D.R. NO. 81-35

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

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Intervenor,

DOCKET NOS. RE-81-2
RE-81-3
RE-81-4
RE-81-5

-and-

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

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION, a/w AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioner,

DOCKET NOS. RO-81-126
RO-81-127
RO-81-128
RO-81-129

-and-

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

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION, a/w AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

SYNOPSIS

Pursuant to N.J.A.C. 19:11-9.2(i), the Director of Representation dismisses objections which the New Jersey State Employees Association, a/w American Federation of Teachers, AFL/CIO ("SEA/AFT") had filed to mail ballot elections in four state-wide units of approximately 32,028 State employees. The Director finds that, assuming the truth of all factual allegations submitted, SEA/AFT has failed to "...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" N.J.A.C. 19:11-9.2(h). Pursuant to N.J.A.C. 19:11-913(a), the Director directs that run-off mail ballot elections be conducted among Professional Unit and Primary Level Supervisors Unit employees during the period May 7 - May 27, 1981, and directs a further administrative investigation regarding the remaining determinative challenged ballots in the Higher Level Supervisors Unit. The Director also issues a Certification of Representative to the Communication Workers of America, AFL-CIO in the Administrative and Clerical Services Unit.

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NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

Appearances:

For the State of New Jersey
Frank A. Mason, Director

For Communications Workers of America, AFL-CIO
Kapelsohn, Lerner, Reitman & Maisel, attorneys
(Sidney Reitman, of counsel)

For the American Federation of State, County and Municipal Employees, AFL-CIO
Sterns, Herbert & Weinroth, attorneys
(John M. Donnelly, of counsel)

For the New Jersey State Employees Association,
Fox & Fox, attorneys
(David I. Fox, of counsel)
Miller, Cohen, Martens & Sugarman, attorneys
(Nancy Schiffer, of counsel)

DECISION AND ORDER

On December 16, 1980, the undersigned directed mail ballot elections in four separate statewide units consisting of approximately 32,028 state employees: (1) Administrative and Clerical Services Unit (approximately 11,496 employees), (2) Professional Unit (approximately 10,392 employees), (3) Primary Level Supervisors Unit (approximately 8,666 employees), and (4) Higher Level Supervisors Unit (approximately 1,474 employees), D.R. No. 81-20, 7 NJPER 41 (¶12019 1980). Three employee organizations -- Communications Workers of America, AFL-CIO ("CWA"), American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), and New Jersey State Employees Association affiliated with American Federation of Teachers, AFL-CIO, ("SEA/AFT") -- qualified to participate in the mail ballot elections. Employees could vote for any of the three organizations or none.

On January 23, 1981, the Public Employment Relations Commission (the "Commission") affirmed the decision directing elections, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), and on February 12, 1981, the Commission denied SEA/AFT's Motion for Reconsideration, P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981).

On February 17, 1981, the Commission mailed ballots to employees in each of the four units,; instructions accompanying the ballot provided that in order to be included in the count, the ballot had to be received at the Commission's postal address by 4:30 p.m. on March 9, 1981.

During the period commencing with the evening of March 9, 1981 and ending with the afternoon of March 12, 1981, Commission staff agents sorted and counted the ballots in each of the four units. The results in three of the four units were dependent upon the resolution of certain challenged ballots. 1/ On March 25, 1981, and on April 3, 1981, the undersigned issued two decisions containing determinations of challenged ballots. On April 6, 1981, after a count of the challenged ballots on which there had been a determination, revised tallies of ballots issued in the three remaining units. These results appear below.2/

On March 18, 1981, SEA/AFT, pursuant to N.J.A.C. 19:11-9.2(h), filed eleven objections to the elections.3/ SEA/AFT has filed three supporting statements and documentation. No other party filed objections. This decision will consider SEA/AFT's objections and supporting documentation.

1/ Challenged ballots were not determinative of the results in the Professional Unit. The results, listed below, would establish the need for a runoff between CWA and AFSCME, N.J.A.C. 19:11-9.3:

Professional Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
2,313	1,722	1,475	582	211	185

2/ Administrative and Clerical Services Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
3,165	1,373	1,183	323	475	170

Primary Level Supervisors Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
2,162	1,317	1,193	463	268	51

Higher Level Supervisors Unit

CWA	AFSCME	SEA/AFT	No	Void	Challenged
349	226	222	155	61	7

Pursuant to the Act and Commission rule 19:11-9.5, to be certified as the exclusive representative, an employee organization must receive a majority of the valid ballots cast in the election.

3/ A copy of SEA/AFT's objections is attached hereto as Appendix A.

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.

Under N.J.A.C. 19:11-9.2(i), if the Director of Representation 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 the objections.

