

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

MIDDLETOWN TOWNSHIP SEWERAGE
AUTHORITY,

Public Employer,

-and-

MIDDLETOWN TOWNSHIP SEWERAGE
AUTHORITY UNION, INC.

DOCKET NO. RO-84-4

Petitioner,

-and-

DISTRICT 65, U.A.W.,

Intervenor.

SYNOPSIS

The Administrator of Representation Proceedings dismisses objections filed by MSAU to an election involving blue collar employees and certifies District 65, U.A.W. as the majority representative of these employees. The objections alleged that District 65's representatives made material misstatements of fact on and before the day of the election relating to salary increases, workweek and subcontracting. The Administrator finds that the evidentiary material submitted by the objecting party did not precisely and specifically identify conduct which would warrant setting aside the election as a matter of law, and noted the Commission's standard that an election will only be set aside where misrepresentations involve a substantial departure from the truth and are made at a time which prevents the other party from making an effective reply. The evidentiary material provided by MSAU did not indicate that the campaign statements were first made at a time which prevented an effective reply and, in fact, contained admissions that some of the objectionable statements had been discussed during the entirety of the election campaign.

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Appearances:

For the Public Employer
Robert J. Eckert, Executive Director

For the Petitioner
Wayne Murphy, Representative

For the Intervenor
Ira Jay Katz, attorney

DECISION

Pursuant to an Agreement for Consent Election a representation election was conducted on September 7, 1983 by the Public Employment Relations Commission ("Commission") among approximately 22 blue collar employees of the Township of Middle-Town Sewerage Authority ("Authority"). Employees were provided

the opportunity to choose as their representative, either the petitioning organization, Middletown Sewerage Authority Union, Inc. ("MSAU"), the incumbent certified representative, District 65 U.A.W. ("District 65") or neither. The tally of ballots reveals that 11 valid ballots were cast for District 65, none were cast for MSAU, 9 valid ballots were cast against representation and 1 ballot was challenged. Therefore, a majority of valid ballots was cast for District 65.

On September 14, 1983, pursuant to N.J.A.C. 19:11-9.2(h), the MSAU filed post-election objections alleging that District 65 before and on the day of the election made certain misstatements concerning future workweek and salary changes, and prospects for subcontracting, which materially affected the election outcome. MSAU submitted affidavits from several employees in support of its objections.

N.J.A.C. 19:11-9.2(h) sets forth the standard for reviewing election objections:

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. (emphasis added)

Under N.J.A.C. 19:11-9.2(i), if the Director of Representation ^{1/}

^{1/} Effective November 1, 1983, the responsibilities of the Director of Representation were assumed by the Administrator of Representation Proceedings.

concludes that the objecting party has presented a prima facie case, he shall conduct a further investigation; failure of the objecting party to furnish evidence which establishes a prima facie case may result in the immediate dismissal of objections.

Further, in In re Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970) (slip opin. at 10), aff'd sub. nom. AFSCME Local 1959 v. P.E.R.C. , 114 N.J. Super. 463 (App. Div. 1971), the Commission articulated the following policy:

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice. Conduct seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election. The foregoing rule requires that there must be a direct relationship between the improper activities and the interference with freedom of choice, established by a preponderance of the evidence.

See also, In re State of New Jersey, P.E.R.C. No. 81-127, 7 NJPER 265 (¶ 12114 1981); In re Passaic Valley Sewerage Comm., P.E.R.C. No. 81-51, 6 NJPER 504 (¶ 11258 1980) ("Passaic"); In re State of New Jersey and N.J.C.S.A./N.J.S.E.A., P.E.R.C. No. 76 (1973); In re City of Linden, E.D. No. 17 (1970); In re Ocean Cty., D.R. No. 79-34, 5 NJPER 220 (¶ 10121 1979), aff'd P.E.R.C. No. 80-12, 5 NJPER 303 (¶ 10166 1979); In re City of Salem, D.R. No. 81-30, 7 NJPER 182 (¶ 12080 1981) ("Salem"), aff'd P.E.R.C. No. 81-121, 7 NJPER 239 (¶ 12107 1981); In re Cty. of Atlantic, D.R. No. 79-17, 5 NJPER 18 (¶ 10010 1979); In re City of Newark, D.R. No. 78-43,

4 NJPER 202 (¶ 4102 1978); In re Camden Cty. Bd./Chosen Freeholders, D.R. No. 78-7, 3 NJPER 272 (1977).

Under the standard adopted by the Commission relating to campaign statements a representation election will be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, and made at a time which prevents other parties from making an effective reply. The misstatements must reasonably be expected to have a significant impact on the election. In re Passaic Valley Sewerage Auth., supra.

