

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Intervenor,

-and-

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

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION,
a/w AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

Docket Nos. RE-81-2
RE-81-3
RE-81-4
RE-81-5

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Intervenor,

-and-

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

Docket Nos. RO-81-126
RO-81-127
RO-81-128
RO-81-129

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION,
a/w AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

SYNOPSIS

The Commission denies requests for review of decisions issued by the Director of Representation. The Commission denied a request for review which sought a reversal of the decision by the Director which dismissed objections to the conduct of and results affecting the election in the four mail ballot elections held for State employees in four separate units. The Commission permitted the Director's certification of the CWA to stand in the Administrative and Clerical Services Unit and also his direction of mail ballot run-off elections in the Professional Unit and Primary Level Supervisors Unit. The Commission also denied review of a decision of the Director which voided the ballots cast by employees employed by the Judiciary given their legal status and position of the Judiciary and the State that the Judiciary is the employer of these employees.

P.E.R.C. NO. 81-127

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Employee Representative.

Appearances:

For the State of New Jersey,
Frank A. Mason, Director

For Communications Workers of America, AFL-CIO,
Kapelsohn, Lerner, Reitman & Maisel, Esqs.
(Sidney Reitman, of Counsel)

For the American Federation of State, County and
Municipal Employees, AFL-CIO,
Sterns, Herbert & Weinroth, Esqs.
(John M. Donnelly, of Counsel)

For the New Jersey State Employees Association, AFT
Fox and Fox, Esqs.
(David I. Fox, of Counsel)
Miller, Cohen, Martens & Sugarman, Esqs.
(Nancy Schiffer, of Counsel)

DECISION ON REQUESTS FOR REVIEW

On April 10, 1981, the Director of Representation issued a Decision and Order, D.R. No. 81-35, 7 NJPER ____ (¶____ 1981), which dismissed objections to the secret ballot elections which had been conducted in the four separate units of State employees which are encompassed within the above-referenced representation petitions. The objections had been filed by the New Jersey State Employees Association affiliated with the American Federation of Teachers, AFL-CIO ("SEA/AFT") on behalf of itself and its supervisory affiliates. SEA/AFT now requests that the Commission review the Director's dismissal of these objections. N.J.A.C. 19:11-8.1. None of the other employee organizations or the State of New Jersey, the public employer, filed objections to the election or requested review of the Director's decision.

The mail ballot elections in this case were conducted from February 17, 1981 to March 9, 1981 pursuant to a Decision and Direction of Election issued by the Director of Representation on December 16, 1980. D.R. No. 81-20, 7 NJPER 41 (¶12019 1980). On January 23, 1981, the Commission affirmed the direction of the elections after granting a request for review from that decision which had also been filed only by SEA/AFT seeking a delay in the holding of the election. P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981). On February 12, 1981, the Commission denied a motion for reconsideration of that decision filed by SEA/AFT. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981).

The elections were held in four separate statewide units of employees, which together consist of approximately 32,000 State employees: (1) the Administrative and Clerical Services Unit (11,496 employees); (2) the Professional Unit (10,392 employees); (3) the Primary Level Supervisors Unit (8,666 employees); and (4) the Higher Level Supervisors Unit (1,474 employees). Three employee organizations -- Communications Workers of America, AFL-CIO ("CWA"), American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") and SEA/AFT or their supervisory affiliates were on the ballot in each of the four units. The employees could vote for any of the three organizations or no union ("None") in each election.^{1/} SEA/AFT filed its objections to the elections on March 18, 1981. See, N.J.A.C. 19:11-9.2(h).