In discharging his duties under N.J.A.C. 19:11-9.2(h) and (i), the undersigned must keep firmly in mind the presumption that the Commission articulated 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 presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence or 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 Passaic Valley Sewerage Comm., P.E.R.C. No. 81-51, 6 NJPER 504 (¶ 11258 1980); 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 305 (¶ 10166 1979); In re Cty. of Salem, D.R. No. 81-30, 7 NJPER ___ (¶ 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. of Chosen Freeholders, D.R. No. 78-7, 3 NJPER 272 (1977). 4/

4/ Parties filing objections to private sector elections must meet a similarly stringent burden of specificity and materiality. Thus, in NLRB v. Golden Age Beverage Co., 71 LRRM 2924, 2926 (5th Cir. 1969), a leading case, the Court observed that the objecting party had the burden of proving that there had been prejudice to the fairness of the election. The Court further stated:

> This is a heavy burden; it is not met by proof of mere misrepresentations or physical threats. Rather, specific evidence is required, showing not only that the unlawful acts occurred, but also, that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election.

Continued

In discharging his duties in this particular case, the undersigned must assess the allegations of impropriety in the context of a year-long organizational and election campaign involving more than 32,000 employees working at numerous locations throughout the State and the extensive distribution of election information through the parties' own efforts and media coverage. The undersigned has set out to determine whether the proffered evidence "precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law." The failure to submit evidence of this quality would result in the immediate dismissal of the objections.

In its first objection, SEA/AFT asserts that the Commission engaged in six allegedly arbitrary actions during the conduct of the elections. The undersigned will consider each of the six subparts of the first objection seriatim.

4/ Continued
In AFSCME, Local 1959 v. P.E.R.C., supra, at 468-469, our Superior Court, Appellate Division, quoted this language with approval. See also, e.g., NLRB v. Whitney Museum of American Art, 105 LRRM 3239 (2nd Cir. 1980); NLRB v. Dobbs House Inc., 103 LRRM 2889 (5th Cir. 1980); NLRB v. Spring Road Corp., 98 LRRM 3309 (9th Cir. 1978); Magnolia Screw Products v. NLRB, 94 LRRM 3255 (6th Cir. 1976); NLRB v. O.S. Walker, 81 LRRM 2726 (1st Cir. 1972); Richardson Engineering Co., 248 NLRB No. 73 (1980). The purpose behind imposing such a demanding burden of proof is to avoid unnecessary delay in certifying a bargaining representative, thus prolonging labor unrest and impeding negotiations. See United Steelworkers of America v. NLRB, 86 LRRM 2984 (5th Cir. 1974), cert. den., 419 U.S. 1049. Stressing this purpose is particularly appropriate here because the collective agreements covering the 32,000 state employees expire on June 30, 1981.

Initially, SEA/AFT complains that the Commission failed "...to remedy the automatic return of ballots to voters by the U.S. Post Office despite a request by SEA/AFT." In support of this allegation, SEA/AFT submitted a copy of a February 23, 1981 letter to the Chairman of the Commission. In this letter, it claimed that the Post Office had returned "...hundreds of ballots..." to their senders and requested that the Commission "...immediately notify all voters by first class mail of the procedure they may now follow to insure..." timely delivery of their ballots. SEA/AFT only produced two affidavits of employees who allegedly had their ballots returned to them.[5/] Finally, after the undersigned provided all parties an opportunity to inspect envelopes which were received at the Commission's postal address after the balloting cut-off date, SEA/AFT alleged that approximately 50 envelopes revealed indications of having been returned to the voters before being sent to the Commission.[6/]

5/ One affiant states that the Post Office returned his ballot on February 25, 1981; the next day he took the common sense step of crossing out the material identifying the voter's address on the white label on the left hand corner of the ballot's return envelope and remailing the ballot. The second employee alleged that he received his ballot back on March 7, 1981; his father redeposited the ballot in the mail. Commission records reveal that the ballot was received and counted.

6/ In particular, SEA/AFT contends that the 50 envelopes either had the word "to" inserted before the Commission's address or the identification label scratched out and that 18 of these envelopes had been double stamped. These markings do not necessarily establish the return of these envelopes to the voters. Double stamping might have resulted from Post Office errors in misrouting a piece of mail or in the transmission of mail from a substation to a delivery station.

SEA/AFT has produced no factual foundation whatsoever to show that the Post Office "automatically" returned envelopes to the voters or that "hundreds" of voters receiving returned envelopes were confused or even disenfranchised. The proffered evidence shows at most that a few individuals had envelopes returned to them. SEA/AFT's only complaint with respect to the returned envelopes is the alleged failure of the Commission to notify all 32,000 voters by first class mail in the middle of the election process of a procedure to utilize with regard to returned ballots.

Along with a ballot, the Commission sent the prospective voters instructions which encouraged voters with problems to call the Commission for answers. When informed, after a week of the three week election process had already passed, that a few individuals had their envelopes returned to them by the Post Office, Commission staff agents took prompt and effective steps to remedy the situation. Five voters called the Commission directly, and received instructions to cross out home address information contained in the identifying material on the white label and to redeposit the ballot. All the unions were likewise informed to so instruct individuals who contacted them directly. In the sorting and counting of envelopes, it was observed that individuals had either understood and followed these instructions, or had discovered this common sense remedy on their own.

