

P.E.R.C. NO. 81-121

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SALEM,

Public Employer,

and

O.P.E.I.U., LOCAL #14,

Petitioner,

Docket No. RO-81-34

and

SALEM COUNCIL 21, C.W.A.,

Intervenor.

SYNOPSIS

The Commission denies a Request for Review of the Director of Representation's decision in In re County of Salem, D.R. No. 81-30, 7 NJPER _____ (¶ _____ 1981) wherein he dismissed objections to a Commission conducted election. The Commission held that the Director properly analyzed the facts and applied the appropriate law in reaching his decision.

P.E.R.C. NO. 81-121

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SALEM,

Public Employer,

-and-

O.P.E.I.U., LOCAL #14,

Petitioner,

Docket No. RO-81-34

-and-

SALEM COUNCIL 21, C.W.A.,

Intervenor.

Appearances:

For the Public Employer, William J. McGinnis, Jr.,
Consultant

For the Petitioner, Schneider, Cohen, Solomon &
DeMarzio, Esqs., (Bruce D. Leder, of Counsel)

For the Intervenor, Kapelsohn, Lerner, Reitman &
Maisel, Esqs. (Melvin L. Gelade, of Counsel)

DECISION ON REQUEST FOR REVIEW

On September 4, 1980, the Office and Professional Employees International Union, Local #14, (the "OPEIU") filed a Petition for Certification of Public Employee Representative with the New Jersey Public Employment Relations Commission seeking to represent certain employees of the County of Salem (the "County") who were, at that time, represented by Salem Council 21/Communication Workers of America (the "CWA").

Pursuant to a Consent Election Agreement signed on December 17, 1980, the Commission conducted a secret ballot election herein on January 22, 1981. The final revised tally of ballots

was issued on February 4, 1981 and showed that a majority of the voters had selected the CWA as their exclusive representative. By letter dated February 4, 1981, the OPEIU, pursuant to N.J.A.C. 19:11-9.2, filed objections to the conduct of the election with the Director of Representation.

The Director issued his determination on March 6, 1981, In re County of Salem, D.R. No. 81-30, 7 NJPER ____ (¶ ____ 1981), and held that the objections should be dismissed because the OPEIU did not furnish evidence to establish even a prima facie case indicating that conduct occurred which would warrant setting aside the election. N.J.A.C. 19:11-9.2(i).

Pursuant to N.J.A.C. 19:11-8.1, the OPEIU, on March 19, 1981, filed a request for review of the Director's decision, alleging that the Director failed to consider certain facts, and misapplied the law. At the conclusion of its request for review the OPEIU argued that if the election were not set aside, the Commission, in the alternative, should order a hearing to permit the OPEIU to prove a prima facie case.

In its request for review the OPEIU has raised the identical objections that were raised below, which included allegations of pre-election misconduct as well as alleged misconduct on election day. Neither the County nor the CWA filed a request for review.

Careful consideration has been given to all of the facts and issues raised herein. The record below shows that the Director considered all of the objections and dismissed the same finding that none of the activity complained of warranted a new election. With respect to the pre-election misconduct, the Director

was correct in dismissing those allegations based upon the policy enunciated by the National Labor Relations Board in Hollywood Ceramics and General Knit^{1/} because the alleged pre-election misrepresentations herein were not a substantial departure from the truth, nor did they occur at a time that prevented the OPEIU from making an effective reply.

With respect to the alleged election day misconduct, the record reveals that the Director did consider all of the alleged misconduct but correctly dismissed those allegations for the various reasons set forth in that decision.

Regarding the request for a hearing, the Director properly denied that request because as indicated, the OPEIU did not even supply sufficient evidence to support a prima facie case indicating that conduct has occurred which would warrant setting aside the election. Therefore, they did not even establish the basis for an investigation, let alone a hearing on contested facts.

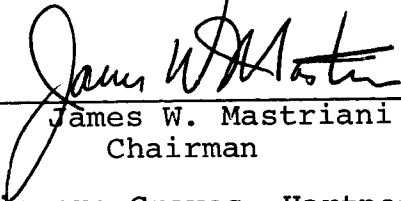
Having reviewed the Director's decision and the issues raised in the request for review, the Commission finds that no new questions of law have been raised, that the Director's factual conclusions are supported by the record, that no prejudicial error has occurred, and, that there are no compelling reasons for a reconsideration of any rules or policies raised herein.

Accordingly, based upon the foregoing discussion, and in the absence of grounds as set forth in N.J.A.C. 19:11-8.2(a),

1/ Hollywood Ceramics Co., 140 NLRB 221, 51 LRRM 1600 (1952); General Knit of Calif., 239 NLRB 101, 99 LRRM 1687 (1978). This policy was adopted by the Commission for cases of factual misrepresentation. See In re Jersey City Med. Center, P.E.R.C. No. 49 (1970).

the Request for Review is hereby denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981