

D.R. NO. 96-3

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

In the Matter of

TOWNSHIP OF WEST AMWELL,

Petitioner/Respondent,

-and-

Docket Nos. RE-95-6
CO-95-445

PBA LOCAL 188,

Employee Representative/Charging Party.

SYNOPSIS

The Director of Representation dismisses several post election objections which were not supported by specific evidence. Other election objections were dismissed because they involved incidents which occurred prior to the execution of a consent election agreement. On the consent election agreement form, language appears advising parties that once they sign the agreement, they waive their right to contest prior issues that could properly be raised at a hearing. However, the Director does find that the election objection alleging that the employer failed to reveal that a new employee would be hired after the eligibility list cut off date must be resolved through a hearing.

Additionally, the Director finds that allegations raised in a related unfair practice charge, if true, may constitute unfair practices within the meaning of the Act. The Director issues a Complaint and Notice of Hearing on the charge and consolidates the hearing on the charge with the hearing on the remaining election objection.

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Appearances:

For the Public Employer/Respondent
Thatcher & Lanza, attorneys
(John R. Lanza, of counsel)

For the Petitioner/Charging Party
Beverly M. Wurth, attorney

DECISION

On February 8, 1995, a Petition for Certification of Public Employee Representative was filed by the Township of West Amwell alleging that the Township had a good faith doubt concerning the majority status of PBA Local 188, West Amwell Unit, the representative of the Township's two full-time police officers.^{1/} The Township and the PBA are parties to a collective negotiations agreement covering the period from January 1, 1993 through December 31, 1994.

^{1/} See N.J.A.C. 19:11-1.1(a), (2) and 1.4.

The parties entered into a consent election agreement and a mail ballot election was conducted among the two regular police officers employed by the Township.^{2/} The tally of the two ballots cast indicated a one/one tie vote. There were no void or challenged ballots. A majority of the valid votes counted plus challenged ballots were not cast for PBA representation.

On April 21, 1995, the PBA filed timely post-election objections pursuant to N.J.A.C. 19:11-9.2(h), alleging that the employer's conduct affected the results of the election. A supporting affidavit was submitted by Timothy Lelie, PBA President. By letter dated May 8, 1995, I advised Lelie that his objections needed to be supported by specific evidence and affidavits. Lelie submitted an additional affidavit on May 23, 1995.

The PBA alleges that the conduct of the employer interfered with the freedom of choice of the voters, thus warranting setting aside the election. Some of the conduct cited in these election objections was also raised in an unfair labor practice charge filed by Lelie (docket no. CI-95-68) on April 10, 1995 and amended on July 3, 1995, to name PBA Local 188 as the charging party (docket no. CO-95-445). The Township opposed the amendment on the grounds that the PBA had been decertified in the election and that the amendment was thus untimely. However, Lelie, as President of the PBA,

^{2/} The ballots were sent to voters on March 28, 1995 and had to be received at the Commission's Post Office Box by April 13, 1995.

apparently intended to originally file the unfair practice charge on behalf of the union. Moreover, the PBA has not yet been decertified^{3/} and was the majority representative at the time the alleged unfair practices occurred.

In the first objection, the PBA contends that the employer's conduct also constituted unfair labor practices. The PBA alleges that on February 10, 1995, the employer arbitrarily refused to let police officers work overtime in excess of their regular work schedule in retaliation against the PBA for the employees' union activity. That same day, the employer announced that the State Police would cover certain tours of duty, thus removing unit work from the PBA's negotiations unit without negotiations. Further, the PBA alleges that the employer unilaterally altered the employees' work schedules on February 10, 1995 and March 10, 1995 to avoid paying overtime and in retaliation against Lelie. Finally, the PBA alleges that on March 4, 1995, Lelie received a written reprimand in retaliation for his union activity.

Lelie also asserts that threatening remarks were made to him by the Township Clerk that made him believe the police department would get preferential treatment if the union were dissolved. Lelie alleges that the Clerk said that the PBA and the union are the cause of the Township's problems; that if Lelie persisted in trying to keep the union, the Town would become

3/ Pending a determination of the election objections.

bankrupt and the continued existence of the union would result in problems and strife between police employees and the Township Committee. Further, Lelie asserts that the Clerk made statements to the other police officer involved in the election which interfered with his free choice in the election.

