the election fall into two categories: campaign tactics prior to the election and conduct at the polling place on the date of the election.

With regard to the allegations concerning improper pre-election campaign tactics, the undersigned is guided by the policy established by the National Labor Relations Board in Hollywood Ceramics Co., 140 NLRB 221, 51 LRRM 1600 (1952) and reaffirmed in General Knit of California, 239 NLRB 101, 99 LRRM 1687 (1978). ^{1/} In these cases the Board states that a representation election will be set aside only under circumstances where there has been some misrepresentation, including a substantial departure from the truth, at a time that prevents an effective reply. Furthermore, the Board holds that the misrepresentation must have more than a mere de minimis impact on the election.

OPEIU has alleged that CWA distributed literature which misrepresented and demeaned the OPEIU, which depicted a cozy relationship between the OPEIU and the County, and which misrepresented the ability of OPEIU to represent the employees of Salem County. The undersigned has applied Hollywood Ceramics to the instant

^{1/} The New Jersey Supreme Court has stated in Lullo v. International Association of Firefighters, 55 N.J. 409 (1970) that the Commission should utilize NLRB law and policy as a guide to its own decisions in representation proceedings.

matter and finds that the OPEIU has failed to submit sufficient evidence to establish either of its requirements. The evidence does not establish that the CWA representations were misrepresentations constituting a substantial departure from the truth nor does the evidence establish that the alleged misrepresentations occurred at a time which prevented an effective reply.

OPEIU also alleges that its organizers were denied access to the Nursing Home in July 1980 and thereafter. The undersigned notes that the instant petition was not filed until September 1980 and the consent agreement was executed by all parties in December 1980. Under these circumstances, any allegedly objectionable activity which originated prior to the filing of the petition is not a proper subject of post-election objections.

In addition, OPEIU alleges that the Nursing Home Administrator told eligible voters to vote for CWA. However, no evidence has been submitted to substantiate this allegation and establish a prima facie case in this regard.

With regard to the objections alleging misconduct at the polling place on the day of the election, the undersigned has examined their content to determine whether the allegations, if true, would warrant setting aside the election and directing a new election. The undersigned has carefully studied the affidavit of the OPEIU observer, who would have first-hand knowledge of the conduct of the election because of her presence in the polling area. Although she alleges that the County observer was relieved for twenty minutes, the CWA observer left the polling area ten minutes before the polls closed to answer a phone call and one of the PERC election agents was also called to the phone at the same time, she does not allege that any of these activities interfered with the orderly procedure of the election. The undersigned notes that the two Commission election agents were assigned to supervise the conduct of the election and the observer has not alleged

that the polls were left unattended by a Commission agent. The OPEIU observer alleges that the ballot box was sealed and unsealed as the polls closed. Apparently this was done in the presence of the election observers, including herself. There is no allegation that any conduct occurred which prevented any voter from recording his choice, free of any restraints or interference. Nor is it alleged that any activity occurred which impinged on the secrecy of the vote or the accuracy of the tally. In fact, a representative of OPEIU acknowledged service of the original tally and certified that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained and that the results were as recorded on the Tally of Ballots.

Lastly, OPEIU alleges that the PERC agent advised the OPEIU observer that she could not challenge Nursing Home employees. The undersigned takes administrative notice of the fact that PERC agents were directed to segregate Nursing Home ballots from all other ballots, that the OPEIU was given an opportunity to assert a challenge to those ballots during the tally, that the OPEIU did assert such a challenge and eventually withdrew its challenge to the eligibility of the Nursing Home employees. Therefore, the conduct which OPEIU objects to, could have had no bearing on the election or its eventual result.

The undersigned has considered all the objections raised in this matter and based upon the foregoing discussion, has concluded that, pursuant to N.J.A.C. 19:11-9.2(j), the objections should be dismissed. The OPEIU has failed to furnish sufficient evidence to support a prima facie case indicating that conduct has occurred which would warrant setting aside the election as a matter of law.

Accordingly, the objections to the election are dismissed.

CERTIFICATION OF REPRESENTATIVE

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that Salem Council 21, C.W.A., Local 1041, AFL-CIO, has been designated and

selected by a majority of the employees of the above-named Public 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 said 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. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

UNIT: All regularly employed full-time and part-time professional and non-professional employees employed by Salem County, excluding casual employees (those working an average of less than 20 hours a week in a calendar year), managerial executives, T-80's, law enforcement employees, supervisors within the meaning of the Act, craft employees, and confidential employees.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: March 6, 1981
Trenton, New Jersey