

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CHERRY HILL IN THE
COUNTY OF CAMDEN, DEPARTMENT OF
PUBLIC WORKS

Public Employer

Docket No. R-92

and
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
LOCAL 1965, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Direction of Election dated January 9, 1970, P.E.R.C. No. 30, a secret ballot election was conducted for the Commission by the American Arbitration Association on February 4, 1970 in the unit described below. 1/

The tally of ballots which was served upon the parties by the Commission's election agent on February 4, 1970 indicated that of approximately 119 eligible voters, 44 voted for petitioner, 64 voted against petitioner, five ballots were challenged and two ballots were void. The challenged ballots are not determinative.

Subsequent to the election, objections were timely filed by petitioner.

Pursuant to notice, a hearing was held on August 10 and 12, 1970 and September 3 and 4, 1970 before Hearing Officer Ronald L. Tobia at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, to argue orally, and to submit written briefs. On September 18, 1970, there issued a Report and Recommendations of Hearing Officer on Objections. A.F.S.C.M.E. had set forth five objections to the election. The Hearing Officer reported that the record is barren of proof concerning two of these objections and he found insufficient evidence to support two other objections. No exceptions were taken to these findings. Accordingly, the findings and recommendations of the Hearing Officer with respect to these four objections are hereby adopted.

1/ The unit found appropriate by the Commission is the following:
"all blue collar employees of the Department of Public Works of the Township of Cherry Hill, but excluding managerial executives, office clerical, professional and craft employees, policemen and supervisors within the meaning of the Act."

There remains one objection which alleges that:

The Employer through its agents and its representatives as early as July 30, 1969, did sponsor, control and assist in the formation and continuation of an alleged employee organization using the name Cherry Hill Employees Association.

The Hearing Officer recommended:

...that the election be set aside due to the activities of Mr. Kane, a man with the apparent authority of Cherry Hill behind him, from August, 1969 until the election. This conduct interfered with the free choice of eligible voters and had a definite effect on the outcome of the election. The threats and fear of reprisal could not be eliminated from the atmosphere to permit a free and fair election. (P. 12, Report and Recommendations of Hearing Officer on Objections.)

The Employer excepts to this ultimate recommendation as well as to various factual underpinnings on which the Hearing Officer relied to reach his conclusion; it also raises certain procedural exceptions, namely, that the objection as stated, even if true, is not grounds for setting the election aside apparently because in substance it alleges an unfair labor practice which this agency is without authority to adjudicate, and/or because on its face it does not relate to the election; that the Hearing Officer in fact was deciding an unfair labor practice in the guise of objections to an election; that since the objections did not allege Employer threats, coercion or interference with employee free choice, evidence offered to prove such is beyond the scope of the objection and not ~~admissible~~ without due notice to the party charged. We find no merit to these procedural exceptions. The objection, as stated, is sufficient to put in issue the validity of the election. That the same language might give rise to an unfair labor practice proceeding in a different forum does not preclude the Commission or its Hearing Officer from consideration of such as an objection to an election. We further find that the evidence relied on by the Hearing Officer is sufficiently related to the objection to be ~~admissible~~ and is not prejudicial to the Employer in terms of notice.

Going to the substance of the Hearing Officer's Report, the Employer excepts essentially in the following areas: that the conduct of Supervisor Kane may not be attributed to the Employer; that there is insufficient evidence to support the conclusion that the Employer had knowledge of Kane's activities; that certain findings regarding Kane's activities are of no significance (preparation of propaganda) or are supported at best by merely isolated incidents; and finally that the allegedly improper formation of the Association, occurring as it did six months prior to the election, is not shown to have had any effect on the election results. For the reasons discussed below we find no merit to these exceptions.

The inquiry here and the ultimate test is simply whether there exists evidence of conduct, within the framework alleged, which interfered or reasonably tended to interfere with the employees right to freely decide the question of representation.