N.J.S.A. 34:13A-5.3 and Commission Rule N.J.A.C. 19:11-9.5, which implements it, require that an employee organization must receive a majority of the valid ballots cast by the

^{1/} These ballots were counted on March 10 through March 12, 1981 in the presence of all parties. The tallies of ballots at that time were:

<u>Administrative and Clerical Services Unit</u>					
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>
3,055	1,324	1,157	308	300	548
<u>Professional Unit</u>					
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>
2,313	1,722	1,475	582	211	185
<u>Primary Level Supervisors Unit</u>					
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>
2,100	1,287	1,174	451	194	241
<u>Higher Level Supervisors Unit</u>					
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>
325	215	212	153	40	71

employees in an election to be designated the exclusive representative in an appropriate unit. The initial tallies of ballot established that the CWA received the most votes in each of the four units. In the Administrative and Clerical Unit, the unit in which CWA received the largest percentage of votes cast, the challenged ballots were determinative of the question of whether it had received an absolute majority in this first election. In the Primary Level Supervisors Unit and the Higher Level Supervisors Unit no ballot choice could receive a majority as a result of this first election and challenged votes were determinative of which employee organization, AFSCME or SEA/AFT, was eligible to participate in a runoff election against CWA. See N.J.A.C. 19:11-9.3.^{2/} In the fourth unit, the Professional Unit, the challenged ballots were not determinative of the result as the tally established that a runoff election would be required between CWA and AFSCME. However, pursuant to N.J.A.C. 19:11-9.3(a), no runoff election can be conducted until objections to the election have been resolved. Therefore, SEA/AFT's filing of its objections on March 18, 1981 prevented the Director from scheduling the runoff in the Professional Unit notwithstanding the absence of dispositive challenged ballots.

N.J.A.C. 19:11-9.2(k) provides that if challenged ballots are sufficient to affect the results of an election, the Director of Representation shall conduct an investigation into such challenges.

^{2/} N.J.A.C. 19:11-9.3(c) provides for a runoff election between the two choices receiving the largest and second largest number of votes.

At the first step of this process, all parties to the election are invited to present documentary and other evidence, as well as statements of position relating to the challenged ballots. If appropriate, the investigation may also include a hearing process to resolve disputed factual matters required to resolve the challenges. After this process is completed, the Director renders an administrative determination which resolves the challenges and contains the appropriate administrative direction.

Pursuant to this rule, the Director solicited statements of position and evidence from all parties with respect to the challenged ballots in the three units in which the challenges were determinative. Following receipt of this information, the Director ascertained that several groups of the challenged ballots could be resolved without the necessity of a hearing based on the information, or lack of it, and the statements of position supplied by the parties.

At the count the State asserted challenges to a number of voters.^{3/} None of the employee organizations asserted challenges to any of these voters.

As part of his investigation, the Director specifically asked all parties to submit documentary and other evidence to

^{3/} Challenges are asserted in a mail ballot election at the count, rather than as the voter appears to cast his or her vote. This is accomplished by having the return envelope of each voter who has cast a ballot identified by name and by an identification number on a label attached to the return envelope. If no challenge is asserted the return envelope is opened and the unmarked secret ballot envelope is removed to be counted in a separate and later step of the process. This unmarked envelope contains the ballot of the voter.

support its claim that the challenged voters were in fact ineligible. As might be expected, since it was the only party asserting ineligibility, only the State submitted statements of position urging that the challenges be sustained. However, with respect to its claim of confidentiality of employees on the eligibility lists and of certain employees who had been sent ballots but who were not on the original lists, the State did not submit any documentary or other evidence to support its claim of confidential status.

On March 25, 1981, the Director issued a Decision and Order containing his determination of a number of the challenged ballots which his investigation revealed did not require a hearing to resolve. D.R. No. 81-32, 7 NJPER ____ (¶ ____ 1981). Some of these challenges he resolved on the basis of the undisputed information submitted by the parties. He ordered that some be counted and others voided.^{4/} With respect to the employees challenged as confidential, he ordered that the ballots be counted as the State was the only party asserting their non-eligibility to vote and it had not submitted any evidence to support its naked claim of confidential status, notwithstanding a specific request for documentary or other evidential support for its challenges.

