

D.R. NO. 92-24

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

LOCAL 702, PUBLIC EMPLOYEES SERVICE UNION,

Docket No. RO-92-65

Petitioner.

-and

LOCAL NO. 11, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director of Representation dismisses Local 11's objections to an election, finding that it failed to make a prima facie showing that conduct occurred which warrants setting aside an election conducted among the County's blue-collar workers.

The Director found that (1) a hand-drawn representation of the ballot distributed as part of a leaflet did not suggest that the Commission endorsed a ballot choice; (2) there was no evidence that the County permitted one union access to workers during the workday while denying access to the rival union; (3) a claim that the County permitted Local 702 to use Local 11's bulletin boards was unsubstantiated and did not raise an impropriety; and (4) the allegation that Local 702 misrepresented Local 11's dues two days before the election was not substantiated.

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Appearances:

For the Public Employer
Robert J. Hrebek, Assistant County Counsel

For the Petitioner
Robert Feeney, Business Agent

For the Intervenor
Schneider, Cohen, Solomon, Leder & Montalbano, Attorneys
(Jacqueline Poquette, of Counsel)

DECISION

Pursuant to a decision and direction of election,^{1/} a secret ballot election was conducted on February 6, 1992 among the blue collar employees of Monmouth County ("County"). A majority of the approximately 350 eligible voters chose representation by Local 702

^{1/} County of Monmouth, D.R. No. 92-11, 18 NJPER 79 (¶23034 1992)

Public Employees Service Union ("Local 702") over representation by Teamsters Local 11 ("Local 11") or no representative.^{2/}

Local 11 filed timely objections to the election on February 14, followed by supporting affidavits and legal argument on March 3, 1992. Local 11 alleges that the following conduct affected the election:

The County gave preferential treatment to Local 702 by permitting it to campaign on County property during working hours on February 3, 4, and 5;

The County permitted Local 702 to post campaign material on bulletin boards reserved exclusively for Local 11;

On February 3, Local 702 posted an election flyer which misrepresented Local 11's dues structure, leaving Local 11 insufficient time to cure the misrepresentation;

Local 702's February 3 flyer also contained a representation of a ballot in which an "x" appeared in Local 702's box. Local 11 asserts that this leaflet, which was not identified as a sample, was intended to deceive voters and interfere with their rights to choose a bargaining representative.

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

^{2/} Two challenged ballots were initially determinative of the outcome. After the challenged ballots were resolved on February 7, the final tally shows that 146 employees voted for Local 702, 128 employees voted for Local 11, and 16 employees voted against representation.

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

Access to Employees
During Work time

Local 11 asserts that the County preferentially permitted Local 702 to campaign during employees' worktime on February 3, 4, and 5. In support of this objection, Local 11 submitted affidavits from its Business Agents Donald Krauchuk and Thomas Walker. Both affidavits state that County policy restricted all union campaigning on County property to non-working hours; that Shop Steward John Vitilone told Krauchuk and Walker that Local 702 Business Agent Robert Feeney met with unit employees at the County Motor Pool during work time on February 3 with the County's approval; and that on February 4, Krauchuk and Walker saw Feeney and a unit employee leaving a locked office in the County Buildings and Grounds Complex. Krauchuk and Walker reported this to Building and Grounds Superintendent William Kelley.

Local 11 also submitted an affidavit from unit employee James Finnin, stating that he saw Feeney at the County Reclamation Center distributing campaign material at 4:10 p.m. on February 5. An affidavit from a second employee, Maurice Dalton, states that he saw Feeney distributing campaign material at the Reclamation Center at approximately 4:00 p.m. on that date.

In Ocean Cty. Judiciary, D.R. No. 86-25, 12 NJPER 511 (¶17191 1986), it was held that where the objecting party has not shown that the employer permitted access to one union while denying similar access to the other, an objection alleging unequal access will not be sustained.^{3/} Here, Local 11 asserts, but does not demonstrate, that the County adopted a policy prohibiting campaigning during working hours. Further, Local 11's allegation that Local 702 campaigned during worktime is not supported by sufficient evidence to make a prima facie case. The Krauchuk and Walker affidavits concerning the alleged February 3 meeting lack precision and contain only unsubstantiated hearsay--i.e., that they were told Feeney held a meeting on February 3 at the Motor Pool on unspecified "working hours." Statements in these affidavits concerning Feeney's February 4 appearance at the Building and Grounds Complex do not show that Feeney was there on employees' worktime nor that he met with any employees.

Local 11's affidavits from employees James Finnin and Maurice Dalton state that they observed Feeney distributing campaign material at the Reclamation Center on February 5 at about 4:00 or 4:10 p.m.

^{3/} See also, Essex County Probation Dept., D.R. No. 87-20, 13 NJPER 170 (¶18076 1987); Newark Housing Authority, D.R. No. 87-1, 12 NJPER 610 (¶17232 1986); cf. County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983) (an employer cannot completely and discriminately enforce a campaigning ban on its property against one union but not its rival).

However, Local 11 has failed to demonstrate that the targeted employees were working at this time.^{4/}

Local 11 has not produced sufficient evidence to show that (a) the County restricted access to employees on worktime, (b) Local 702 actually campaign among employees while they were working, or (c) the County knew about or permitted Local 702's representative to violate a no-solicitation ban (assuming one existed). Finally, Local 11 has neither asserted nor demonstrated that any such ban was discriminately enforced against Local 11.^{5/}

I find that the evidence presented does not demonstrate that the County permitted Local 702 to campaign among employees during working time while discriminately denying such access to Local 11.