On September 14, 1983, MSAU was advised of its obligation to submit documentary evidence in support of the objections and of its obligation to present a prima facie case. Subsequently, MSAU submitted several undated affidavits as its evidentiary proffer on the allegedly objectional campaign statements and electioneering by District 65.

The undersigned has carefully reviewed MSAU's objections in accordance with the requirement that the accompanying evidence must precisely and specifically show that conduct has occurred which would warrant setting aside the election as a matter of law. First, MSAU has objected to alleged improper election campaign tactics, stating that before and on the election day, District 65 made various statements to employees guaranteeing salary raises in excess of 4 percent, promising a 2% raise retroactive for 1982 and a 7% raise for 1983, and telling employees that the work week would revert to 7 days if the union were voted out.

In the instant case, the MSAU admits that District 65's workweek predictions had been stated over a period of one and a half years of union meetings. Moreover, District 65 had negotiated with the Authority since its certification in 1982 to secure a contract, without avail. In this context, campaigning promises such as a "guaranteed salary raise," which, as in this case, frequently occur in a free and vigorous campaign, are not likely to be accepted uncritically by employees. MSAU has not submitted evidentiary proffers which tend to establish that District 65's predictions and promises were not the subject of continued debate in the campaign or that they were not promises of the ordinary sort that voters consistently evaluate in finalizing their voting choice. Accordingly, the undersigned dismisses these objections.

Next, MSAU claims that on election day District 65 representatives were observed talking to an authority employee before he went to vote. Election day campaigning is not, of itself, misconduct. In re Cty. of Atlantic City, supra; In re City of Atlantic City, D.R. No. 82-54, 8 NJPER 344 (¶ 13158 1982). MSAU's documentation does not establish that the conversation between the District 65 representative and employee either interfered or tended to interfere with that employee's free choice. Therefore, this objection has no merit.

Next, the undersigned finds that MSAU failed to provide precise and specific evidence to support its claim of election interference based on the alleged statements concerning subcontracting made by a District 65 shop steward. The affidavits submitted by

MSAU to support this objection allege simply that District 65 had stated that if it won the election the Authority could not subcontract.

On October 12, 1983, the MSAU was advised to provide evidence describing the complete context of District 65's shop steward's statements concerning subcontracting. MSAU was advised that without additional information, the Commission would be unable to evaluate whether or not these remarks were misstatements and if so, whether they were made at a time which would preclude an effective reply. ^{2/} However, MSAU has not responded to the October 12 correspondence. Accordingly, the undersigned determines that MSAU has not established a prima facie case relating to this objection.

Finally, MSAU's objection materials suggest that it was denied an observer at the election polls. A review of the file documents in this case clearly demonstrates that MSAU had an observer for the duration of the election.

Based upon the foregoing, the undersigned concludes that MSAU has failed to precisely and specifically show that conduct has occurred which would warrant setting aside the election as a matter of law and its objections are dismissed in their entirety. In accordance with the rules of the Commission, and the results of the tally of ballots, the undersigned issues the appropriate

^{2/} MSAU was advised that District 65 had filed an unfair practice charge with the Commission alleging that the Authority had threatened to subcontract on August 31, 1983. It thus appeared that subcontracting was an ongoing campaign issue.

certification of representative (attached hereto) to District 65,
UAW.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS



Joel G. Scharff, Administrator

DATED: November 30, 1983
Trenton, New Jersey



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
Middletown Twp. Sewerage Authority,
Public Employer,
-and-
Middletown Twp. Sewerage Authority
Union, Inc.,
Petitioner,
-and-
District 65, U.A.W.,
Intervenor,

DOCKET NO. RO-84-4

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the undersigned in accordance with the New Jersey Employer-Employee Relations Act, as amended, and Chapter 11 of the Commission's Rules and Regulations; and it appearing from the Tally of Ballots that an exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefore;

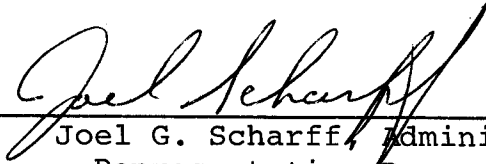
Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

District 65, U.A.W.

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 discrimination and 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 blue collar employees (collection and plant) employed by Middletown Township Sewerage Authority excluding managerial executives, supervisors within the meaning of the Act, clerical, professional and craft employees, police and fire employees, confidential employees, and all others.

DATED: Trenton, New Jersey
November 30, 1983


Joel G. Scharff, Administrator
Representation Proceedings