The State filed no request for review from this decision. However, SEA/AFT and AFSCME both filed requests for review urging that hearings be ordered to determine permanent future unit placement

^{4/} Certain other challenges raised for isolated reasons and affecting small numbers of employees such as employees who had retired or resigned between the time the eligibility list was prepared and the elections held, were resolved on the basis of updated employment records.

of these employees. These organizations did not seek to have these voters declared ineligible; to the contrary, they both still maintained that these employees should be eligible. They only sought to have the Director ordered to find them eligible after a full hearing.

The Commission has delegated to the Chairman the authority and discretion to deny requests for review when he deems it appropriate. N.J.S.A. 34:13A-6(f). Pursuant to that authority he issued a decision on April 6, 1981, P.E.R.C. No. 81-112, 7 NJPER ____ (¶ ____ 1981), in which he denied both requests for review since the parties seeking review agreed that the votes should be counted, and never challenged or objected to the eligibility of those employees. N.J.A.C. 19:11-8.2.^{5/}

On April 3, 1981, the Director also issued a Decision and Order containing his administrative determination of those ballots challenged as cast by employees of the Judiciary. D.R. No. 81-34, 7 NJPER ____ (¶ ____ 1981). At the count the State asserted challenges to any employee having the payroll identification number "750." It was the State's position that these employees were all assigned to the Judiciary notwithstanding that they had Civil Service job titles which also appeared in the four state units.

During the investigation of the Judiciary challenges the Director, in addition to soliciting positions and evidence

^{5/} Though it is beyond the scope of this decision and the requirements of our rules, we note our total agreement with the Chairman's denial of the requests for review.

from the parties, also invited the Judiciary, through the Administrative Office of the Courts, to submit a position and documentation. The State and the representative of the Judiciary submitted positional statements and certain documentation which establish that both agree that the challenged employees are Judiciary personnel under the supervision and control of the Judicial branch, and that therefore they cannot be included in these units, and are not eligible to vote in these elections. They also maintain that the payroll identification number refers to a budgetary account assigned only to the Judicial branch and applied to employees assigned exclusively to that branch of government. None of the parties submitted any information to contest this latter position.

In light of this information, and certain other documents referred to in his decision and attached to it, and the Supreme Court's decision on the status of judicial employees vis-a-vis the Employer-Employee Relations Act, Passaic County Probation Officers Assn. v. County of Passaic, 73 N.J. 297 (1977) the Director concluded that the ballots challenged on the basis that they were cast by employees of the Judiciary had to be voided. On April 14, 1981, SEA/AFT filed a request for review from this decision. No other party has filed a request for review from that decision.

On April 6, 1981, following the issuance of the Chairman's denial of the request for review of the Director's March 25, 1981 decision on challenged ballots, D.R. No. 81-32, certain challenged ballots were voided or counted, and others remained

challenged.^{6/} Revised tallies of ballots were then issued in the three remaining units.^{7/} The results of the revised tallies are:

<u>Administrative and Clerical Services Unit</u>						
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>	
3,165	1,373	1,183	323	475	170	
<u>Primary Level Supervisors Unit</u>						
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>	
2,162	1,317	1,193	463	268	51	
<u>Higher Level Supervisors Unit</u>						
<u>CWA</u>	<u>AFSCME</u>	<u>SEA/AFT</u>	<u>No</u>	<u>Void</u>	<u>Challenged</u>	
349	226	222	155	61	7	

These results establish that CWA has received an absolute majority of the valid ballots cast in the Administrative and Clerical Unit and that CWA and AFSCME received the highest and second highest number of votes respectively in the Primary Level Supervisors Unit. The original tally had established that CWA and AFSCME also received the highest and second highest number of votes in the Professional Unit. The revised tallies also established that challenged ballots were still determinative as to which organization received the second highest number of votes in the Higher Level Supervisors Unit.

As indicated earlier, on April 10, 1981, the Director issued his Decision and Order dismissing SEA/AFT's objections to the election. Thus, the results of the election could be given effect. See, N.J.A.C. 19:11-9.2(i) and (j) and N.J.A.C. 19:11-9.3 (a). The Director, therefore, concluded his decision in D.R. No. 81-35 by 1) issuing the appropriate Certification of Representative to CWA in the Administrative and Clerical Services Unit;

^{6/} The Director had voluntarily stayed his decision and order in D.R. No. 81-32 on the resolution of the challenges at the request of SEA/AFT and AFSCME to permit them to file the request for review with the Chairman.