There is no dispute and the record is clear that the Cherry Hill Association of Public Works Employees came into being principally through the efforts of Supervisor Kane, and that its purpose was to organize and bargain for Public Works employees (certificate of incorporation) and to turn the employees against AFSCME and in favor of the Association (Association President Becker's testimony). The Employer insists that this formation of the Association is too remote from the election. Petitioner's objection, however, complains not only of the formation but also its continuation. The record discloses that the Association was informally organized in August, 1969 (the same month in which the Commission held hearings on AFSCME's petition), and incorporated in September. It attempted to intervene on AFSCME's petition after that hearing closed. In November the Hearing Officer recommended that the Association be denied intervention as it was not timely filed. The Association filed exceptions with the Commission; it also, by published circular, announced a meeting for November 24 and commented in the circular "MAKE NO MISTAKE! THE ASSOCIATION IS STILL VERY MUCH IN THE RUNNING AND WE WILL BE UNTIL WE WIN - AND WE WILL WIN!!" The Commission decision issued in January, 1970 directing an election but denying the Association a place on the ballot. Following the election on February 4, the Association announced by circular that there would be a party "To Celebrate Victory in [the] Election..." When the Association was being formed, Kane told employee Becker, "If you stay with the Association and we do get in, you're guaranteed about two-fifty a week, you know that, don't you?" At the other end, several weeks before the election, Kane told employee Ghaul, when the latter tried to withdraw from the Association, that he must remain a member of the Association in order to retain his job. It is evident from the foregoing (and such is not meant to be an exhaustive review of the evidence) that the Association was a continuing organization, active throughout the period of the representation proceeding, and that,

whatever its impact, such cannot be minimized by observing that its formation was remote in time from the election.

The measurement of its impact must focus on Kane. As a supervisor, Kane had and exercised the authority to discipline employees as well as to recommend to his superior, Superintendent Hepkin, on matters of hiring, firing and discipline, recommendations which Hepkin followed more often than not. In the early stages of the campaign, Kane and all supervisors of equal and higher rank were told by Bisco, Director of Public Works, that they were part of management. 2/ Following the formation of the Association, Kane paid its expenses, selected its attorney, arranged for its meetings and police protection for those meetings, designated its officers, prepared or approved its campaign literature and even designated those who would distribute it. Of the Association's nine officers, eight were employees eligible to vote in the representation election. 3/ Kane's ~~interference~~ ^{interference} in this regard is best demonstrated by the Association's own incorporating certificate which excludes from membership "management personnel, as defined by the New Jersey Employer-Employee Relations Act". 4/ Supervisory interference with the supposed free choice of officers inevitably ~~diminishes~~ ^{diminishes} the likelihood of a freely chosen negotiating representative.

Kane was not the only supervisor to participate in Association affairs. McGill and D'Arcy, supervisors of equal rank with Kane, solicited employee signatures on petitions to be used in support of the Association's request for recognition. Supervisor Joseph Esposito contributed money to the Association, at Kane's request.

Since Kane was "part of management" and since he was the guiding hand in Association activities, it is worth examining the Association's literature prior to the election. One leaflet says nothing at all about the Association but simply reminds the reader that the Employer is the source of his job, paycheck and fringe benefits. It concludes "DON'T BITE THE HAND THAT FEEDS YOU." Another leaflet states "As things stand now, the employees... are going to receive a nice raise without the union. What will happen if the union comes in?... We will not receive any raise until the contract is negotiated..."; it then speculates on the time which negotiations might consume. A third leaflet refers to the dwindling number of union adherents and then asks "Why don't these few individuals who are trying to use you to further themselves realize what is handwritten on the wall. If they

2/ Said in the context that as part of management they could not join Local 1959.

3/ According to the list of eligible voters submitted by the Employer for use in the election.

