

D.R. NO. 95-21

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

In the Matter of

NORTH BERGEN HOUSING AUTHORITY

Public Employer,

-and-

Docket No. RO-95-61

TEAMSTERS LOCAL 560, I.B.T.

Employee Organization

SYNOPSIS

The Director of Representation dismisses the employer's objections to an election and certifies the union to represent a unit of maintenance employees. The employer asserts that certain unit employees made pre-election predictions that "things would change" after the election, that another unit employee found his assigned company truck damaged after it was driven by a coworker favoring the union, and that the supervisor encouraged an employee to vote in favor of the union.

The Director found that the employers' assertions failed to establish a prima facie case that conduct occurred which would warrant setting aside the election.

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Appearances:

For the Public Employer  
Giblin and Giblin, Attorneys  
(Thomas Biamonte, of Counsel)

For the Employee Organization  
Schneider, Goldberger, Cohen, Finn  
Solomon, Leder & Montalbano, Attorneys  
(James Mets, of Counsel)

DECISION AND  
CERTIFICATION OF REPRESENTATIVE

A secret ballot election was conducted on January 19, 1995 among the maintenance employees of the North Bergen Housing Authority pursuant to a decision and direction of election,<sup>1/</sup> . Ten of the approximately 17 eligible voters chose representation by Teamsters Local 560, and five employees voted against representation. There were two challenged ballots which did not affect the election outcome.

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<sup>1/</sup> North Bergen Housing Authority, D.R. No. 95-16, 21 NJPER  
(¶ 1995)

On January 24, 1995, the Housing Authority filed an unfair practice charge against Local 560 alleging that certain conduct violated the Act and invalidated the election process. On January 26, 1995, the Housing Authority asked that its charge also be treated as post-election objections.

The charge, now converted to post-election objections, asserts,

...the intimidating and harassing conduct by individuals aligned with [Local 560] served to contaminate the election process so that an impartial and fair election was not conducted on January 19, 1995. ...given the small number of voters, individual acts, such as are referenced in the attached affidavit of Robert Villemont, invalidated the election process.

The affidavit of Authority Maintenance Worker Robert Villemont states that another Authority maintenance employee, Frank Natale Sr., repeatedly commented, "wait until this is all over, everything will change, you wait and see." Natale allegedly repeated this statement on the morning of the election and also said "Today is V-Day." The affiant further states that another maintenance employee, Frank Natale Jr, told him on January 9, "Things will be different around here, the whole place is going to change." Mr. Villemont asserts that these comments made him feel threatened, intimidated, harassed and worried that he would lose his job if he voted against the Union.

On February 3, 1995, the Authority filed two additional affidavits in support of its objections:

Maintenance employee John Kennel states in his affidavit that Frank Natale Jr. told him, "It's getting near the time of the election. Things will change once the Union is in." Kennel states that he felt upset, threatened and concerning about his job by these remarks.

Maintenance employee Edward Malpica states in his affidavit that in September or October, 1994, he was assigned to drive an Authority truck that had been driven the night before by lead maintenance employee Nick Dominy. He states that the truck wheels were locked the next morning, and asserts that Dominy "may have caused the problem because he was strongly in favor of the union."

Malpica further alleges that Maintenance Superintendent Frank Calabria told him in December, 1994 to vote in favor of the union. He states that these comments made him fearful of his job.

\* \* \*

N.J.A.C. 19:11-9.2(h) sets forth the initial standard for review of 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)

This Rule sets up two separate and distinct components for evaluating election objections. The first is a substantive

component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present for the objecting party to make its prima facie case. Under N.J.A.C. 19:11-9.2(i), if the objecting party presents a prima facie case, I initiate an investigation; if the objecting party fails to proffer sufficient evidence to support a prima facie case, I may immediately dismiss the objections.

In Jersey City Dept. of Public Works, P.E.R.C. No. 43, NJPER Supp. 43 (1970), 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.

I have reviewed the objections and the supporting affidavits submitted by the Authority. I find that it has not established a prima facie case as required by N.J.A.C. 19:11-9.1(h). A review of the Authority's objections and supporting documentation shows the following:

Campaign Statements

The statements allegedly made by Frank Natale Jr. and Frank Natale Sr. are not inherently coercive in nature. Statement made during the course of an election campaign which are simply predictions of conditions if the union is elected, or not, are not grounds for setting aside an election. Here, the employees' predictions about the effects of the election outcome are so generalized, they cannot even be characterized as positive or negative predictions. Further, neither Natale Sr. or Jr. are in a position of authority with the Housing Authority such that their predictions that "things will change" or "things will be different" could be interpreted as a threat of employees' jobs. As maintenance employees, rather than representative of management, neither employee has the ability to fire anyone or eliminate jobs. Further, even the union could not make such a threat against an employee's job since it is the employer, not the union, which controls an employee's continuing employment status. Compare Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 63 (¶19021 1987).

Truck Damage Incident

Malpica alleges that his assigned truck was damaged after it was driven by another maintenance employee, Nick Dominy, who favored the union. First, this assertion is based only on supposition, not fact, that Dominy "may have" damaged the truck. Second, even assuming that Dominy did cause the damage, I cannot infer that Dominy is an agent of the union, or that any such damage was deliberate or connected with his support of union representation.

Superintendent's Comments

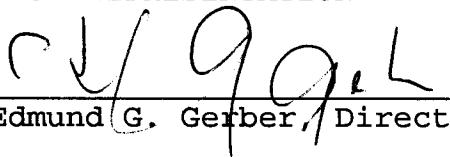
Malpica further states that Maintenance Superintendent Calabria told him to vote in favor of the union. There is no absolute

requirement that low level supervisors abstain from expressing their opinions regarding union representation. The fact that a superior expressed a preference for the union is not objectionable. County of Hudson - Meadowview Hospital, E.D. No. 13 (1970). If the Maintenance Superintendent is an agent of the employer, empowered to discipline or terminate employees, there might be some implied threat. However, this objection is filed by the employer. An objecting party cannot rely on its own agent's conduct to have the election set aside.

Moreover, Local 560 secured a majority of the votes in the election by a 10 to 5 margin, with two challenged ballots. Therefore, even if this employee were caused to change his vote as a result of the Superintendent's comments, this would not have affected the outcome of the election.

Based upon the foregoing, I find that the Housing Authority has not made a prima facie showing that conduct occurred which warrants setting aside the election as a matter of law. Accordingly, I dismiss the election objections filed by Local 11. In accordance with the rules of the Commission, the appropriate Certification of Representative is issued to Teamsters Local 560 (see attached).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: February 15, 1995  
Trenton, New Jersey