^{7/} This amended tally did not affect the result in the Professional Unit since challenged ballots were not determinative of the result in that unit.

2) directing that runoff elections be conducted in the Professional Unit and Primary Level Supervisors Unit between CWA and AFSCME; these elections are to be conducted as mail ballot elections from May 7, 1981 to May 27, 1981; 3) directing that the parties convene with respect to the further administrative investigation regarding the remaining determinative challenged ballots in the Higher Level Supervisors Unit.^{8/}

On April 15, 1981, SEA/AFT filed its request for review of the Director's decision and order and also submitted a request for a stay of the certification issued with that decision as well as a stay of the direction of the runoff elections.

By letter dated April 16, 1981, the Chairman advised all parties of the scheduling of a meeting on April 24, 1981 at which the Commission would take up both of SEA/AFT's pending requests for review; the request to review D.R. No. 81-35, and the request to review the decision on the eligibility of judiciary employees to vote in these elections, D.R. No. 81-34.^{9/} The letter further advised all parties that statements in opposition to the requests for review, if any, were to be submitted by April 22, 1981. The State and CWA have submitted statements in opposition.

N.J.A.C. 19:11-8.2 sets forth the grounds for determining when the Commission will grant a request for review:

^{8/} The parties did meet with respect to these voters and a further period was given for the submission of documentation on the remaining 7 challenged ballots. Upon receipt of this information, the Director will determine if some of these challenges can be resolved, thus permitting a determinative result, or whether hearings must be held on each ballot to decide the validity of the challenge. The issues in such hearings will vary with the grounds for the asserted challenge.

^{9/} This letter was hand delivered to representatives of each party on the same day.

(a) The commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;

2. That 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. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. That there are compelling reasons for reconsideration of an important commission rule or policy.

We now consider whether any of the requisite grounds exist in the instant case for reviewing the Director's decision dismissing SEA/AFT's election objections.

SEA/AFT first argues that the Commission should reconsider the standards it employs in assessing election objections. Although there is no dispute that the Director of Representation correctly stated these standards, D.R. No. 81-35, supra (Slip opinion at pp. 5-6), it is instructive to summarize the nature and purposes of these standards.

N.J.A.C. 19:11-9.2(h) places the initial burden on the objecting party:

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.

Pursuant to N.J.A.C. 19:11-9.2(i), the Director of Representation must then review the objections and supporting evidence to determine "...if the party filing said objections has furnished sufficient evidence to support a prima facie case." The Director assumes the veracity of the specific evidence proffered by the objecting party at this point. If sufficient evidence has not been submitted to support a prima facie case, the Director may dismiss the objections immediately. If sufficient evidence has been submitted, the Director shall conduct an investigation into the objections.

Pursuant to N.J.A.C. 19:11-9.2(j), the Director, after finding a prima facie case and then conducting an administrative investigation, may order a hearing "...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 completion of the administrative investigation and, where appropriate, the hearing process, the Director then makes an administrative determination sustaining or dismissing the objections.

In reviewing a ruling on election objections, the Commission applies the guidelines it set forth in In re Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970) (slip opinion at p.10):

[T]he 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.

The Appellate Division of the Superior Court specifically approved this standard in affirming the Commission's decision sub nom AFSCME, Local 1959 v. PERC, 114 N.J. Super 463 (App. Div. 1971).

Also, in reviewing a decision not to hold a hearing, the Commission applies the following standard:

The Commission construes the words 'where appropriate' to mean that in the course of the investigation evidence has been submitted demonstrating the existence of substantial questions of fact which, if resolved in favor of the objecting party, would require the setting aside of the challenged election. The Commission does not believe that the mere claim of objectionable conduct, unsupported in the investigative stage by any evidence should thereby entitle the objecting party to a hearing, or, alternatively, that a claim for which the evidence presented is found to be insufficient support for the objection, should create a right to a hearing. If there is to be protracted delay of the certification of the election's results, there should be some reasonable basis which would warrant such delay

in the first instance. The Commission believes that the presentation of evidence raising substantial questions of fact is a reasonably imposed precondition to the holding of a hearing. The failure of the objecting party to satisfy such condition should permit the Commission to proceed to certify the outcome of the election.