4/ That Act has no such term as "management personnel" much less a definition. What obviously was intended and in fact practiced for appearance sake was the exclusion from membership of supervisors and above.

were given the positions they wanted by the Township, they would no longer belong to the union.." Finally are two leaflets mentioned earlier in a different context: one predicting victory for the Association in its battle for recognition and the other, a post-election announcement of victory. These are in fact the comments of supervision, not comments from a rival group of employees. And in view of Kane's dominance in Association affairs, that distinction would scarcely be lost on the employees. The quoted portions above are but more subtle variations of comments expressed by Kane to others: his promise to Becker of better wages and assistance on promotional tests if Becker stayed with the Association; his threat to Ghaul of job loss if Ghaul withdrew from the Association. The victory predicted and later claimed was to all appearances correct at the time. The Association which was not even on the ballot had been the straw man through which supervision defeated the union.

According to Harvey, Association Secretary-Treasurer, Kane had said that he did not want Local 1965 to represent the men. Of course, Kane was entitled to his opinion but the choice of representative belonged to the employees. By creating and manipulating the Association as the foregoing demonstrates, Kane, with support from other supervisors, virtually pre-empted the opportunity for free choice.

The Employer's contention that it had no knowledge of Kane's activities and that such may not be imputed to it must be rejected. Kane's immediate superior, Superintendent Hepkin, testified he was aware that Kane was actively supporting the Association. Director of Public Works Bisco testified he knew Kane was working for the Association but did not know to what extent. When Kane and several other supervisors denied Kane's involvement, the matter was dropped. In July 1969 the Mayor issued several written statements to employees of the Department of Public Works setting forth the Employer's position concerning AFSCME's request for recognition: the Employer prefers that the question of representation be settled in an orderly fashion through the procedures established by State law, that the right of free choice be preserved and that the Employer would accept the employees decision. That was the last such communication between Employer and employees; it occurred before the Association even began to function. Representatives of management state that supervisors were instructed at various times to remain neutral. What was required, in view of the activities of Kane et al, was a declaration to the employees of the Employer's neutrality. This is not a question of whether fault may be attributed to the highest echelons of management. 5/ The question, as stated earlier, is whether the employees were given the reasonable opportunity to register their

5/ The objection reads: "The Employer through its agents and its representatives..." Kane and supervisors of equal rank are clearly representatives of management. Whether Kane's attitudes are a complete reflection of "Employer" attitudes is not significant. His conduct is the conduct of Supervisor Kane, not citizen Kane.

choice without interference. The Commission concludes for the reasons stated above that such opportunity did not exist. Accordingly, the objection is sustained and a second election will be directed.

DIRECTION OF SECOND ELECTION

The Commission directs that a secret -ballot election shall be conducted among the employees in the unit found appropriate. The election shall be conducted as soon as possible but no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees described in footnote 1 above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by American Federation of State, County and Municipal Employees, Local 1965, AFL-CIO.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: May 28, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CHERRY HILL
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DEPARTMENT OF PUBLIC WORKS 1/

Public Employer

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Docket No. R-92

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 1965, AFL-CIO

Petitioner

Appearances:

Warren C. Douglas, Township Solicitor,
and A. Fred Ruttenberg, Esq. for the
public employer

Stephen F. Lichtenstein, Esq.
appeared for petitioner

REPORT AND RECOMMENDATIONS OF HEARING OFFICER ON OBJECTIONS

Pursuant to an Order Rescheduling Hearing, dated July 20, 1970,
a hearing was held before the undersigned Hearing Officer on August 10
and 12 and September 3 and 4, 1970. At this hearing all parties were
afforded the opportunity to present evidence, to call, examine, and
cross-examine witnesses, to argue orally and to submit briefs.

1/ The formal papers were amended at the hearing by stipulation
to correctly reflect the name of the public employer.

