

D.R. NO. 92-9

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

In the Matter of

CAMDEN COUNTY JUDICIARY,

Public Employer,

-and-

PROBATION ASSOCIATION OF NEW JERSEY,      Docket No. RO-92-54

Petitioner,

-and-

COALITION OF CAMDEN COUNTY  
PROBATION OFFICERS,

Intervenor.

SYNOPSIS

The Director of Representation dismisses PANJ's post-election objections to an election conducted among probation officers employed by the Camden County Judiciary. PANJ objected to campaign tactics prior to the election and conduct near the polling place on the date of the election. The Director finds that PANJ failed to furnish sufficient evidence to support a prima facie case in accordance with N.J.A.C. 19:11-9.2(i). Affidavits submitted by PANJ lacked the precision and specificity required by N.J.A.C. 19:11-9.2(h).

D.R. NO. 92-9

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

In the Matter of

CAMDEN COUNTY JUDICIARY,

Public Employer,

-and-

PROBATION ASSOCIATION OF NEW JERSEY,      Docket No. RO-92-54

Petitioner,

-and-

COALITION OF CAMDEN COUNTY  
PROBATION OFFICERS,

Intervenor.

Appearances:

For the Public Employer  
Joan Kane Josephson, Chief, Labor Relations

For the Petitioner  
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys  
(Sidney H. Lehmann, of counsel)

For the Intervenor  
Isabel Johnston, Representative

DECISION

Pursuant to an Agreement for Consent Election, a representation election was conducted on October 31, 1991, by the Public Employment Relations Commission ("Commission") among the probation officers and senior probation officers employed by the Camden County Judiciary. Fifty-five ballots were cast for the Coalition of Camden County Probation Officers ("Coalition"), 52 ballots were cast for the Probation Association of New Jersey,

Camden County Local 109 ("PANJ"), and one ballot was cast against representation.<sup>1/</sup> There were no void or challenged ballots. Therefore, a majority of the valid votes were cast for the Coalition.

Pursuant to N.J.A.C. 19:11-9.2(h), PANJ filed timely post-election objections to conduct affecting the results of the election. The objections concern campaign tactics prior to the election and conduct near the polling place on the date of the election. PANJ urges that the election be set aside because the results were so close that interference with one vote could have changed the election outcome. PANJ provided affidavits from two bargaining unit members in setting forth its objections.

One affiant stated that on October 29, 1991, two days before the election, she observed a supervisor placing a handwritten flyer into the mail boxes of eligible voters. The flyer was undated and addressed "To: CCPOA", the incumbent union. The flyer stated: State PANJ membership is divided over expenditures for high legal fees which are depleting its treasury, State PANJ "finances are being questioned" and State PANJ "financial records are in audit". At the bottom of the flyer was the question, "Has an attempt like a corporate raid been made on us because of our +\$10,000 treasury?" On October 29 and 30, 1991, the same supervisor was also observed telling bargaining unit members that they should vote for the Coalition because PANJ would raid the CCPOA's treasury.

---

<sup>1/</sup> The incumbent, Camden County Probation Officer's Association ("CCPOA") did not participate in the election.

PANJ's second affiant states that senior probation officers with additional duties, known as administrative seniors, met with probation officers during working hours beginning a few days before the election. These closed-door meetings continued through October 30, 1991, when a "steady stream of probation officers who were called into meetings with administrative seniors" was observed. The meetings were conducted one-on-one, with 15 minutes notice given to those attending. PANJ claims that these administrative seniors told probation officers to vote for the Coalition or that "there would be certain effects upon their work."

Finally, PANJ objects to a handwritten petition circulated on the day before the election and during the first 30 minutes of the election, near the polling area. The petition stated that as a result of the election either PANJ or the Coalition would replace the CCPOA as the bargaining agent for probation officers. The signatories requested that the incumbent CCPOA's Executive Board "strongly urge" that its net assets of \$10,300.20 be distributed in accordance with its constitution, Article XI, Dissolution Procedure, to either PANJ or the Coalition, whichever organization won the election.

\* \* \* \*

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

An election conducted by the Commission is a presumptively valid expression of employee choice. An objecting party must show evidence of conduct that interfered with or reasonably tended to interfere with the freedom of that choice. The evidence must demonstrate a direct relationship between the improper activities and the interference with the voters' freedom of choice. An allegation of seemingly objectionable conduct, without more, will not be sufficient to set aside an election. Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970) aff'd sub nom AFSCME Local 1959 V. P.E.R.C., 114 N.J. Super. 463 (App. Div. 1971) citing NLRB V. Golden Age Beverage Co. 415 F.2d 26, 71 LRRM 2924 (5 Cir. 1969).