In re State of New Jersey and NJCSA/NJSEA, P.E.R.C. No. 76 (1973)
(slip opinion at p. 8) (Emphasis supplied).^{10/}

These standards promote the purposes underlying the New Jersey Employer-Employee Relations Act. If the objecting party adduces specific evidence of conduct which interfered or reasonably tended to interfere with the employees' freedom of choice, then the procedural protections of investigation and, where appropriate, a hearing come into play, and the results of the election will be held in abeyance and ultimately set aside if the allegations of improper conduct are proven. If the objecting party does not adduce such evidence, then the objections are promptly dismissed, thus avoiding unnecessary delay in certifying a bargaining representative and the concomitant result of impeding negotiations and prolonging labor unrest. To hold a hearing would be a true exercise in futility when it is clear that even if the objecting party proved every fact it hoped to prove, the election results would still be upheld. In short, the Commission's

^{10/} In re State of New Jersey and NJCSA/NJSEA, supra, involves a factual setting very similar to the instant case. There, a mail ballot election was conducted in a statewide unit of approximately 10, 500 administrative and clerical employees. SEA and its joint petitioner, the New Jersey Civil Service Association ("CSA"), triumphed. AFSCME filed objections, but the Commission dismissed these objections without a hearing and certified SEA/CSA as the representative of administrative and clerical employees.

standards attempt to protect the employees' freedom of choice against either truly objectionable conduct which could affect the election results or the dilatory, yet hopeless, tactics of parties disappointed in the election results.^{11/}

Beginning with our 1970 decision in In re Jersey Dept. of Public Works, supra, the Commission has consistently and frequently confirmed the applicability of these standards. See, In re Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980); In re State of New Jersey and NJCSA/

^{11/} We agree with the Director of Representation, and disagree with SEA/AFT, that the Commission's standards closely parallel those standards which the National Labor Relations Board ("NLRB") and federal courts apply in reviewing election objections. A party filing objections is not automatically entitled to a hearing; instead, the objector must proffer specific prima facie evidence of the existence of substantial and material factual disputes which, if resolved in its favor, would require the setting aside of the election. See, e.g., Anchor Inns v. NLRB, 106 LRRM 2860 (3rd Cir. 1981) and Lipman Motors Inc. v. NLRB, 78 LRRM 2808 (2nd Cir. 1971). This specific evidence must show not only that unlawful acts occurred, but also that these acts interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election. If the NLRB in the reasonable exercise of its discretion determines that the alleged conduct, even if true, could not have affected the results of the election, then it acts properly in dismissing the objections without a hearing. In effect, by determining that the alleged conduct could not have affected the election results, the NLRB holds that the required laboratory conditions and the integrity of the election have not been impaired. See, e.g., NLRB v. Golden Age Beverage Co., 71 LRRM 2924, 2926 (5th Cir. 1969) and cases cited in D.R. No. 81-35, supra, at p. 7, n. 4. See also, Monier Roof Tiles, 249 NLRB No. 92, 104 LRRM 1204 (1980); Howard Johnson Co., 242 NLRB No. 183, 101 LRRM 1388 (1979). In some cases, the NLRB and reviewing courts have disagreed over whether allegedly objectionable conduct, even if true, could have affected the results of the election, but in no cases has anyone successfully disputed the propriety and applicability of the above standards for considering election objections.

