

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY

Public Employer

and

LOCAL 194, AMERICAN FEDERATION OF TECHNICAL  
ENGINEERS, AFL-CIO

Petitioner

Docket No. R-50

and

LOCAL UNION 723, AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
and HELPERS OF AMERICA

Intervenor

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Amended Decision and Direction of Election, a secret ballot election was conducted under the supervision of the Commission on December 23, 1969 among the employees in the unit described below.<sup>1/</sup> Thereafter a tally of ballots was served upon the parties showing that of approximately 774 eligible voters, 312 voted for Petitioner, 162 voted for Intervenor, 124 voted for "neither" organization; 11 ballots were challenged and 3 were declared void. The challenged ballots do not affect the results of the election. Objections to the conduct of the election and to conduct

1/ The unit is "All of the collectors and maintenance employees, including craft employees, in the Operations Division of the New Jersey Turnpike Authority; but excluding all part time employees, professional employees, office clerical employees, policemen, managerial executives and supervisors as defined in the Act."

affecting the results of the election were timely filed by Intervenor on January 5, 1970.<sup>2/</sup>

The Commission has caused an investigation to be made and reports its findings and conclusions as follows:

A preliminary observation should be made regarding the evidence submitted in support of Intervenor's objections. In accordance with its rule, Section 19:11-19(i) which provides that the objecting party shall bear the burden of proof, the Commission requested Intervenor, Local 723, to submit whatever documents and affidavits it had to support its allegations. Thereafter a representative of Local 723 replied by notarized statement that its objections were self-explanatory, its allegations were fact and if an affidavit be needed, the statement should be considered such; supplemental affidavits would be submitted if needed. Having made an initial request for all evidence, the Commission made no further request; and no further evidence was submitted by Intervenor.

The Intervenor's objections will be reprinted below and treated individually in the order of their submission by the Intervenor.

Objection No. 1

"The Act and the Commission's Rules and Regulations provide for, mandate, and require that all elections shall be conducted by secret ballot. In this case the integrity of the ballots' secrecy was impaired by the following factors:

- a. The outside envelope of all mail ballots (i.e. the

<sup>2/</sup> Petitioner questions the timeliness of the filing on the basis of the date it received a copy of the objections. Petitioner does not state the date it received the objections. However, Intervenor certifies that on the date it served the Commission with its objections it also served each of the other parties, including Petitioner, by certified mail. Since December 25, 26, 27 and 28 and January 1, 2, 3 and 4 were either holidays declared by the Governor, a Saturday or a Sunday, the objections were filed "within 5 days" as required by Section 19:11-19(f) and defined by Section 19:17-1(a) of the Commission's Rules and Regulations. The Commission finds the objections were timely filed and properly served.

mailing envelope) contained a designation of the voter and his classification (i.e. within the Toll Collector or Trades Divisions). Of the approximately 161-163 mail ballots received all but one were from employees of the Toll Collector Division. Thus, the parties firstly could determine which classifications and which employees voted by a mail ballot. (A form of voting requested by the Public Employer and the Petitioner.)

Secondly, and of more importance, the parties were able to determine how the 160-odd mail balloting Toll Collectors voted. This resulted from the fact that the mail ballots were readily distinguishable from the manual ballots (because of the additional wording on the ballot and the placement of same) coupled with the fact that almost 99% of the mail ballots were cast in favor of the Petitioner.

Thus, by knowing who voted by mail (the name, address, classification, and interchange of each employee who used a mail ballot was announced on two occasions to all parties) the parties (including the Employer) knew how the individual employees voted (since close to 99% voted for the Petitioner).

Thirdly, the Employer was thus able to determine how a group of employees (in this case Toll Collectors), as opposed to individuals, voted and could utilize this information either for or against a group of employees.

The importance of the latter aspect of this objection was recognized by the Commission's representative since three (3) ballots which contained on the ballot itself a designation "Trades" was voided because in the opinion of said representative the ballot designated the position of a group of employees which could be used for or against said employees by the Employer."

Several observations should be made regarding this area of complaint. By the terms of the Direction of Election, every eligible employee, regardless of classification, was entitled to request a mail ballot. Those who so requested were provided with a ballot and a return envelope, the latter being addressed to the American Arbitration Association, and indicating in the upper left hand corner that the voter should fill in his name and address and thereafter sign it. No space was provided and no indication was given that the voter should identify himself by job classification.

None of the envelopes nor ballots used in the election, and now in the Commission's possession, disclose the job title of the voter. Also regarding the three ballots ruled void, that disposition results not only because those voters identified themselves and their preference but also because the word "Trades" written in the "neither" box precludes a determination of what the voter's intent was concerning the three choices permitted on the ballot.