Use of Bulletin Boards

Local 11 Business Agents Krauchuk and Walker state in their affidavits that the County permitted Local 702 to place campaign material on a bulletin board reserved for Local 11 union business. This assertion is conclusive and lacks specific first-hand knowledge. There is no showing that any specific County representatives knew about or

^{4/} Local 702 contends that work shifts end at 3:30, 4:00 and 4:15. Local 11 has asserted only that Feeney distributed materials at the reclamation center, not that he was talking to working employees in the reclamation center. It may be that he was distributing materials to employees as they were leaving work for the day.

^{5/} Local 11 did not claim that it was prevented from campaigning among employees. I note that Local 11 Business Agents Krauchuk and Walker state they were also at the County Maintenance Building at the same time Local 702's agent was seen there.

authorized Local 702's use of bulletin boards. Even assuming arguendo that the County granted such permission to Local 702, the Commission has previously held that the incumbent organization's contractual rights to exclusive use of bulletin boards does not apply during a representation election campaign. Once the incumbent enjoys the use of such communications medium, the employer is required to extend equal privileges to the rival organization. See Union County Regional Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976) (employer must grant to the challenging organization the same access to communications systems it grants to the incumbent); Essex County Vocational Technical School Bd. of Ed., P.E.R.C. No. 82-23, 7 NJPER 509 (¶12227 1981) (Board properly allowed rival union access to school communications facilities during an election drive period where the incumbent already enjoyed a contractual right to such access).

I find that the objection concerning Local 702's use of the bulletin board to be without merit.

Campaign Material Misrepresentations

Local 11 asserts that a Local 702 leaflet contained a misrepresentation about Local 11's dues structure. Local 11 asserts that the leaflet was posted on February 3, and that it did not have adequate time to rebut the leaflet's alleged misrepresentations.

In Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980), the Commission articulated its standard to review statements made during a representation election campaign. It held that a representation election will be set aside where there has

been a misrepresentation or similar campaign trickery which involves a "substantial departure from the truth," made at a time which prevents parties from making an effective reply. The misrepresentations, whether deliberate or not, must reasonably be expected to have a significant impact on the election. See also, Bergen Community College, D.R. No. 90-19, 16 NJPER 170 (¶21069 1990), adopting H.E. No. 90-3, 16 NJPER 93 (¶21035 1990); Middlesex County Utilities Auth., D.R. No. 90-2, 15 NJPER 501 (¶20207 1989).

Where an objecting party alleges that material factual misrepresentations interfered with employee free choice, that party must prove either inability to effectively reply or direct evidence of interference. Passaic Valley; Bergen Community College; City of Atlantic City, D. R. No. 82-54, 8 NJPER 344 (¶13158 1982). Absent a showing that the alleged misstatement is a "substantial departure from the truth," the objection will be dismissed. Camden County Judiciary, D.R. No. 92-9, 18 NJPER 30 (¶23009 1992), req. for rev. denied, P.E.R.C. No. 92-86, 18 NJPER ____ (¶____ 1992); Passaic Valley.

Here, Local 11 has not submitted evidence to establish that the statements in Local 702's leaflet are untrue. There is no evidence submitted to show when or where this leaflet was posted or the extent of employees' exposure to it. Local 11 has failed to demonstrate that the statements in the leaflet interfered with employee free choice in the election. Finally, there is no evidence to support the assertion that Local 11 had inadequate time to reply to the leaflet, which by Local 11's own assertion, was posted three days prior to the election.

Ballot Representation

Local 11 also objects to a representation of a ballot drawn on the aforementioned leaflet. It contends that the leaflet contained a representation of a ballot in which an "x" appeared in Local 702's box. Local 11 argues that the ballot drawn on the leaflet was not identified as a sample, thus deceiving voters and interfering with their right to choose a bargaining representative.

The ballot representation on the bottom of the leaflet is a drawing of three horizontal squares. The words "Teamster #11" appear in the left square, "no representative" in the center square, and "Local 702" appears in the right square. On the leaflet submitted by Local 11 as an exhibit, the Local 702 box is marked with an "x" and the words "This is where you want to put your future." are hand printed in large letters immediately under the Local 702 square.^{6/}

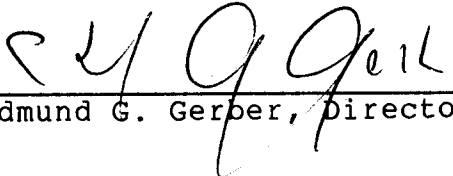
N.J.A.C. 19:11-9.1(b) prohibits reproductions of the Commission's sample ballot in a way which suggests to employees that the Commission endorses a particular choice on the ballot. However, where the ballot depiction is sufficiently dissimilar from the Commission's sample ballot and the campaign materials are clearly identifiable as partisan, we have dismissed the objection. City of Newark, D.R. No. 92-14, 18 NJPER ____ (¶ 1992), req. for rev. pending; County of Hudson - Meadowview Hospital, E.D. No. 13 NJPER Supp. 104 (1970).

^{6/} Local 702 contends the actual leaflet it distributed did not have an "x" marked in its square. It is not necessary to decide the veracity of Local 11's claims at this juncture.

Here, the depiction of the ballot is hand drawn. It is on a handwritten leaflet which is clearly identified as a partisan both by its campaign content and the Local 702 letterhead at the top. The ballot drawing is not at all similar to the Commission's actual election ballot nor its sample ballot. The Commission is not mentioned anywhere on the leaflet. I do not find that the leaflet ballot depiction suggests in any way that the Commission endorsed a particular election choice. Nor has Local 11 shown that the ballot drawing confused voters or interfered with their free choice in the election.

I find that Local 11 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, I shall issue the appropriate Certification of Representative (see attached) to Local 702 Public Employees Service Union.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 13, 1992
Trenton, New Jersey