NJSEA, P.E.R.C. No. 76 (1973); In re City of Linden, E.D. No. 17 (1970). Indeed, as recently as April 16, 1981, we denied a request for review of a determination dismissing election objections for failure to make out a prima facie case indicating that conduct had occurred which, assuming it could ultimately be proven, would warrant setting aside the election as a matter of law. In re County of Salem, P.E.R.C. No. 81-121, 7 NJPER ____ (¶____ 1981). We perceive no reason to reconsider long-established and judicially approved standards which have functioned well in preserving the integrity and effectiveness of the election process by protecting employees against interference with their freedom of choice during the election and by preventing unnecessary, protracted litigation after the employees have recorded their choice.

SEA/AFT also alleges that the Director of Representation misapplied the above standards by basing his determination on credibility findings and unfounded assumptions without affording SEA/AFT a hearing on its objections. For instance, SEA/AFT asserts that the Director improperly dismissed an objection which alleged that the Commission delayed in sending duplicate or challenged ballots to requesting employees. To support this objection, SEA/AFT, despite having in its possession Commission records revealing the dates on which ballots were requested and supplied, only produced affidavits of four employees who stated that they had either not received a ballot after requesting one or had not received a ballot promptly. The Director noted that

Commission records did not reveal a specific request on behalf of two of these employees; SEA/AFT finds this observation objectionable because an affidavit of one of its representatives stated that he had supplied the necessary information. This dispute is really an inconsequential quibble. Four instances of alleged delay or failure to forward a ballot could not have affected the results of these elections involving over 32,000 voters. Even if true, SEA/AFT's assertions concerning alleged delay would not warrant setting aside the elections.

SEA/AFT also challenges the Director's dismissal of an objection alleging that the State allowed a CWA representative to process a grievance, but denied SEA/AFT representatives this right. To support this objection, SEA/AFT alleged only one incident of a CWA representative processing a grievance and only one instance of SEA/AFT not being able to process a grievance. SEA/AFT produced no evidence to show that any eligible voters other than the one affiant were aware of the alleged discriminatory treatment; indeed, the affiant herself stated that she first became aware of CWA's processing of the grievance "...during the second week of March 1981."^{12/} SEA/AFT asserts that the Director erred in dismissing this objection because of the admittedly hearsay nature of the supporting affidavit. Again, this contention is of

^{12/} The election period ended March 9, 1981. Thus, at best, the affiant learned of the alleged processing at the very end of the election process.

little moment. SEA/AFT has not produced specific evidence that the allegedly objectionable conduct could have affected the results of the election. Even if true, the allegations concern isolated events which could not have undermined the integrity of statewide elections involving tens of thousands of voters.

Also, SEA/AFT alleges that the Director erred in failing to hold a hearing on an objection alleging that CWA representatives threatened SEA/AFT supporters. SEA/AFT bases its objections on only two affidavits. In one affidavit, one Administrative and Clerical employee stated that on one occasion a CWA organizer employed in the Department of Treasury threatened her. In the other affidavit, one Primary Level Supervisor asserted that he indirectly received an anonymous threat over one month before the election and that he discussed the threat with 15 to 20 co-employees and his supervisors; the threat was never repeated, much less carried out. We believe that the Director acted properly in determining that the alleged threats, even if true, did not warrant setting aside the elections since they are of an extremely isolated nature.

In sum, we agree with the Director that SEA/AFT failed to supply sufficient evidence to support a prima facie case indicating that conduct occurred which would warrant setting aside statewide elections involving more than 32,000 employees. None of SEA/AFT's contentions before us in any way changes the bottom line on these objections: the allegedly objectionable conduct, even if true, could not have affected the results of the

elections.^{13/}

In its request for review, SEA/AFT also asserts that the Director has created a dangerous and unworkable precedent for future elections and has made arbitrary rulings, departed from past practice, and violated specific rules governing representation elections. Our review of the Director's decision and the papers filed by SEA/AFT discloses no basis whatsoever to support these contentions.

Finally, SEA/AFT requests review because the Director certified a union in the Administrative and Clerical Unit which "...will likely be prohibited from representing these employees by the terms of the AFL-CIO Constitution, pending a hearing on May 4, 1981, before the AFL-CIO Umpire." Far from raising a novel or compelling reason for review, this contention merely seeks to relitigate an issue which the Commission has decided twice before, P.E.R.C. No. 81-94, supra at pp. 23-26; P.E.R.C. No. 81-95, supra at p. 5.