BACKGROUND

Pursuant to a Decision and Direction of Election, P.E.R.C. No. 30, a secret ballot election was conducted for the Commission by the American Arbitration Association, hereinafter AAA, on February 4, 1970, for employees in the appropriate unit. 2/ The Commission's election agent served upon the parties a tally of ballots, dated February 4, 1970, which revealed that of approximately 119 eligible voters, 44 voted for petitioner, 64 voted against petitioner, five ballots were challenged and two ballots were void.

The petitioner, hereinafter AFSCME, filed timely objections, to the conduct of the election and conduct affecting the results of the election. In addition, AFSCME filed unfair labor practice charges with the Commission containing the indential allegations of the objections. The charges of AFSCME were consolidated for hearing with the objections and also with an unfair labor practice charge filed by the Township of Cherry Hill, hereinafter Cherry Hill. Pursuant to an Order Severing Cases, dated July 31, 1970, the pending unfair labor practice charges were severed from the pending objections matter and the charges were dismissed based on Burlington County Evergreen Park Mental Hospital v. Dorothy Cooper, et al 55 N.J. _____ (1970). Cherry Hill objected to the hearing and moved to dismiss the objections to the election because these objections were stated in unfair labor practice terminology and the

2/ The unit found appropriate by the Commission is as follows: "All blue collar employees of the Department of Public Works of the Township of Cherry Hill, but excluding managerial executives, office clerical, professional and craft employees, policemen and supervisors within the meaning of the Act."

Commission no longer had this power after the Cooper decision. The Hearing Officer denied this motion to dismiss on the grounds that the matter set down for hearing was a representation matter involving objections to an election and clearly the Supreme Court in Lullo v. International Association of Fire Fighters 55 N.J. 409 (1970) and in Cooper, supra; upheld the Commission's jurisdiction in representation matters. AFSCME elected to pursue these matters as objections. The undersigned ruled that objections to an election can allege conduct sufficient to find an unfair labor practice violation in lieu of filing charges, if that conduct demonstrates interference with the voters' freedom of choice. Based on the foregoing reasons, it is respectfully recommended that the Commission sustain the denial of the motion to dismiss.

The undersigned Hearing Officer has carefully considered the record in this matter and the briefs filed by respective counsel. Although AFSCME filed five objections to the election, the testimony centered in two major areas, namely the activities of Cherry Hill and or its agents concerning the Cherry Hill Association of Public Works Employees, hereinafter the Association, and defects in the conduct of the election itself. 3/

SPONSORSHIP, CONTROL AND ASSISTANCE

AFSCME alleged as part of its objections to the election herein that Cherry Hill "...through its agents and representatives, as early

3/ Exhibit C-1 contains the verbatim objections filed by AFSCME. However, the record is barren of proof concerning Objection No. 2 and No. 3.

as July 30, 1969, did sponsor, control and assist in the formation and continuation of an alleged employee organization...". A hearing was held on August 5, 1969 to resolve a question concerning the representation of employees in Cherry Hill's Department of Public Works that arose out of a petition filed by AFSCME. After the close of the hearing, the Association moved to intervene with designation forms that postdate the hearing but the Commission denied the motion as being untimely. 4/ Even though the Association had no place on the ballot, it is the activities of this organization from its formation in August, 1969, until the election which form the basis of AFSCME's objection to the election. These activities must be carefully scrutinized to determine whether this conduct interfered with the free choice of negotiating representatives by public employees.

The bulk of the testimony put forth by AFSCME focused around Mr. Robert Kane, the Supervisor of Maintenance in the Water Pollution Control Department, and his role in the Association. Prior to any discussion of Mr. Kane's conduct, the question of his supervisory status must be resolved. At the representation hearing, in this matter, the issue of whether Mr. Kane was a supervisor within the meaning of the Act was resolved by stipulation. It was agreed according to Mr. Melchior, Municipal Manager, that Mr. Kane possessed the statutory indicia of a supervisor and as part of management he would not be eligible to vote in the election. This stipulation also covered Mr. Joseph Esposito, Supervisor of Sanitation, and Mr. D'Arcy, Supervisor of Shade Trees and Parks. Notwithstanding the fact that Cherry Hill now takes no position