The final objection asserts that the employer failed to reveal that a new employee would be hired after the eligibility cut-off date and that the employer knew the representational preferences of the new employee.

N.J.A.C. 19:11-9.2(h), (i) and (j) set forth the standard for reviewing, investigating and conducting a hearing concerning election objections:

- (h) Within five days after the tally of ballots has been furnished, any party may file with the director of representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. 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.

- (i) Where objections as defined in subsection (h) of this section are filed, the director of representation shall conduct an investigation into the objections if the party filing said objections has furnished sufficient evidence to support a prima facie case. Failure to submit such evidence may result in the immediate dismissal of the objections.
- (j) Where an administrative investigation has been conducted into the objections that have been filed as defined in subsection (h), a hearing may be conducted where the investigation reveals that substantial and material factual issues have been placed in dispute which, in the exercise of the reasonable discretion of the director of representation, may more appropriately be resolved after a hearing. After the administrative investigation has been completed, or where appropriate, the hearing process has been completed, an administrative determination will be rendered with regard to the objections either setting aside the election and directing a new one, or dismissing the objections and issuing the appropriate certification.

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 employees' freedom of 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, is not a sufficient basis 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), See also, Bor. of Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 64 (¶19021 1989).

Several of the PBA's objections were not supported by specific evidence. These objections concern the Township Clerk's remarks to Lelie and to the other police officer. No specific evidence was provided about how or why the remarks were threatening or induced Lelie to change his decision on how to vote in the election. Employers may communicate to unit employees their views concerning employment relations as well as their positions concerning negotiable subjects, in the absence of threats, coercion, intimidation or the promise of a benefit. City of Jersey City, H.E. No. 79-9, 4 NJPER 276 (¶4141 1978); State of New Jersey, D.R. No. 83-20, 9 NJPER 146 (¶14061 1983); Atlantic Cty. Comm. Coll., P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986). These remarks do not appear to be indicative of objectionable conduct. It is also not clear from the objections that the Township Clerk is the public employer or its designated representative. Additionally, no direct evidence was provided to support the objection concerning alleged statements that were made by the Township Clerk to the other police officer in the unit. An affidavit in support of election objections must be based on personnel knowledge, not hearsay. Jersey City Med. Ctr., D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). Accordingly, these objections are dismissed.

The separately stated objections which also are the subject of an unfair practice charge (docket no. CO-95-445) are also dismissed. On the face of the consent election agreement signed by both parties on March 15, 1995, the following introductory language appears:

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AGREEMENT FOR CONSENT ELECTION

A Petition filed under the New Jersey Employer-Employee Relations Act and the Public Employment Relations Commission's Rules and subject to the approval of the Director of Representation, the parties hereby waive a hearing on all issues that could properly be raised at a hearing and agree as follows: (emphasis added)

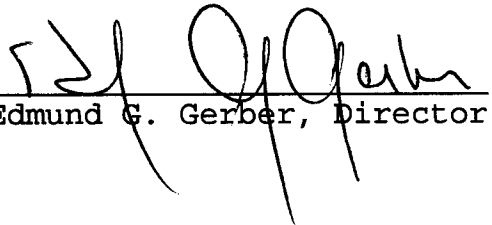
Accordingly, the election objections concerning the refusal to assign overtime, the refusal to negotiate over a change in work schedules, the refusal to negotiate over a decision to use the State Police to handle certain tours of duty and the discriminatory reprimand of Lelie all occurred prior to the signing of the consent election agreement. Under the terms of the Consent Election Agreement, the PBA has waived its right to litigate these issues as election objections. The issues, however, may be litigated in the unfair practice forum.

However, I find that substantial and material factual issues exist concerning the objections that the Township failed to reveal that a new employee would be hired after the eligibility list cut-off date, when the employer knew the representational preferences of the new employee. Therefore, pursuant to N.J.A.C. 19:11-9.2(j), this objection shall be resolved through a hearing.

Additionally, it appears that the allegations raised in the unfair practice charge, if true, may constitute unfair practices within the meaning of the Act. Accordingly, I shall issue a Complaint and Notice of Hearing on the charge and consolidate the

hearing on the charge with the hearing concerning the election objections.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: August 8, 1995
Trenton, New Jersey