Having considered the Director's decision and the issues raised in the request for review, the Commission finds that no new questions of law have been raised, that the Director's conclusions are supported by the record, that no prejudicial error has occurred, and that there are no compelling reasons for reconsideration of an important Commission rule or policy. To the contrary, the Commission's review confirms that SEA/AFT has failed to produce specific

^{13/} Contrast Anchor Inns v. NLRB, supra, in which the Third Circuit Court of Appeals held that a hearing should be held because allegedly objectionable campaign tactics directed at two or three employees could have affected the outcome of an election involving a unit of only five or six employees.

evidence which, if true, would warrant setting aside the elections. Further delay in certifying the results of these elections would only frustrate the freedom of choice of the large majority of state employees who voted for either CWA or AFSCME to represent them. Further delay would also increase the prospect that the collective agreements covering the 32,000 state employees could expire on June 30, 1981 without successor agreements having been negotiated or, indeed, without a representative having been certified in each of the four statewide units. Freedom of choice and labor stability, values at the very heart of labor relations policy in this state, are fostered by calling a halt to time-consuming litigation which has no prospect of success when it is clear that the allegedly objectionable conduct could not have affected the results of the election. See, e.g., State of New Jersey and NJCSA/NJSEA, supra; United Steelworkers of America v. NLRB, 86 LRRM 294 (5th Cir. 1974), cert. den. 419 U.S. 1049; NLRB v. Sun Drug Co., 62 LRRM 2063 (3rd Cir. 1966). By denying the instant request for review, we seek to call such a halt, and to permit the employees' freedom of choice to prevail.

Accordingly, based on the foregoing discussion and in the absence of grounds as set forth in N.J.A.C. 19:11-8.2(a), the request for review of the decision dismissing the objections is hereby denied.

We have also considered the request for review of D.R. No. 81-34 concerning the eligibility of the Judiciary employees filed by SEA/AFT. In it, SEA/AFT argues that the Director misapplied the Passaic County Probation Officers decision and ignored the alleged evidence submitted by SEA/AFT of a past history of including these employees in the unit. SEA/AFT also argues that the Director should not have solicited the position of the Judiciary.

We find there are no grounds for granting the request for review of D.R. No. 81-34. N.J.A.C. 19:11-8.2. We do not find that the Director's analysis of the documents submitted was in any way factually in error, nor do we believe his analysis of the Passaic County Probation Officers decision was in error. We also agree with him that in view of the Supreme Court's opinion in that case, the position of the Judiciary was necessary as part of his investigation.^{14/} Finally, we agree with the Director that given the unique legal status of the Judiciary, and the position of both the Judiciary and the State that the Judiciary is the employer of these employees, no value would be served by conducting a hearing.

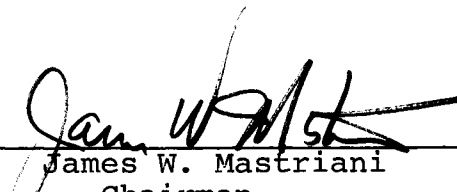
We therefore also deny the request for review of D.R. No. 81-34.

By denying the requests for review of the decision dismissing the objection to the elections, we have mooted the need to pass upon the requests for stays of the Certification of

^{14/} The investigation of challenged ballots is not conducted in the same manner as the initial stages of a review of objections to elections. Contrast N.J.A.C. 19:11-9.2(k) with N.J.A.C. 19:11-9.2(h) and (i).

Representative issued to CWA in the Administrative and Clerical Services Unit and the direction of the run-off elections in the Professional and Primary Level Supervisors Unit pending our review. Accordingly, the Certification of Representative and direction of run-off elections contained in D.R. No. 81-35 continue in effect.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Hipp and Newbaker voted in favor of this decision. Commissioner Suskin abstained from consideration. Commissioner Graves was not present.

DATED: Trenton, New Jersey
April 24, 1981
ISSUED: April 24, 1981