4/ P.E.R.C. No. 30.

as to Mr. Kane being a supervisor, the record does not indicate any status change from the representation hearing until the election. In Cherry Hill Mr. Melchior has the final decision concerning hiring, firing, and disciplining and these matters technically must come through the chain of command from Mr. Kane to Mr. Hepkin, Superintendent of Water Pollution Control, to Mr. Bisco, Director of Public Works. The record is clear that Mr. Kane could discipline employees by means of forced days off and he could effectively recommend discipline in that his recommendations were followed in the greater portion of cases. Therefore, the testimony unequivocally establishes that at the period prior to the election, Mr. Kane was a supervisor within the meaning of the Act and the Hearing Officer so finds. The alleged activities of Mr. Kane concerning the Association will now be examined to determine their effect on the election.

Mr. Gerald Becker, President of the Association, testified at length about the relationship that existed between that organization and Mr. Kane. According to Becker, the formation of the Association as a rival organization to AFSCME was planned by Mr. Kane. Mr. Becker was approached to be President and the other officers, Mr. Thomas as Vice-President and Mr. Harvey as Secretary Treasurer, were all Mr. Kane's nominees. The record indicates that the first informal meeting of the Association took place in August when Mr. Kane held overtime the men in his department for Mr. Becker to speak against AFSCME. Mr. Kane supervised approximately 16 or 18 men at that time. In addition, Mr. Becker testified that Mr. Kane authorized the use of a Cherry Hill vehicle to enable Mr. Becker to go to the different places for the purpose of speaking to the men who did not hear the speech. All of these

activities took place during working hours.

Concerning financial backing, the record reveals that the Association's expenses were paid by Mr. Kane. Mr. Becker testified that Mr. Kane told him that benefits would be forthcoming if the Association were recognized and further, Mr. Kane guaranteed Mr. Becker \$250 per week plus assistance on promotional tests. According to Mr. Becker, the first meeting of the Association was arranged by Mr. Kane entirely. Mr. Kane got permission from Mr. Lyons, Cherry Hill's Purchasing Agent and Governor of the Moose Club, to use the Moose Hall at no charge for Association meetings. The record indicates that the attorney who incorporated the Association at no fee and who attended the first meeting was obtained by Mr. Kane. At this meeting, this attorney told the 50 employees present that his time was being donated until Cherry Hill formally recognized the Association. In addition, Mr. Kane made all the arrangements for the subsequent meetings of the Association in a like manner. The alcoholic refreshments provided by Mr. Kane for these meetings were delivered in a Cherry Hill truck to the Moose Hall. Also, Cherry Hill police protection was arranged for Association meetings by Mr. Kane.

Actions were taken to make it more convenient for employees to attend Association meetings. Mr. Becker testified that Mr. Kane gave the night man in his department time off to attend a meeting and allowed Cherry Hill employees to attend meetings on work time or overtime.

Concerning election propaganda, Mr. Becker testified that Mr. Kane participated in the composition of fifteen leaflets. 5/

Mr. Harvey, Secretary to Mr. Hepkin and Secretary-Treasurer of the Association, testified at length concerning the dictation and reproduction of these leaflets. The record reveals that the Association's election propaganda was typed by Mr. Harvey and dictated by either Mr. Becker or Mr. Kane. Cherry Hill's xerox machine and paper was used by Mr. Harvey in the reproduction of all of the Association's literature. Mr. Harvey testified that the purpose of this propaganda was to defeat AFSCME. Also, he testified that he either personally handed a copy of the xeroxed campaign propaganda or left it on the desk of Mr. Burris, Cherry Hill's Clerk. Furthermore, Mr. Harvey corroborated much of Mr. Becker's testimony concerning the activities of Mr. Kane as prime mover of the Association.