In sum, the returned envelope problem was a quite insignificant and isolated phenomenon in the elections. Even if Post Office employees, not Commission employees, made a few

isolated mistakes in returning envelopes to the voters, the Commission certainly acted within its discretion in declining to send a first class letter to all approximately 32,000 voters in order to correct a problem which may have affected, at the most, only a handful of employees. Commission representatives took effective steps commensurate with the small size of the problem to inform inquiring voters what to do with the returned envelopes. Accordingly, the undersigned finds that SEA/AFT has failed to provide sufficient specific evidence to prove either that the Commission acted improperly in declining to send the requested notice or that, as claimed by SEA/AFT, "...confusion or havoc resulted causing many of the voters in question not to return the ballots and causing others to return them late."

SEA/AFT next asserts that the Commission delayed "...the sending of duplicate and challenged ballots to requesting employees." SEA/AFT attached affidavits of four employees to support this allegation.

Three of these employees asserted that SEA/AFT requested ballots on their behalf, but they did not receive ballots. Commission records show that SEA/AFT requested a ballot for one of these employees, a member of the Administrative and Clerical Services Unit, on Friday afternoon, Friday 27, 1981; on Monday, March 2, 1981, Commission employees mailed the ballot to the specified address. With respect to the other two employees, Commission records evidence that when SEA/AFT requested ballots

on their behalf, it failed to identify their unit or to supply a sufficiently specific job title for Commission employees to determine their unit.[7/] Without such identifying information, Commission representatives could not possibly send these employees a ballot for a particular unit. Commission representatives informed SEA/AFT of the need for more specific job titles or unit identifications, but SEA/AFT never supplied the necessary information.

The fourth employee -- a Primary Level Supervisor -- claimed that she requested SEA/AFT to secure a ballot on February 20 or 23, but did not receive one until March 5 or 6 at which time she promptly voted and returned her ballot. Commission records show that SEA/AFT requested a ballot on February 24, and that the ballot was sent to the specified address on February 26.

During the balloting period, the Commission distributed to all parties lists of challenged ballots issued upon request; these lists indicated the date of request and the date of issuance. The undersigned has reviewed these records as well as the information provided to the Commission initiating a request. These records show that Commission staff agents processed all requests for ballots identifying the name of the voter and unit placement expeditiously, usually on the date the request was received but in no event later than 48 hours, unless a weekend interceded.

7/ Thus, SEA/AFT listed one of the employees as a conferee in the Taxation Division; this job title does not fall within any of the four election units. SEA/AFT listed the other employee as a Project Engineer; this title could fall into any of several different units involved in the election or could fall outside the election units altogether.

Thus, in an election involving over 32,000 voters, and having in its possession Commission records revealing the dates on which ballots were requested and supplied, SEA/AFT has only claimed four instances of alleged delay or failure to forward a ballot.[8/] Additionally, Commission records indicate that all proper requests for ballots were promptly handled. Accordingly, there is no factual basis for the claim that Commission delay caused many ballots to be mailed late so that they could not be received by March 9, 1981.

In the third subpart of its first objection, SEA/AFT alleges that the Commission acted improperly by "...sending, en masse, challenged ballots to employees employed in the Offices of Civil Service and Budget and Accounting without notification to or agreement among the parties concerning their elegibility." The undersigned noted, the dispute among the parties concerning the eligibility of these employees in his decision directing an election. Although these employees work in eligible job titles, the State did not include them on the eligibility list because it believed they performed confidential duties. In the face of long-

8/ In its review of envelopes received during the week after the election, SEA/AFT observed a total of 78 untimely envelopes received from voters whose names were not on the eligibility lists. These envelopes do not support a contention that Commission agents delayed in responding to requests.

standing clarification of unit petitions seeking to resolve the unit status of these employees, and the State's refusal to include these employees on the eligibility list, it would have been futile to discuss further the eligibility of these employees with the parties. SEA/AFT offers no clue as to how the provision of ballots to a large number of employees whom it claimed to be eligible voters could conceivably discourage these employees from voting or could adversely affect a particular union. Providing such ballots could only promote participation in the election process. Accordingly, the undersigned determines that SEA/AFT has failed to provide specific evidence showing prejudice to any union, voter confusion, or discouragement of employees from participating in the election.

SEA/AFT next alleges that the undersigned contravened N.J.A.C. 19:11-5.1 when he announced the dates of the elections without making a prior attempt to secure the agreement of all parties. Contrary to SEA/AFT's contention, nothing in N.J.A.C. 19:11-5.1 requires the Director of Representation to allow the parties to discuss and agree upon the election dates; instead, the rule, by its repeated use of the word "may", invests the Director with discretion to determine whether a meeting for such a purpose would be helpful.[9/] In the instant case, the undersigned

9/ N.J.A.C. 19:11-5.1 provides in pertinent part:

> ...The director of representation may provide an opportunity to the parties to discuss and agree upon the dates, hours and places of the election, and the designations on the ballot, subject to his or her approval. The director of representation may authorize an officer to convene a conference among the parties for such purpose, at any time subsequent to the direction of election. In the absence of an agreement among the parties as to the dates, hours and places of the election, and the designations on the ballot, the director of representation shall determine the same. (Emphasis supplied)

set the date of the elections after taking into consideration, inter alia, the enormous administrative demands of mail ballot elections involving more than 32,000 employees, the policy of the New Jersey Employer-Employee Relations Act favoring the prompt holding of elections, and the provision of a reasonable opportunity for the resolution of the Article XX proceedings which SEA/AFT had initiated with the AFL-CIO. D.R. No. 81-20, supra (Slip Opin. at pp. 35-36). Thus, the undersigned exercised his discretion to set the dates. Indeed, SEA/AFT had the opportunity to raise this issue before the Commission in its Request for Review when it questioned the timing of the election. The Commission affirmed the undersigned's determination to commence the elections on the announced date. P.E.R.C. No. 81-94, supra (Slip Opin. at pp. 23-26). Finally, SEA/AFT has failed to identify any way in which this decision had an adverse effect on either it or the voters. Accordingly, the undersigned determines that the Commission has already affirmed the scheduling of the elections and that SEA/AFT has proffered no specific evidence to establish that the dates selected for the elections prevented any employees from exercising their free choice.

SEA/AFT next alleges that the Commission erred when it failed to establish written guidelines for the elections. The Commission's rules contain five pages of detailed election procedures. See, N.J.A.C. 19:11-9.1 through 19:11-9.6. Beyond these detailed procedures, the very complexity, magnitude, and unprecedented

nature of the instant elections made additional written guidelines covering every potential detail impracticable; flexibility proved to be a necessary asset in responding to unforeseeable developments. At all times, the undersigned and his representatives fully informed the parties of the ground rules and discussed any problems arising from these rules with the parties. The only detriment SEA/AFT attributes to the absence of written guidelines is the alleged "addition" of a "rule" requiring that a party requesting a ballot on a voter's behalf supply the Commission with the voter's specific unit or job title. Elections in four units were being conducted simultaneously. In fact, as Commission representatives informed the parties and as common sense bears out, this procedure was always a necessary requirement in order to process a request properly. After all, the Commission could not forward a proper ballot to an individual unless the requesting individual or organization specified the unit to which he belonged. SEA/AFT has not alleged that it was unable to comply with this requirement or that the requirement had a disproportionately greater impact on it than on other competing employee organizations. Accordingly, the undersigned determines that SEA/AFT has failed to proffer specific evidence which would establish that this procedural requirement constituted improper conduct or prejudiced any competing employee organization.

The final component of SEA/AFT's first objection is an allegation that a Commission representative, at a conference held during the counting of the ballots, improperly requested "...secret communications from the parties relative to their positions on voter eligibility...." SEA/AFT alleges that it was prevented from asserting a claim of eligibility on behalf of employees whose eligibility was no longer being asserted by another employee organization. In fact, while all employee organizations were afforded an opportunity to modify their positions concerning voter eligibility, SEA/AFT was never precluded from asserting an effective claim of eligibility for each disputed voter. Furthermore, there were no determinations made concerning voter eligibility before the parties received several opportunities to submit statements of position and documentation concerning their claims of eligibility or ineligibility. SEA/AFT did submit statements of position and documentation with regard to several of these employees and the undersigned considered this material in reaching his determination on challenged ballots. SEA/AFT filed a request for review of this determination, but did not allege any claimed impropriety with regard to its ability to assert claims of eligibility. Accordingly, the undersigned determines that SEA/AFT has failed to provide specific evidence to establish that its opportunity to assert claims of voter eligibility was in any way impaired or denied.

The undersigned now turns to SEA/AFT's objections to the conduct of the State during the election campaign. In its

first such objection, SEA/AFT maintains that the State acted improperly when on or about February 27, 1981, it "reversed its initial position" and decided to contest the eligibility of approximately 350 Judiciary employees and when the Administrative Director of the Courts subsequently notified Judiciary employees of the Judiciary's position on eligibility. According to SEA/AFT, these actions confused Judiciary employees and dissuaded them from voting. Since the undersigned has already sustained the State's challenges to the votes cast by the Judiciary employees in question, D.R. No. 81-34, 7 NJPER ___ (¶_____ 1981), the present objection is now moot.[10/] The voting or non-voting of Judiciary employees is now irrelevant.[11/] Accordingly, the undersigned determines that the objections concerning the Judiciary employees could not have affected the outcome of the elections.

10/ SEA/AFT's reliance on Banner Bedding, Inc., 214 NLRB No. 139, 87 LRRM 1417 (1974) is misplaced. There, the Board sustained a challenge to an employee's ballot on the basis of a pre-election oral agreement between the employer and the union that the employee was not eligible. The Board emphasized that such oral agreements could only be binding on the rare occasion when all parties admitted that a firm agreement had been reached. In the instant case, the State, in a letter dated February 27, 1981, asserted that it never entered the alleged agreement. Also, representatives of the Executive cannot constitutionally bind the Judiciary with respect to the latter's employees, Passaic Cty Probation Officers Ass'n v. County of Passaic, 73 N.J. 247 (1977).