Regarding the substance of the complaint itself, it must be observed that certain infirmities inhere in any balloting method and on occasion will operate to impair the secrecy of the ballot. Thus, for example the voters' choice may be unanimous, thereby indicating how each employee voted; or challenged ballots, subsequently overruled and opened, may reveal that all those, now identified through the challenge procedure as a group, voted the same way. In such cases, the results are not discounted simply because the voter, caught in a statistical improbability, has involuntarily revealed his choice and, together with his co-voters, destroyed the desired secrecy. Unfortunate as this consequence may be, it does not outweigh the effect to be given the properly registered choice of the voters. So it must be in the instant case. Even assuming that all toll collectors voted by mail ballot, that this "fact" was public information and that they all selected the same choice (assumptions which are not totally factual), that unanimous expression is entitled to greater recognition than the desire for secrecy. It should, of course, be noted that each individual voter's ballot remained secret which is the essence of a secret ballot election. It may be argued that had the manual and mail ballots been identical in form, the question of possible identification would not have arisen. In retrospect this is true, but it is not dispositive of the objection. The Commission's

agent took reasonable steps to safeguard the secrecy of the ballot. If now, because an extremely improbable event came to pass, a group of voters can be identified as having favored a particular choice, that "fact" is unlikely to be cured by a rerun election, and considering the possible inherent infirmities of any balloting procedure, it is, in the circumstances of this case, considered to be less a vice than having these and other employees participate in a second election. The fact is, however, that any indication of how any particular group voted is neither established on geographic conditions nor in a given group since not all collectors voted by mail and not all employees at any given location voted by mail. Therefore, the Commission overrules Objection 1 a.

Objection No. 1 b

"Mail ballots were furnished upon request regardless of who requested the same and they were mailed to whatever address was indicated on the request. Thus, an outsider could request a mail ballot on behalf of an employee or in the name of an employee and request that the ballot be mailed to whatever address the outsider requested (including his address) and then solicit the employee's vote and mail it for the employee all under the guise of secrecy. The unsuspecting employee who may not even have wanted a mail ballot would thus be exposed to external pressures influencing his voting and be placed in the position of revealing how he was going to vote.

The misuse of this procedure is apparent from the fact that a large number of requests for mail ballots were received on mimeographed postal cards -- prepared by and distributed free by the Petitioner. Thus 225 requests for mail ballots were made and approximately 161-163 returned.

Furthermore, no opportunity was given to the parties to determine the validity of the signature on the mail ballot request and the address to which the ballot was to be sent. This, despite the fact that the "Notice of Election" required that "employees" make request for the mail ballot.

Finally, as to this point, there was no occasion to check the eligibility of those voting by mail (by comparing their signatures) as there was for manual voters since the latter group were identified by Turnpike identification or

driver's licenses. Thus, for the mail ballots the Commission ignored the mandate required by the "Notice of Election" that "Eligible employees are requested to bring identification to the polls." The purpose of this requirement was presumably for the purpose of determining whether a particular voter was eligible to vote. The same safeguard was not provided the parties by the mail ballot.

As a matter of fact, there was no way for the parties to determine whether the mail ballot was actually voted by an eligible employee or someone else.

In addition, the Intervenor was denied the right to compare the signature on the mail ballot request form with the signature on the ballot's mailing envelope. The Intervenor was denied the right to ascertain whether the address to which ballots were requested to be forwarded was, in fact, the address of the alleged requesting employee.

Finally, the Intervenor was not afforded an opportunity to ascertain the timeliness of any request for mail ballots as proscribed by the "Notice of Election" (i.e. whether requested too soon or too late -- For example, one request was postmarked the same day as the "Notice of Election" was posted.)"

The first aspect of this objection, relating to possible solicitation by an "outsider" is mere speculation since no evidence was submitted indicating that such activity occurred. Thus, it does not warrant further consideration. Likewise without merit is the contention that Petitioner distributed postcards requesting mail ballots. This fact alone, assuming it to be fact, does not demonstrate interference with the election process. There is no evidence that the postcards, even if distributed by Petitioner, were not signed by the employee requesting a mail ballot. The time honored desires of all partisans to obtain a maximum turn-out in an election by encouraging voters to cast ballots or assisting in getting them to the polls is not to be held impermissible in elections conducted by the Commission or its agent.

