

P.E.R.C. NO. 89-124

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY BOARD OF SOCIAL
SERVICES (MORRISVIEW NURSING HOME),

Public Employer,

-and-

MORRIS COUNCIL No. 6, NJCSA,

Docket Nos. RO-E-89-97

Petitioner,

-and-

DISTRICT 1199J, NUHCE,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of Morris Council No. 6, NJCSA's request for review of the Director of Representation's determination dismissing post-election objections. Assuming for purposes of this decision that Council No. 6 supplied evidence specific enough to support its factual allegations, the Commission nevertheless believes that the alleged conduct, even if true, does not warrant setting aside the election as a matter of law.

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Appearances:

For the Public Employer, O'Mullan and Brady, Esqs.
(Daniel W. O'Mullan, of counsel)

For the Petitioner, Fox and Fox, Esqs.
(Dennis J. Alessi, of counsel)

For the Intervenor, Oxfeld, Cohen, Blunda, Friedman, LeVine
& Brooks, Esqs. (Arnold S. Cohen, of counsel)

DECISION AND ORDER

Morris Council No. 6, NJCSA ("Council 6") has requested review of the Director of Representation's determination dismissing post-election objections.^{1/} We deny that request.

^{1/} Council 6 filed a "notice of appeal" of the Director's decision. N.J.A.C. 19:11-6.10 and 11-7.4 provide that rulings by the Director of Representation shall not be appealed directly to the Commission, but shall be considered by the Commission only upon a request for review. We will treat this motion as such a request.

On February 17, 1989, Council 6 filed a Petition for Certification of Public Employee Representative seeking to represent certain employees of the Morris County Board of Social Services ("County") at the Morrisview Nursing Home. The incumbent representative, District 1199J, NUHHCE ("District 1199J") intervened. On March 30, 1989, our staff conducted the election. Of 297 valid ballots, 68 were cast for Council 6 and 225 for District 1199J.

On April 4, 1989, Council 6 filed post-election objections alleging that District 1199J "engaged in a pattern of intimidation and harassment which destroyed the 'laboratory condition' of the election process." Council 6 relied on affidavits submitted with an earlier request to block the election and with its request for review of the Director's denial of the block. It also asserted that when one employee voted, another employee entered the booth and instructed her to vote for District 1199J.

On April 12, 1989, the Director dismissed the objections. D.R. No. 89-27, 15 NJPER ____ (¶ ____ 1989). He noted that Council 6 had not served the other parties. He concluded that: since District 1199J won by so many votes, the incident of two voters talking together while one voted did not affect the outcome; the problem with defaced notices was cured by the posting of new notices; allegations about agency fee trickery and a signing-out incident were vague and not supported by specific facts; Council 6 had adequate time to counter any misrepresentations of fact; the allegation about a District 1199J representative speaking with a

supervisor was confusing; the allegation about 1199J campaign buttons being given to patients lacked specificity; the allegation about employees being afraid to wear Council 6 buttons was not specific; the allegation concerning 1199J representatives destroying Council 6 authorization cards was too remote in time to have prevented the employees from casting non-coerced ballots, and any threats made to Council 6's attorney and president could not have affected the outcome.

On April 18, 1989, Council 6 filed this request for review. On April 25, District 1199J filed a statement supporting the Director's decision. On May 1, the County filed a statement relying on the Director's decision. Both District 1199J and the County noted that they were not served with the post-election objections.

On May 1, 1989, Council filed a statement claiming that the other parties were inadvertently not served but that they had received all substantive materials and arguments relied on by Council 6.

N.J.A.C. 19:11-8.2 sets the standards for granting a request for review. Review may be granted only on one or more of these 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.

Applying these standards, we deny the request for review.

The Director articulated the stringent legal standard for reviewing post-election objections. The improper activities must be directly related to an interference with freedom of choice. The objector must establish the relationship by a preponderance of the evidence. Jersey City Dept. of Public Works, P.E.R.C. No. 43 (1970), aff'd sub. nom. AFSCME, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971). Accord NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924, 2926 (5th Cir. 1969); see also cases cited by Director at 4-5.

Council 6 claims that it supplied evidence sufficient to support a prima facie case under N.J.A.C. 19:11-9.2(h). Assuming for purposes of this decision that Council 6 supplied evidence specific enough to support its factual allegations, we nevertheless believe that the alleged conduct, even if true, does not warrant setting aside the election as a matter of law.

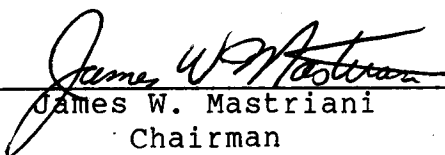
We condemn the alleged destruction of authorization cards, the defacing of Commission notices, and any threats or misinformation that may have occurred during the election campaign. We took appropriate steps to guarantee the posting of new notices and to insure that voters were not improperly influenced during the election.

The Director addressed each allegation individually. Even viewing them together and assuming them to be true, we are not convinced that the alleged improprieties would have affected the results of the election.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioner Smith was not present.

DATED: Trenton, New Jersey
May 15, 1989
ISSUED: May 16, 1989