11/ This analysis results in the dismissal of another objection: lack of SEA/AFT access to Judiciary employees. Further, SEA/AFT did not allege that the State permitted other employee organizations to meet with Judiciary employees.

Next, SEA/AFT objects to an alleged modification of the State's policy on bulletin board use. In particular, SEA/AFT finds the following clause of the policy objectionable on its face:

> Bulletin board space should be made available in order to post information submitted by the employee organizations through the responsible management official provided that such material is approved in advance as to content by the administration. The posted material shall not contain anything profane, obscene or defamatory of the State or its representatives and employees, nor anything constituting election campaign material.

The instant objection, standing alone, affords no basis for a determination that the State's bulletin board policy somehow unfairly affected the election process to the detriment of SEA/AFT. On its face, the policy applied equally to all employee organizations and disadvantaged none. See, In re Nestle Co., 103 LRRM 1567, 248 NLRB No. 106 (1980); Axelson, Inc., 251 NLRB No. 44, 105 LRRM 1027 (1980); and Flat River Glass Co., 234 NLRB No. 200, 98 LRRM 1032 (1978).[12/] A restrictive bulletin board policy might hurt the flow of election information if no other channels for the distribution of information existed. Here, alternate channels abounded, such as leaflet distribution and meetings arranged on the employer's premises. Additionally, all parties

12/ SEA/AFT's citations of Liberty Nursing Homes, Inc., 236 NLRB No. 55, 99 LRRM 1435 (1978) and Great Lakes Steel, Div. of Nat'l Steel Corp., 236 NLRB No. 115, 98 LRRM 1551 (1978), enforced 625 F.2d 131 (6th Cir. 1981), are inapposite. Neither case arose in a representation context, and neither case suggests that a union which loses an election to a competing labor organization can challenge the outcome on the basis of a uniformly applied bulletin board rule.

received a list setting forth the names and addresses of all eligible voters; the parties could use the lists to mail informational material to the voters. Because of the scope of the statewide elections, newspapers, radio and television stations covered the pre-election campaigning extensively. It is difficult, if not impossible, to imagine how any state employee could, under these circumstances, remain ignorant of the positions of the competing organizations. Accordingly, the undersigned finds that SEA/AFT has failed to provide specific evidence to establish that the bulletin board policy on its face discriminated against it or that the policy prevented employees from obtaining information relevant to their choice in the elections.[13/]

SEA/AFT also avers that the State discriminatorily applied the bulletin board policy in an attempt to favor CWA and AFSCME as opposed to SEA/AFT. Affidavits accompanying the objections alleged that in February 1981, CWA placed posters with a calendar at the bottom and the letters CWA at the top in the Division of Taxation and in the Department of Transportation design office in Trenton, and that on a Tuesday in the second or third week of February, an employee saw a copy of a document entitled "AFSCME Public Advocate" on a bulletin board in the

13/ In a related objection, SEA/AFT asserts that the State violated its agreement with SEA/AFT when it promulgated its modified bulletin board rules. The undersigned concludes that SEA/AFT could not legally insist upon negotiated bulletin board rights greater than those afforded competitors during the representation campaign. See, In re Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976).

Department of Education in Trenton. The affidavits also alleged that SEA/AFT posters and internal documents were immediately removed after placement on bulletin boards. SEA/AFT did not produce copies of any of the above-mentioned documents.

If, as SEA/AFT claims, placement of campaign materials on bulletin boards was prohibited, then the removal of such materials would be consistent with the State's policy. SEA/AFT cites only two isolated examples of the appearance of CWA or AFSCME campaign material on State bulletin boards in the context of a statewide campaign involving more than 32,000 employees working in numerous and diverse locations. Compare, Heath Co., 196 NLRB No. 29, 79 LRRM 1657 (1972). Accordingly, the undersigned determines that the evidence consisting of two isolated incidents is insufficient to establish either discriminatory treatment directed against SEA/AFT by the State or objectionable conduct affecting the results of the election.

SEA/AFT next alleges that the State hampered its meetings while promoting CWA meetings. SEA/AFT's proffered proof of the State's alleged restrictions on SEA/AFT meetings consists of only three incidents: (1) the termination of a two hour classroom meeting one-half hour early when students started to arrive; (2) the substitution on one occasion of the employees' cafeteria for a previously reserved conference room; and (3) a manager's statement that an employee would have to contact officials in Trenton to determine the availability of a lounge area for a

meeting. The undersigned finds that none of these incidents could have appreciably restricted SEA/AFT's ability to communicate with employees throughout the State during an extended and extensively reported election campaign.

In contrast to the above "restrictions" on its ability to hold meetings, SEA/AFT alleges that a CWA supporter offered coffee to state employees three times a week during the month preceding the election in an office building in Newark in which the State leases office space. SEA/AFT asserts that up to 200 employees and some management personnel attended these "...coffee meetings." SEA/AFT's proffered evidence does not support a claim that the alleged CWA activity constituted meetings on the employer's premises requiring advance approval or that the employees received the coffee on work time rather than breaks. In addition, there was no allegation that SEA/AFT requested that these meetings be stopped or that it requested , and was denied, equal time for meetings of a similar nature. Without such an evidentiary nexus, the proof offered cannot support a contention that the State treated SEA/AFT and competing organizations unequally and thus denied SEA/AFT a fair opportunity to present its case to prospective voters.