The remainder of this objection is addressed essentially to the alleged absence of opportunity for the Intervenor or any other party to

satisfy itself that the individual requesting a ballot and/or voting a ballot was in fact an eligible employee and whether his request and/or ballot was timely filed. Here again it should be noted that there is neither allegation nor evidence of actual abuse of or interference with the election process; the objection goes to the possibility of abuse. That such a possibility exists in any election proceeding cannot be denied. It is possible, for example, in a manual ballot situation, especially as here where there are hundreds of eligible voters, that in spite of the most reasonable safeguards an ineligible employee, or one who is not even an employee, could obtain the necessary identification, pass through the checking table without challenge and cast what would later be counted as a valid ballot. So the question is not one of possibility but whether there is evidence of irregularity. As earlier noted, Intervenor has submitted no such evidence. However, because at this stage the matter is not readily susceptible of proof by one not having access to the pertinent documents, and because of its concern for the integrity of its processes, the Commission itself has caused an investigation to be made and reports as follows. The A.A.A. received and honored 232 timely filed written requests for mail ballots. Of that number 214 were from individuals whose name and address identification on the request can be verified as correct by comparison with the Employer's master list of eligible employee names and addresses. The remaining number, 18, were from individuals all of whose names appear on the master list of eligible employees, but whose addresses on the requests differ from the addresses on the master list. All 18 were sent ballots. Of these 18, seven voted but were successfully challenged because the address on the ballot's envelope did not correspond to the address on the master list; six did not vote; four voted without challenge even though the

addresses did not correspond; and one returned a ballot which was disregarded because the voter failed to give any of the required identification on the envelope containing the ballot. It is evident from the foregoing that the overwhelming majority of requests were in proper form and as to these no suspicion may attach that an ineligible voter was sent a ballot. Regarding those 18 requests where the addresses differed from those on the master list, eight of them ultimately came to naught because their votes were challenged or disregarded and another six did not attempt to exercise the vote.<sup>3/</sup> That the remaining four voted without challenge represents a failure of the challenge procedure, the responsibility for which must rest principally upon the parties' observers. It should be observed, however, that even if it were to be assumed that these ballots were improperly cast, an assumption not based on evidence, the election results are such that these four votes would not affect the outcome no matter how tallied.

The Commission concludes that there was substantial compliance with the established procedure and that while there is evidence of some deviation it was not on such a scale that the outcome of the election could be affected nor was it of such significance that one could reasonably conclude, in the face of evidence showing substantial compliance, that the entire

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<sup>3/</sup> That no one of these six ballots was voted can be ascertained from the following facts. When A.A.A. sent out a mail ballot it printed on the return envelope the same control number that appeared beside that employee's name on the master list. All ballots when returned were checked by control number against the list and a notation was made indicating that the ballot with that control number had been accounted for. In the case of the above six, there is no such notation for their control numbers, meaning that regardless of who received them, they were not returned. It is through this same device that the identity of the single voter, whose ballot was disregarded, can be established as well as the fact that his request contained an address different from that on the list.



procedure is infected with doubt.

The remainder of the complaints in this objection, not already disposed of, go beyond the procedures established for the election. Thus, Intervenor objects that it had no opportunity to compare signatures for mail ballot requests nor opportunity to compare signatures for returned ballots. That is true. And it should be fairly obvious why no opportunity is permitted to make such comparisons. The limited experience of this agency and the experience of other agencies similarly situated indicates that this "safeguard", so obviously unwieldy, is unnecessary. It is also true that no opportunity was afforded to determine that only timely filed requests for ballots were honored. This is an internal matter and no good cause has been shown why it should have been subjected to public scrutiny. The Commission overrules Objection 1 b.

Objection No. 1 c.

"Approximately thirty (30) ballots were returned without any post-mark whatsoever and it was impossible to determine how, when, by whom the same were delivered and whether they were received within the time period required by the "Notice of Election"."

The instructions on the Notice of Election used in the instant case state, with respect to mail ballots, that such "shall be returnable" to the A.A.A. "by 5 P.M. on December 22, 1969." The instructions on the mail ballot itself ask that the voter "seal this envelope and mail as soon as possible;" the voter is then informed that, in order to be counted, the ballot "must be returned" by the above specified time and date. The Commission's Direction of Election states that its election officer shall designate "arrangements for the mailing and return of the mail ballots." In short, there appears to be no requirement that a ballot be returned by mail or that it bear a post-mark. While use of the mails would normally be expected, a ballot, hand delivered by the due date and time, would be equally acceptable.

In the final analysis, compliance with the specified deadline is determined by the Commission's agent, the A.A.A., and it alone is accountable. Its representative states, without contradiction, that only those ballots in its possession, however delivered, as of the specified deadline were tallied; those received late were disregarded. In the absence of contrary evidence, this statement is conclusive of the issue. Therefore, this objection is overruled.