With regard to dues collection, the record reveals that Mr. Vile, the Pumping Station Maintenance Foreman, collected 75¢ per week dues from approximately 90 Association members. Mr. Ghaul, a Public Works employee, testified that he attempted to voluntarily drop out of the Association three or four weeks prior to the election. Mr. Kane indicated to Mr. Ghaul that if he wanted to keep his job with Cherry Hill he had to be a dues paying member of the Association. Mr. Becker testified that the employees who worked under Mr. Kane's supervision feared him. The large membership in the Association was attributed by Mr. Becker to be an outgrowth of this fear of reprisal. In addition, Mr. Becker and Mr. Ghaul heard Mr. Kane telling employees that Cherry Hill would know how each employee voted in the election. Mr. Ghaul testified that he believed what Mr. Kane told him because Mr. Kane seemed to know everything that was going on. The foregoing testimony was produced by AFSCME in support of their objection as to the improprieties of Mr. Kane's activities for the Association.

In response to the foregoing testimony, Cherry Hill produced witnesses who denied any sanction or participation whatsoever in the activities of Mr. Kane and of the Association. The testimony reveals that although Cherry Hill generally knew that Mr. Kane was active in the Association, no specific proof could be gathered to force him to cease and desist.

Mr. Bisco denied encouraging or promoting the Association but admitted being aware of campaign literature. In addition, he testified that hearsay information from Mr. Pessolano, Supervisor of Streets and Roads and an AFSCME supporter, was given to him concerning the activities of Mr. Kane for the Association. Further, Mr. Bisco heard that Mr. Kane was active for the Association but testified that there was no proof. The only investigation made was in a conversation between Mr. Bisco and Mr. Kane wherein Mr. Kane denied complicity in Association activities and the matter was dropped. However, the record reveals that Mr. Bisco disciplined Mr. Pessolano for campaigning for AFSCME because all supervisors were instructed to remain neutral.

Mr. Hepkin, the supervisor of Mr. Kane, Mr. Harvey, and Mr. Becker, testified that he did not know who the members of the Association were, nor did he encourage participation in the Association. The record reveals that Mr. Hepkin had no knowledge of the improper use of a Cherry Hill vehicle, nor did he know that Mr. Harvey was typing for the Association during working hours. In addition, he did not know that xeroxing was being done by Mr. Harvey on Cherry Hill's machine and with its paper. Mr. Hepkin testified to being aware of the conflict between the Association and AFSCME. He also testified that he had recently discovered that the men who worked under Mr. Kane's direction feared him.

Mr. Lyon, Cherry Hill's Purchasing Agent, admitted granting the use of the Moose Hall on three occasions to the Association without charge, at the request of Mr. Kane. Mr. Lyon testified that as an officer of the Moose, he had to be present at the opening and closing of a meeting. He said he did not remain for the meetings. In contradiction, Mr. English and Mr. Esposito, former employees of Cherry Hill and AFSCME supporters, testified that Mr. Lyon tended bar for the Association and remained for at least one meeting. Although aware of the Association's activities, Mr. Lyon denied participation in them since he had no interest therein.

Mr. Burris, Cherry Hill's Clerk, testified that he could have been present at the Moose Hall during an Association meeting since he was there often with Mr. Lyon. He denied giving any authorization to Mr. Kane to use Cherry Hill's xerox machine, located in his outer office. He stated that he did not recall if Mr. Kane had talked about the Association. Furthermore, he did not recall Mr. Harvey either personally giving, or leaving on his desk copies of Association propaganda. Also, he said that anyone authorized by a department head had access to the xerox machine and there was little control of its use.

