

P.E.R.C. NO. 2000-101

STATE OF NEW JERSEY  
BEFORE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Public Employer,

-and-

ADMINISTRATIVE, PROFESSIONAL AND  
SUPERVISORY GUILD/N.J.E.A.  
(ADMINISTRATIVE UNIT),

Docket No. RO-2000-13

Petitioner,

-and-

RUTGERS STAFF UNION, AFT, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of D.R. No. 2000-12. In that decision, the Director of Representation ordered a count of 114 mail ballots that had been misplaced by the United States Postal Service during a representation election among administrative employees of Rutgers University. The Director conducted an investigation which revealed no evidence of fraud, tampering with the ballots, or any intentional wrongdoing. The Commission concludes that the final count for the election reflected the employees' free choice and that the Director ultimately followed the best course.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Public Employer, Grotta, Glassman & Hoffman,  
attorneys (Theodore M. Eisenberg, of counsel)

For the Petitioner, Klausner, Hunter & Rosenberg,  
attorneys (Stephen B. Hunter, of counsel)

For the Intervenor, Dwyer and Canellis, attorneys (Brian  
Adams, of counsel)

DECISION

On May 15, 2000, the Administrative, Professional and  
Supervisory Guild/N.J.E.A. (Administrative Unit) moved for  
reconsideration of D.R. No. 2000-12, 26 NJPER \_\_\_\_ (¶\_\_\_\_ 2000).  
In that decision, the Director of Representation ordered a count  
of 114 mail ballots that had been misplaced by the United States  
Postal Service during a March 6, 2000 representation election.

The election was initiated by a petition filed by NJEA seeking to represent certain administrative employees of Rutgers University. The Rutgers Staff Union, AFT, AFL-CIO intervened and was also on the ballot. Since none of the choices on the ballot received a majority of the votes cast, a run-off election between NJEA and "No representative" was held on April 10, 2000. While picking up the ballots for the run-off election, the Commission staff agent first learned of the 114 ballots from the March 6 election. Several ballots cast in the run-off election have been challenged and those ballots will determine the outcome of that election. Those challenges have not yet been resolved or those ballots counted.

After the ballots were discovered, the Director invited the parties to submit position statements concerning how the misplaced ballots should be addressed. NJEA asked that both elections be set aside and a new election be conducted. Rutgers suggested that an investigation be conducted and, assuming no irregularities, the misplaced ballots be counted. The AFT did not submit a position.

The Director conducted an investigation which revealed no evidence of fraud, tampering with the ballots, or any intentional wrongdoing. He concluded that the fairest method of ascertaining employee choice would be to count the 114 ballots. He believed that this action would preserve the integrity of the election

process and the employees' free expression. Those ballots were counted on May 16 and did not affect the outcome. A run-off election was still required.

Under N.J.A.C. 19:11-8.2, review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

NJEA argues that the results of the March 6 election and the April 10 run-off election must be voided to maintain the appearance of fairness in the mail ballot process and to restore the eligible voters' confidence in the agency's mail ballot election procedures. It suggests that the agency's image may be irrevocably damaged if the elections are not set aside and the "tainted" mail ballot election process is allowed to continue. NJEA also argues that if the discovery of the 114 ballots had been revealed to the parties prior to the run-off count, their legal positions would not have been influenced by the results of that count. Finally, NJEA argues that granting its request will not prejudice any party and will restore the public's faith in the mail ballot election process.

Rutgers opposes the request for review. It argues that NJEA has not asserted a substantial legal question warranting review or identified any erroneous factual findings. Rutgers contends that review should be denied absent evidence of fraud or tampering, or interference with the voters' freedom of choice, and that voiding the elections would arbitrarily nullify that choice. It also argues that the results of the recount validated the necessity for a run-off election, which has already been held without objection.

AFT did not respond to the request for review.

We deny review. The Director's decision evidences careful consideration of all the issues. In a situation where the postal service misplaced a significant number of ballots, no option on how to proceed would have been perfect. Counting the ballots was the best option among the imperfect solutions. It permitted all those who voted to have their voice heard in an election found to be free of fraud or tampering. Voiding the two elections would have invalidated employee choice under the belief that it would have somehow helped preserve the integrity of the mail ballot election process.


It has not been suggested that the ultimate ballot count in the March 6 election did not accurately reflect employee choice. Everyone who returned a ballot in a timely fashion had his or her ballot counted. As long as the misplaced ballots were not subject to tampering, and the Director specifically found that

they were not, we believe that the Director ultimately followed the best course. We recognize the NJEA's concern that the parties could have been notified of the misplaced ballots before the count in the run-off election and that perhaps that might have changed the parties' legal positions. Nevertheless, that concern is outweighed by the overriding fact that the final count for the March 6 election reflected the employees' free choice.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: May 30, 2000  
Trenton, New Jersey  
ISSUED: May 30, 2000