Objection No. 1 d.

"The Intervenor was never shown or supplied with a sample copy of the mail ballot."

The Commission's file contains a letter dated December 18 from the Assistant Election Director of A.A.A. to the parties, including the Intervenor. The letter recites that the Notices of Election and "Sample Ballots" are enclosed; attached to the letter is a copy of a sample mail ballot as well as copies of the manual ballot and Notice. An earlier letter, dated December 3, 1969, from the A.A.A. to the parties, including the Intervenor, had enclosed the Notice and a copy of a sample manual ballot but no mail ballot. If, as the Intervenor states, it never received the sample mail ballot, it is not unreasonable to expect that under these circumstances it would have inquired of its whereabouts. Furthermore there has been no showing that its failure to receive such prejudiced its position or in any way interfered with the conduct of the election. Accordingly, the objection is without merit and is overruled.

Objection No. 1 e.

"The Commission advised the parties that "Notice of Election" would be required to be posted for three weeks in all districts, work sections, shops, and interchange plazas. This requirement was not complied with for a number of locations until only two (2) weeks before the election. During the one week period when no notice was posted, a number of employees were induced to vote by mail (thinking this was the

only way to vote) and did vote by mail during that week and said votes were procured by Petitioner's representatives which votes were subject to the above-mentioned infirmities and voting irregularities."

That notices be posted for a specific three week period is not an iron bound requirement, such that non-compliance would automatically void the election, and to interpret it as such is a misreading of the situation. Notice posting is requested for the obvious purpose of informing those eligible of the coming election and of certain ground rules. Whether the notices were posted for two weeks or three weeks is of little significance as long as reasonably adequate notice is achieved, a result generally measured by the degree of participation by the voters in the election. Here, there was substantial participation, virtually an 80% turnout. In addition, there is no showing that those not participating were caused to refrain by lack of notice. The second aspect of this objection, that some employees were induced to vote by mail at a time when the notice was expected to be posted but was not, must be considered pure speculation. But even if such a proposition was supported by affidavits from those induced, it would not be material because the Commission has already rejected the objections lodged against the mail balloting procedures. Accordingly, this objection is overruled.

Objection No. 1 f

"The supplying of postal cards by the Petitioner for the purpose of requesting mail ballots constituted an unfair interference with the process of the election since it, in effect, purchased the obligation of the employees to support the Petitioner and afforded the Petitioner an opportunity to unlawfully influence and participate in the actual voting process of the employees."

This objection essentially repeats one of the complaints raised earlier in Objection 1 b. The additional arguments of unfair interference

and the possibility of unlawful influence have been considered but are found not persuasive. The Commission overrules this objection.

Objection No. 2

"The American Arbitration Association was designated by the Commission as its agent for conducting the election. Despite this fact, during the counting of the ballots, an employee of the Commission in effect superimposed his authority over that of the A.A.A. and substituted his opinion for that of the A.A.A. As a consequence, challenged ballots (among them all of the mail ballots but sixty-six (66)) which ordinarily would not be opened were opened at the direct order of the Commission's said employee and included in the tally of ballots. It is submitted that the inclusion of such ballots in the tally unfairly colors the proofs before the Commission as to the validity of the challenges -- a factor which ordinarily would not be present if the procedure of segregating, and not opening and counting, challenged ballots had been followed (as under the N.L.R.A.) and permitting their counting to await a ruling on the challenge.

Such conduct, on the part of the Commission's employee is in direct contravention of the New Jersey Administrative Code -- 19:11-19(d) which provides as follows:

"Any party...may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded" (Emphasis added)"

The objection is obviously without merit to the extent that it challenges the right of the Commission to act through one of its staff members and have that member assume direction of the election or any phase of the election procedure, notwithstanding the presence of an earlier designated agent. Such an elementary right of a principal need not be discussed further.

While the above objection does not indicate the nature of the challenges referred to, the staff member involved in the subject complaint states that Intervenor attempted to challenge certain mail ballots for the

following reasons: one group did not contain postmarks on the envelopes; in another group, the control number originally placed on the envelope by the A.A.A. had been crossed out and a new number assigned; a third group was questioned on the basis that the Intervenor's representative did not know the employees in question or that they had in fact mailed the ballots. The Commission's representative refused to accept challenges made for any of the foregoing reasons. Concerning the designation of a new control number, he had been advised by the representative of A.A.A. that such changes had been made by that organization and amounted to no more than a mere bookkeeping change. The Intervenor was permitted to challenge those mail ballots where the employee address on the outside envelope did not conform to the address shown on the Employer's records. It is the conclusion of the Commission that the reasons advanced for attempting to challenge the ballots in the first three groups above were not bona fide. Under the Commission's rules a party may challenge "for good cause." Absence of a postmark when none is required, the change of a control number when done by the one responsible for establishing the mechanics of the election, and mere unfamiliarity with individual voters when there is no evidence that the voter is not who he purports to be - none of these reasons constitutes good cause and challenges on these bases were properly declined. Having refused to permit these challenges in the first instance, the Commission's representative was not obliged to segregate them for future determination, but was at liberty to open and count them.