In connection with its allegations that the State approved meetings on an unequal basis, SEA/AFT alleges that the State, in contravention of its guidelines, permitted CWA supporters unfettered access to State employees at their working sites.

According to one affidavit, two individuals visited two floors at the Labor & Industry building in Trenton on two occasions and gave employees pro-CWA materials; the affidavit does not suggest that particular State officials knew of or approved these visits. Another affidavit stated that on one occasion, "management people" saw employees leaving handbills on desks on one floor of the Department of Taxation building. A third affidavit stated that a CWA supporter walked through work areas in a Newark office building and gave employees literature and pens; again, no allegation that particular State officials approved these visits appears. Finally, an affidavit alleged that during the period between April 21, 1980 and June 30, 1980, over seven months before the election, a State employee distributed CWA leaflet flyers and attended CWA meetings during his working hours. The affiant alerted the employees' supervisor; as far as he knew,[14/] however, "no action was ever taken to restrict [the alleged] activities."

These incidents do not constitute sufficient evidence to establish the close alliance between CWA and the State that SEA/AFT alleges nor do they prove that CWA enjoyed a material advantage in the distribution of material to employees. Viewed in their true context -- a year long campaign involving thousands of employees in numerous facilities throughout New Jersey -- these incidents pale into microscopic insignificance. Accordingly, the

14/ This qualification may be significant since the affiant changed job assignments on June 30, 1980, and did not purport to know what happened after that date.

undersigned determines that SEA/AFT has failed to provide specific evidence establishing unequal access to meetings and worksites affecting the outcome of the elections.

In its final objection raising alleged State favoritism SEA/AFT alleges that the State allowed CWA representatives to process a grievance, but denied SEA/AFT representatives this right. Only one instance of a CWA representative processing a grievance is alleged; rather than asserting personal knowledge, the affiant stated that "During the second week of March, 1981, it came to [her] attention that a grievance was processed by [an unnamed] CWA representative" and that "it was her understanding" that a certain resolution was reached. Only one instance of the State's alleged refusal to process an SEA/AFT grievance is specified.

SEA/AFT has failed to provide competent evidence based on personal knowledge to establish that a CWA representative presented a grievance which the State processed during the pre-election or election period. In addition, SEA/AFT has failed to

produce evidence showing that any eligible voters other than the one affiant was aware of CWA's alleged processing of a grievance. Under these circumstances, the undersigned finds that SEA/AFT has not adduced specific competent evidence to establish either favored treatment accorded CWA in grievance processing or knowledge on the part of eligible voters of such treatment which could have affected the results of the elections.

SEA/AFT's next objection asserts that the pending Article XX cases before the AFL-CIO preclude any assurance that either CWA or AFSCME, if certified, will be able to represent the employees in question. This objection merely rehashes an issue which the Commission has already decided twice, first when it affirmed the undersigned's decision to proceed with the February 17, 1981 mail ballot elections, P.E.R.C. No. 81-94, supra at 23-26, and second when it denied SEA/AFT's Motion for Reconsideration. P.E.R.C. No. 81-95, supra at 5. The additional passage of time without a definitive Article XX ruling and the nearing of the June 30, 1981 expiration date of the current agreements accentuate the Commission's finding that "...sufficient time and opportunity have been given to resolve NJSEA's effort to seek AFL-CIO protection...and an additional extension might serve to deprive the employees herein of prompt choice of representative, if any, and to negotiate a new contract." P.E.R.C. No. 81-94,

supra at 23.[15/] Accordingly, the undersigned finds that SEA/AFT has merely restated an argument previously considered and decided by the Commission and has not furnished specific evidence to establish that any conduct has occurred which would warrant the setting aside of the election as a matter of law.

The next objection asserts that CWA representatives threatened employees engaged in SEA/AFT organizational activity. One affidavit alleged that on one occasion, a CWA organizer employed at the Department of Treasury in the Administrative and Clerical Services Unit told another unit employee: "my people are going to get you after we win the election." A second affidavit alleged that on or about January 15, 1981, the Superintendent of Collection Administration informed an SEA/AFT shop steward in the Primary Level Supervisors Unit that "...CWA had called and threatened to do bodily harm to [him]." The Superintendent refused to identify the person who allegedly made the threat. The shop steward allegedly discussed this incident with about 15 or 20 employees and with his supervisors.