Mr. Melchior, Municipal Manager, testified that Cherry Hill did not speak for or against either organization, nor participate in campaigning during the election. Cherry Hill Supervisors were told not to involve themselves. Mr. Kane's activities had come to his attention only recently and he gave no sanction to his conduct. Concerning the selection of election observers, Mr. Melchior testified that Mr. Becker and Mr. Scott were selected after a consensus arrived at at a supervisors meeting. He stated that the selection of the President and Vice President of the Association as Cherry Hill observers was to insure the presence of

employees with a keen interest so as to be assured of the honesty of the election. Mr. Melchior testified to have heard only indefinite rumors that Mr. Kane was active on behalf of the Association and knew nothing of Kane's particular activities. The foregoing testimony was offered by Cherry Hill to demonstrate no sponsorship, control or assistance to the Association during the election.

The Hearing Officer has carefully considered the testimony and finds that Cherry Hill has not denied the fact that Mr. Kane acted in the foregoing manner on behalf of the Association. Cherry Hill claims only general information of Mr. Kane's activities without proof or knowledge of the specific conduct. Also, Cherry Hill has attempted to impeach the credibility of Mr. Becker pointing to a dispute between Mr. Becker and Mr. Kane over a \$50.00 commission paid to Mr. Kane for referral of Mr. Becker to an auto body shop. In addition, Cherry Hill has shown that Mr. Becker reported Mr. Kane's activities to the Cherry Hill police. The Hearing Officer has had an opportunity to view the demeanor of the witness and also consider the fact that Mr. Becker had nothing to gain by fabrication of such a story. Furthermore, Mr. Harvey for the most part corroborates the testimony of Mr. Becker. Therefore, the undersigned finds that the testimony of Mr. Becker and Mr. Harvey is credible and will be accorded weight in deciding this matter.

The Hearing Officer has analyzed the testimony concerning Mr. Kane's activities and finds that Mr. Kane sponsored, controlled and assisted in the formation and continuation of the Association. It appears that the Association and Mr. Kane were synonymous and its officers his pawns. The Hearing Officer finds the following facts concerning Mr. Kane's conduct: he formed the Association and nominated

and elected its officers; he arranged for all of its meetings and paid almost all expenses; he permitted township vehicles to be used for Association business; he held men overtime as a captive audience and allowed employees to attend Association meetings on Cherry Hill time; he secured an attorney to donate his time; and he participated in the preparation of Association propaganda. Furthermore, the undersigned finds that he threatened Mr. Ghaul with the loss of his job if he did not pay dues to the Association and that he intimidated eligible voters by stating that the secrecy of their ballot would not be preserved. Mr. Ghaul believed Mr. Kane capable of carrying out these threats of reprisals.

The Hearing Officer finds that it is inconceivable that Cherry Hill could claim ignorance to the aforementioned activities of Mr. Kane in light of the fact that Mr. Lyon gave the Association a meeting place and Mr. Burris at least saw some Association election propaganda immediately after it was reproduced. In addition, the Hearing Officer finds that it is too coincidental that Mr. Becker, President, and Mr. Scott, Vice President, were selected as Cherry Hill observers when the Association was not even on the ballot. Furthermore, Mr. Bisco congratulated Mr. Becker and Mr. Scott on winning the election immediately after the count of ballot. However, no employee organization won the election held on February 4, 1970.

The defense of Cherry Hill as to lack of authority and insufficient evidence is spurious to say the least. A public employer cannot sit back and be completely permissive concerning improper election activities on the part of its supervisors and then raise its ignorance as a defense to election objections.

Based on the foregoing, it is respectfully recommended that the election be set aside due to the activities of Mr. Kane, a man with the apparent authority of Cherry Hill behind him, from August, 1969 until the election. This conduct interfered with the free choice of eligible voters and had a definite effect on the outcome of the election. The threats and fear of reprisal could not be eliminated from the atmosphere to permit a free and fair election.