The Commission's representative also states that prior to attempting these challenges, Intervenor requested that the signatures on all mail ballots be compared with signatures contained in the Employer's payroll records. It also asked that the written requests for mail ballots addressed

to A.A.A. be checked to determine if all were timely filed. Both requests were declined and subsequently about 70 mail ballots were opened with no attempt being made by Intervenor to challenge them. It is the Commission's view that the rejection of these requests was proper. No evidence was submitted or even allegation made that one or more mail ballots contained a forged signature. Furthermore, the Commission and its agents are not qualified to engage in handwriting analysis. Finally, it is not the Commission's policy to permit such activity as an integral part of its election procedure. Regarding the second request, the Commission has been advised, as was its staff member at the time of Intervenor's request, that the A.A.A. honored only those requests which were timely filed. As determined earlier in this decision, that statement is conclusive in the absence of evidence to the contrary. Accordingly, the Commission overrules this objection in its entirety.

Objection No. 3.

"The Commission's employee refused to accept challenges on mail ballots whose identifying number had been altered without any indication as to when or by whom."

This objection has already been considered and ruled upon within Objection No. 2.

Objection No. 4.

"The ballots were counted in such a fashion so as to preclude the Intervenor's observers and representatives from checking the individual ballot as to whether or not it comported with the designation afforded it by the party counting the ballots. It was, therefore, impossible for the Intervenor to determine the accuracy of the count. This becomes extremely important when one realizes that even on the submitted tally the Petitioner only avoided a run-off election by six (6) votes.

As an example of the inaccuracy of the tally we refer to the fact that in addition to the three (3) ballots labeled "void" on the tally there were at least seven (7) more which were declared "void at the time the ballots were counted."

It is not clear from the foregoing and no additional evidence was submitted indicating precisely how Intervenor's observers were precluded from checking the accuracy of the count. According to the Commission's representative and the representative of the A.A.A., all parties were invited to observe the ballot-by-ballot count, and all parties did observe the procedure through selected representatives. If, for example, Intervenor's observers could not see each ballot counted or thought some irregularity occurred during the count, the time to express their dissatisfaction was during the count. No party complained at that time regarding the counting procedure and no party requested a re-count.

Concerning the tally, the evidence does not support the allegation that votes were not accurately tallied. The three ballots declared "void" and so tallied referred to three ballots which, because of improper notations on the face of the ballots, made it impossible to determine the voter's choice. They were properly counted as void ballots. The other ballots referred to by Intervenor as also having been declared void but not so tallied concern a group of mail ballots, none of which was opened. They were set aside because the information on the outside envelope indicated they should not be opened for various reasons, e.g., no signature as required, proof that the individual had already voted manually. Technically, since these ballots were not opened and examined, they should not be considered void; the voter had simply disqualified himself from voting in the first place. In the final analysis, even if they should have been tallied as void, and even if, at the time of the count they were loosely referred to as void (which in a broad sense is not totally inaccurate), the fact that they were not so tallied in no way affects the outcome of the election and their treatment in no way casts doubt upon the validity of the counting

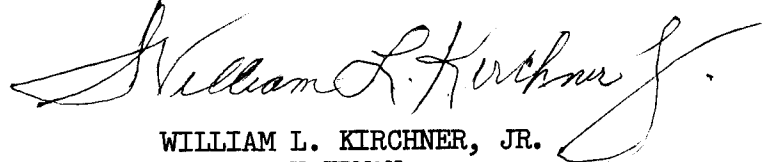
procedure. The Commission finds this objection to be without merit and thus overrules it.

In summary, the Commission overrules each and every objection filed by Intervenor. Petitioner, having received a majority of all valid votes cast, plus challenged ballots, will therefore be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Local 194, American Federation of Technical Engineers, AFL-CIO has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described in footnote 1 above, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act of 1968, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment.

BY ORDER OF THE COMMISSION



WILLIAM L. KIRCHNER, JR.  
ACTING CHAIRMAN

DATED: March 5, 1970  
Trenton, New Jersey