I have reviewed the objections and the supporting statements submitted by PANJ. I find that PANJ has not established a prima facie case as required by N.J.A.C. 19:11-9.1(h) and I dismiss the objections for the following reasons.

PANJ objects to pre-election statements in flyers placed in voters' mailboxes by a certain employee. Although the affiant alleges this employee is a supervisor, she fails to state what title is held by this employee or even if this employee supervises the voters in question. In any event, there is no absolute prohibition against higher ranking employees expressing their preference in a campaign, absent allegations that a supervisory employee threatens employees or offers promises of benefits. County of Hudson - Meadowview Hospital, E.D. No 13 (1970); Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970). PANJ has not alleged such conduct.

PANJ contends that the Coalition's flyer and petition both contain false and misleading information and were distributed so close to the date of the election that PANJ could not respond. A representation election will be set aside for improper pre-election campaign statements only where there has been a factual misrepresentation involving a substantial departure from the truth made at a time which precludes an effective reply. Jersey City Medical Center, P.E.R.C. No. 49 (1970), City of Salem, D.R. No. 81-30, 7 NJPER 182 (¶12080 1981), aff'd P.E.R.C. No. 81-121, 7 NJPER 239 (¶12107 1981).<sup>2/</sup>

---

<sup>2/</sup> 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 Sewerage Auth., P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980); County of Atlantic, D.R. No. 79-17, 5 NJPER 18 (¶10010 1079); Borough of Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 63 (¶19021 1987), adopting H.E. No. 88-20, 13 NJPER 828 (¶18318 1987).

Here, PANJ has not submitted evidence to establish that the statements and questions contained in the Coalition's flyer are "substantial departures from the truth". Neither has PANJ proven that the allegation of the petition, which appears to be a request that the soon-to-be dissolved CCPOA turn its treasury over to the winning union in accordance with its constitution, as false. Absent a showing of factual misrepresentation, neither the distribution of the flyers nor the circulation of the petition constitute grounds to set aside the election. Middletown Tp. Sew. Auth., D.R. No. 84-14, 10 NJPER 2 (¶15001 1983); Bergen Comm. Coll., D.R. No. 90-12, 16 NJPER 170 (¶211069 1990), adopting H.O. No. 90-3, 16 NJPER 93 (¶21035 1990); Secaucus Municipal Util. Auth., P.E.R.C. No. 83-17, 8 NJPER 480 (¶13225 1982).

The fact that the petition was circulated near the polling location does not by itself demonstrate that conduct has occurred which actually interfered with the voters' free choice. Campaigning in the area of the polling place will not automatically set aside an election. County of Atlantic; Camden Cty Freeholders Bd., E.D. No. 9 (1970); Weehawken Ed. Assn., D.U.P. No. 81-25, 7 NJPER 371 (¶12169 1981). Accordingly this objection is dismissed.

Finally, PANJ alleges that senior probation officers, employees it now claims have supervisory authority, conducted meetings with eligible voters during working hours. The Commission

has ruled that meetings held by an employer among assemblies of employees within 24 hours of the commencement of an election and on "company time" are a per se interference with the employee's free choice and that other direct evidence of interference is not required under these circumstances. Tp. of East Windsor, D.R. No. 79-13, 4 NJPER 445 (¶4202 1979); Passaic Valley Sewerage Comm., supra. The conduct complained of by PANJ does not meet this standard. The employees holding the meetings, Senior Probation Officers, ("Administrative Seniors") are included in the unit of eligible voters in the Agreement for Consent Election entered into by PANJ.<sup>3/</sup> PANJ did not challenge the eligibility of these voters during the election. Although PANJ now claims that they have supervisory authority, PANJ cannot now make this claim. The consent election agreement provides: "...the parties hereby waive a hearing on all issues that could be raised at a hearing..." This agreement excludes supervisors from the unit. PANJ effectively agreed these employees are not supervisors. PANJ has failed to demonstrate a relationship between the one-on-one meetings with employees who were included in the group of eligible voters and an undue and direct interference with the employee free choice. City of Atlantic City; Middletown, supra.

---

3/

The unit is defined in the unit as: Included: All Probation Officers and Senior Probation Officers, including S.P.O./P.O., Bilingual, and S.P.O. with additional duties employed by the Assignment Judge of Camden County (emphasis added) and excluding (among others) supervisory employees.

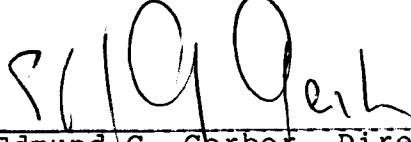


D.R. NO. 92-9

8.

Accordingly I dismiss the objections filed by PANJ.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
\_\_\_\_\_  
Edmund G. Gerber, Director

DATED: December 20, 1991  
Trenton, New Jersey