The two alleged threats are isolated in the extreme. In a unit of approximately 11,496 Administrative and Clerical employees, only one received an alleged threat. The communication is vague on its face and reflects the overheated partisanship

15/ In its supplemental brief, SEA/AFT avers that the AFL-CIO Executive Council directed an AFL-CIO Umpire to rehear the Article XX cases on May 4, 1981. In any event, SEA/AFT has no concrete evidence of present protection and only a speculative hope of obtaining future protection.

of an individual union adherent rather than evidence of an official union-approved adoption of scare tactics. See, e.g., NLRB v. Morgan Health Care Center, 103 LRRM 2800 (1st Cir. 1980); NLRB v. Spring Road, supra. The second threat was directed , in a circuitous manner, to only one SEA/AFT supporter, a Primary Level Supervisor in a unit containing approximately 8,666 employees. Of equal importance, the alleged threat occurred more than one month before the elections; in the ensuing period, no action was taken on the original threat and no more threats were received. Assuming that the original threat carried coercive potential for the few employees who heard of it, the passage of time without its maturation or even reiteration surely negated any inference that CWA had deliberately made such threats part of its campaign or that the alleged threat poisoned the general election atmosphere with fear and coercion, thus making a fair election impossible. See, NLRB v. J.C. Penney Co., Inc., 96 LRRM 2391 (5th Cir. 1977); NLRB v. Bancroft Mfg. Co., 89 LRRM 3105 (5th Cir. 1975); United Steelworkders of America v. NLRB, supra; NLRB v. Griffith Oldsmobile Inc., 79 LRRM 2650 (8th Cir. 1972); Cross Baking Co. v. NLRB, 78 LRRM 3059 (1st Cir. 1971); Rockwell Mfg. Co. v. NLRB, 55 LRRM 2868 (7th Cir. 1964); NLRB v. Golden Age Beverage Co., supra; Connecticut Foundry Co., 247 NLRB No. 145, 103 LRRM 1496 (1980); Caron Nat'l, Inc., 246 NLRB No. 179, 103 LRRM 1066 (1979); Wayne Metal Co., 246 NLRB No. 61, 102 LRRM 1536 (1979); Firestone Steel Products Co. 241 NLRB No. 57, 100 LRRM 1612 (1979); S & S Corrugated Paper Machinery Co., 84 NLRB No. 173, 26 LRRM 1112 (1950); and The Developing Labor

Law, p. 48 (Cum. Supp. 1976).[16/] Accordingly, the undersigned concludes that SEA/AFT has failed to provide specific evidence that CWA threats permeated the election atmosphere to such an extent that the outcome of the elections could have been affected.

The eleventh and last objection alleges that "unresolved, unremedied unfair practice charges protesting the State's refusal to bargain and its unlawful assistance to CWA and AFSCME" made free and fair elections impossible. The undersigned thoroughly considered this issue in his decision directing an election and rejected SEA/AFT's position. D.R. No. 81-20, supra at 19-29. SEA/AFT appealed, and the Commission affirmed. P.E.R.C. No. 81-94, supra at 19-22. SEA/AFT's only evidence of the actual intrusion of this issue into the election process consists of one sentence in one AFSCME advertisement which mentions the State's

16/ Contrast Methodist Home v. NLRB, 596 F.2d 1173, 101 LRRM 2139 (4th Cir. 1979), cited by SEA/AFT. There, one hour before the election, a known union adherent, in the presence of several other employees, approached a union opponent with a knife, held the knife to the opponent's neck and threatened to start cutting her abdomen open; the union narrowly won the election. Such an incident, if true, might irreparably pollute the election atmosphere.

Standard Knitting Mills, Inc, 172 NLRB No. 114, 68 LRRM 1412 (1968) is also inapposite. There, high level management representatives threatened plant closure and loss of benefits shortly before the election; similar threats had been made earlier in the campaign. Although these threats were directly communicated to only four employees out of nearly 3,000 in the unit, their origin and nature assured widespread distribution throughout a single plant facility and their timing made the impact more coercive and less curable. The union lost the election by only 17 votes.

bargaining purposes.[17] To the extent SEA/AFT found itself aggrieved by this solitary sentence, it had ample time -- more than a month -- to refute or clarify it. See, In re County of Salem, D.R. No. 81-30, 7 NJPER ___ (¶_____ 1981); Lipman Motors, Inc. v. NLRB, 78 LRRM 2808 (2nd Cir. 1971), cert. den. 405 U.S. 1032; General Knit of California, Inc., 239 NLRB No. 101, 99 LRRM 1687 (1978); Connecticut Foundry Co., supra. Accordingly, the undersigned finds that SEA/AFT has merely restated an argument previously decided by the Commission and has not furnished specific evidence that the pendency of the unfair practice charges prevented the expression of employee free choice.

Based upon the foregoing, the undersigned dismisses the election objections filed by SEA/AFT. In accordance with the rules of the Commission, and the revised Tallies of Ballots, as set forth in footnotes 1 and 2, the undersigned shall issue the appropriate certification of representative (attached hereto and made a part hereof), to CWA in the Administrative and Clerical Services Unit and shall direct that run-off elections be conducted among employees in the Professional Unit and in the Primary Level Supervisors Unit.

Accordingly, pursuant to N.J.A.C. 19:11-9.3(a), the undersigned directs that run-off elections be conducted among Professional Unit employees and among Primary Level Supervisors Unit employees and that ballots be mailed to employees in these

17/ SEA/AFT has produced two copies of this advertisement: one appeared on January 16, 1981 in a Trenton newspaper; the other is undated and does not carry the name of any newspaper.