DEFECTIVE ELECTION PROCEDURES

The Hearing Officer, notwithstanding the fact that the foregoing is sufficient basis for setting aside the election herein, will consider Objections No. 4 and No. 5 of AFSCME that concern themselves with alleged violations of election ground rules and last minute changes in the voting procedures. 6/ These objections will be considered in two categories: election procedures and electioneering on the part of Cherry Hill through its agents.

AFSCME alleges that the fact that its two observers were not present at the pre-election conference interfered with the election in that Cherry Hill did not notify them concerning said conference. The Hearing Officer finds this no basis for setting aside this election since the record does not indicate Cherry Hill prevented these observers from attendance. Furthermore, the testimony revealed that the election commenced on time. In addition, AFSCME alleges that the parties agreed to have the eligible voters line up outside in the yard of the Public Works building. Miss Weaver, the Commission's election agent, testified that due to the cold weather the men were permitted to wait inside in the corridor. She testified that this is normal voting

6/ Exhibit C-1 contains these objections verbatim.

procedure and did not witness any confusion. The Hearing Officer finds that the relocation of the waiting line did not interfere with the voter's freedom of choice.

Another allegation of AFSCME is that Mr. Rodriguez, an AFSCME International Representative, was told by Mr. Melchior he would be arrested if he electioneered on Cherry Hill property on election day. The testimony is contradictory concerning this incident but the undersigned finds that the fact that Mr. Rodriguez was electioneering in the agreed place on election day cured any adverse affect this verbal exchange could have had on the election. In addition, another alleged violation of election ground rules concerned released time to ensure an uninterrupted flow of voters. The Hearing Officer finds that the record is not clear as to whether these were agreed upon. Even if agreed to, no effect upon the election has been established. Therefore, the Hearing Officer finds that the foregoing allegations are very technical in nature and do not form the basis for setting this election aside.

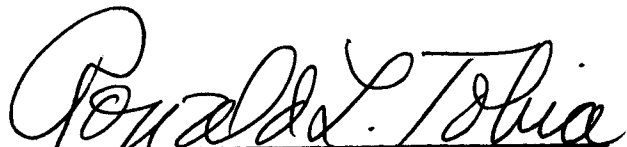
With regard to alleged electioneering, the record reveals two occasions during the election wherein Mr. Bisco talked to eligible voters. Mr. Bisco admitted talking to an employee, Mr. French, concerning a potential incorrect classification and pay rate but denies promising to "take care of him" if he voted against AFSCME. Mr. Esposito testified that he overheard this conversation, but that Mr. Bisco promised to reward Mr. French for voting against AFSCME. Mr. Becker corroborates this testimony in that Mr. Bisco told him he had to do a lot of talking to Mr. French during the election. The other allegation of electioneering

involves Mr. Hartranft and Mr. Horsey who were talking to men in line while waiting to vote. Mr. Post, a former Public Works employee, testified that Mr. Bisco told Mr. Horsey to stand by the door to the polls and that a disturbance ensued with AFSCME's observers. Miss Weaver did not recall any such disturbance. Also Mr. Joseph Esposito, Supervisor of Sanitation, testified that he sent Mr. Hartranft to see why employees were giving Mr. Horsey a hard time in line. In contradiction, other testimony revealed that Mr. Joseph Esposito told Mr. Becker and other employees after the election that he sent Hartranft and Horsey to disrupt the election.

These facts concerning electioneering standing alone would not be the basis for setting aside this election. The facts concerning these incidents are not clear as to what was said to prevent voters from exercising freedom of choice. Absent a connection between election day activities and actual interference with freedom of choice, the undersigned finds that the record does not clearly indicate these activities to be the type of electioneering to warrant the setting aside of this election.

RECOMMENDATION

Based on the foregoing, the Hearing Officer respectfully recommends that the February 4, 1970 election be set aside by the Commission and another election be directed in the appropriate unit as described in footnote two in accordance with its Rules and Regulations.



Ronald L. Tobia
Hearing Officer

DATED: September 18, 1970
Trenton, New Jersey