

P.E.R.C. NO. 2003-89

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CUMBERLAND COUNTY BOARD OF
SOCIAL SERVICES,

Public Employer,

-and-

Docket No. RO-2003-27

NJCSA CUMBERLAND COUNCIL 18
(SUPERVISORS),

Petitioner,

-and-

CUMBERLAND SUPERVISORS ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission voids the aspect of the order in D.R. No. 2003-15 that sets the eligibility date for a rerun election. In that decision, the Director of Representation determined that the challenged ballot cast by an employee in a run-off election between NJCSA Cumberland Council 18 (Supervisors) and the Cumberland Supervisors Association should not be counted. The election involved employees of the Cumberland County Board of Social Services. The Chair granted the request of Council 18 for review of that decision and asked all parties to address the eligibility date for a rerun election, should one be required. The Commission clarifies its rule and practice in determining eligibility to vote in rerun elections. Consistent with NLRB practice, the payroll period determining eligibility will be the latest completed payroll period preceding the date of issuance of the notice of rerun election. The Commission voids that aspect of the Director's decision which declared that eligible votes in the rerun election will be those eligible to vote in the first election. The Director shall issue a new order consistent with the Commission's decision.

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, Harold B. Shapiro, attorney

For the Petitioner, Tomar, O'Brien, Kaplan, Jacoby &
Graziano, attorneys (Mark E. Belland, of counsel)

For the Intervenor, Sandra White, Representative

DECISION

On April 15, 2003, the Chair of the Commission granted a request for review of D.R. No. 2003-15, 29 NJPER ____ (¶____ 2003), filed by NJCSA Cumberland Council 18 (Supervisors). In that decision, the Director of Representation determined that the challenged ballot cast by Eileen Billings in a run-off election between Council 18 and the Cumberland Supervisors Association

should not be counted. The election involved employees of the Cumberland County Board of Social Services.

N.J.A.C. 19:11-10.4 concerns run-off elections. It provides:

Employees who were eligible to vote in the prior election and who continue to be included in the voting unit on the date of the run-off election shall be eligible to vote in the run-off election.

Eligibility to vote in the prior election was governed by N.J.A.C. 19:11-10.3(c). It provides that "eligible voters shall be those employees included within the unit . . . who were employed during the payroll period for eligibility."

The Director found that Billings was not holding a unit title during the payroll period for eligibility in the prior election. He reached that determination because the payroll period for eligibility ended October 11, 2002 and Billings was not appointed to a unit position until October 28. Although Billings may have been performing some unit work as part of her training for a unit position, she did not assume a unit position until after the payroll cutoff date. We will not disturb the Director's proper application of Commission rules and Commission and National Labor Relations Board precedent. See Lullo v. Int'l Ass'n of Firefighters, Local 1066, 55 N.J. 409 (1970) (experience and adjudication under the federal act may guide the Act's interpretation); NLRB v. Tom Wood Datson, Inc., 767 F.2d 350 (7th

Cir. 1985) (individual must be both hired and working on eligibility date).

Because voiding Billings' ballot resulted in a tie vote, the Director declared the election a nullity and ordered a rerun election. N.J.A.C. 19:11-10.5 provides that "[e]mployees who are eligible to vote pursuant to N.J.A.C. 19:11-10.3(c) shall be eligible to vote in the rerun election." As we noted above, N.J.A.C. 19:11-10.3(c) specifies that eligible voters shall be employees "who were employed during the payroll period for eligibility" Unlike the rule governing runoff elections, however, the rule governing rerun elections does not specify whether the eligibility date shall be the prior election eligibility date or a new date.

The National Labor Relations Board sets the payroll period for eligibility in a rerun election as the latest completed payroll period preceding the date of issuance of the notice of rerun election. See NLRB Casehandling Manual §11452.2; Socony-Vacuum Oil Company, Inc., 84 NLRB 969, 24 LRRM 1331 (1949). Use of that new date is consistent with most of our agency decisions. See, e.g., Borough of Neptune City, D.R. 97-3, 22 NJPER 345 (¶27179 1996) (new date); but see Cape May Cty. Welfare Bd., D.R. 95-10, 21 NJPER 17 (¶26009 1994) (date from prior election).

We asked all parties to address the eligibility date for a rerun election, should one be required. Both unions asked that

the date be the most recent payroll period. The employer took no position.

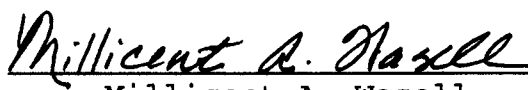
We will use this opportunity to clarify our rule and practice in determining eligibility to vote in rerun elections. Consistent with NLRB practice, the payroll period determining eligibility will be the latest completed payroll period preceding the date of issuance of the notice of rerun election.

We will therefore void the aspect of the order in D.R. 2003-15 that declared that eligible voters in the rerun election will be those eligible to vote in the first election. The Director shall issue a new order consistent with this decision.

ORDER

The aspect of the order in D.R. 2003-15 setting the eligibility date for the rerun election is voided. The Director of Representation shall issue a new order consistent with this decision.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci, and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: May 14, 2003
Trenton, New Jersey
ISSUED: May 14, 2003