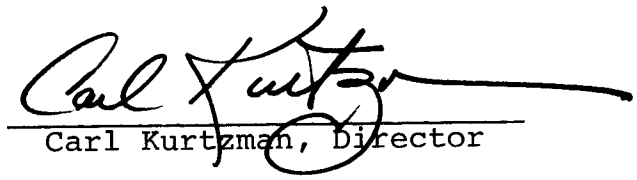
units on May 7, 1981 and that the ballots shall be returned to the Commission's postal address on May 27, 1981. Thereafter, the ballots will be tallied.

Those eligible to vote are employees who were eligible to vote in the original election and who are in an eligible category on the date of the run-off election. Employees shall vote as to whether they desire to be represented for the purpose of collective negotiations by the Communications Workers of America, AFL-CIO, or American Federation of State, County and Municipal Employees, AFL-CIO (or their appropriate supervisory affiliates).

A majority of valid ballots cast by all employees in each unit shall determine the results of the elections. The elections directed herein shall be conducted in accordance with the Commission's rules.

The undersigned further directs that all parties convene on Wednesday, April 15, 1981, at 10:00 a.m., at the Commission's offices in Trenton, New Jersey, with respect to the further administrative investigation regarding the remaining, determinative challenge votes in the Higher Level Supervisors Unit.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION



Carl Kurtzman, Director

DATED: April 10, 1981
Trenton, New Jersey

PLEASE TAKE NOTICE that the undersigned attorneys for the New Jersey State Employees Association, Local 4089 a/w American Federation of Teachers, AFL-CIO, pursuant to N.J.A.C. 19:11-9.1 (h), file the following objections to conduct of the elections and to conduct affecting the results of the elections in the above-captioned cases:

OBJECTION NO. 1:

The Public Employment Relations Commission (PERC), by its representative Carl Kurtzman, Director of Representation, engaged in unprecedented unilateral and arbitrary actions in conducting these elections. These actions include: (a) failing to remedy the automatic return of ballots to voters by the U.S. Post Office despite a request by SEA/AFT; (b) delaying the sending of duplicate and challenged ballots to requesting employees; (c) sending, en masse, challenged ballots to employees employed in the Offices of Civil Service and Budget and Accounting without notification to or agreement among the parties concerning their eligibility; (d) unilaterally establishing election dates without first seeking agreement of the parties; (e) failing to establish written groundrules concerning the conduct of the election, and (f) requesting secret communications from the parties relative to their positions on voter eligibility in order to deny SEA/AFT an opportunity to raise bona fide eligibility questions.

OBJECTION NO. 2

On or about February 27, 1981, the State of New Jersey reversed its initial position that Judiciary employees are eligible voters and thereafter challenged all votes cast by the approximately 350 employees in payroll code 750.

OBJECTION NO. 3

The State's policy of restricting bulletin board use, announced January 2, 1981, as "Modifications of Employee Relations Policy Guide #1," is unlawful on its face because it requires prior management approval for posting on bulletin boards and because it is overly restrictive of employees' rights.

OBJECTION NO. 4

The State disparately enforced its rules concerning access to employees' work sites so as to hamper the SEA/AFT campaign and promote employees' contacts with CWA and AFSCME.

OBJECTION NO. 5

The State discriminatorily enforced its posting rule to allow postings of campaign literature by CWA and AFSCME and prohibit postings by SEA/AFT.

OBJECTION NO. 6

The State unlawfully refused to process grievances filed on behalf of employees by SEA/AFT, yet permitted CWA representation of employees.

OBJECTION NO. 7

The State violated its negotiated Agreements with SEA/AFT by unilaterally repudiating the provisions regulating access to employees and use of bulletin boards.

OBJECTION NO. 8

During the campaign period, the State denied SEA/AFT access to meet with Judiciary employees, preventing our reaching those employees with our election campaign.

OBJECTION NO. 9

CWA and AFSCME cannot give assurances that they will represent these employees, if certified, in view of the pending Article XX cases before the AFL-CIO.

OBJECTION NO. 10

CWA representatives and organizers made threats against employees who engaged in organizational activities on behalf of SEA/AFT.

OBJECTION NO. 11

Free and fair elections cannot be held in these four bargaining units because of unresolved, unremedied, unfair practice charges protesting the State's refusal to bargain and its unlawful assistance to CWA and AFSCME.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

State of New Jersey,
Petitioner,
-and-

C.W.A./AFL-CIO,
Employee Representative-Petitioner,
-and-

NJSEA-AFT/AFL-CIO,
Employee Representative-Intervenor,
-and-

AFSCME/AFL-CIO,
Employee Representative-Intervenor.

DOCKET NO. RO-81-126
RE-81-2

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;

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

Communications Workers of America, 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 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 employees employed by the State of New Jersey performing administrative and office clerical services excluding managerial executives, confidential employees, professional and craft employees, policemen, and supervisors within the meaning of the Act.

Carl Kurtzman, Director
of Representation

DATED: Trenton, New Jersey
April 10, 1981