

P.E.R.C. NO. 81-112

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,

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

-and-

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

Intervenor,

-and-

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

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIA-
TION,

Employee Representative.

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Intervenor,

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

-and-

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

Intervenor,

-and-

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

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

SYNOPSIS

The Chairman, acting under authority delegated to him by the Commission, denies requests for review of a decision issued by the Director of Representation which ordered the counting of certain challenged ballots.

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a/w AMERICAN FEDERATION OF TEACHERS,
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a/w AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,

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NEW JERSEY CIVIL SERVICE ASSOCIATION,

Employee Representative.

Appearances:

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

For Communications Workers of America, AFL-CIO
Kapelsohn, Lerner, Reitman & Maisel, attorneys
(Sidney Reitman, of counsel)

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

For the New Jersey State Employees Association,
Fox & Fox, attorneys
(David I. Fox, of counsel)
Miller, Cohen, Martens & Sugarman, attorneys
(Nancy Schiffer, of counsel)

DECISIONS ON REQUESTS FOR REVIEW

On March 25, 1981, the Commission's Director of Representation issued a decision which determined whether challenged ballots cast by certain voters should or should not be counted for the purpose of issuing a revised tally of ballots. Mail ballot elections were previously directed and conducted by the Commission.^{1/} Since challenged ballots were sufficient in number to have affected the results of the election in three of the four units involved in the elections,^{2/} it caused the Director to conduct an administrative investigation of the challenges.^{3/} His decision, after administrative investigation, ordered that a revised tally of ballots issue on ballots he determined to be valid ballots and on those he deemed void. He was unable to resolve certain challenged ballots on which he requested additional evidence. The basis for each of these conclusions is set forth at length in his decision.

Neither the State of New Jersey (the "State") nor the Communication Workers of America, AFL-CIO ("CWA") has requested review of the Director's decision. The New Jersey State Employees Association, affiliated with the American Federation of Teachers, AFL-CIO ("SEA/AFT"), and the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") have filed requests

1/ D.R. No. 81-32, 7 NJPER ____ (¶ ____ 1981) and P.E.R.C. No. 81-94, and on reconsideration, 81-95, 7 NJPER ____ (¶ ____ 1981).

2/ Administrative and Clerical Services Unit

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

3/ N.J.A.C. 19:11-9.2(k).

for review on April 2, 1981 and April 3, 1981 respectively. The CWA has filed a statement in opposition to the request for review on April 3, 1981. Additionally, SEA/AFT and AFSCME request a continuation of stay of the Director's decision pending consideration of their requests for review.^{4/}

The Commission has delegated to the undersigned the authority and discretion to deny requests for review. N.J.S.A. 34:13A-6(f). The key issue herein is whether SEA/AFT and AFSCME have raised issues which warrant an order granting review by the Commission (see N.J.A.C. 19:11-8.2), and whether the Director should proceed to count the ballots as ordered in his decision.

Careful consideration has been given to all of the facts and issues at hand. The challenged ballots fall into several different categories which are discussed at length in the Director's decision. The principal objections raised by SEA/AFT and AFSCME are that the ballots ordered counted should not be counted until plenary hearings are undertaken to resolve the eligibility of the voters and further that the Director's decision is inappropriate inasmuch as he did not specifically order "permanent unit placement" for those voters whose ballots would be counted.

^{4/} On March 25, 1981, after issuance of his decision and the commencement of procedures for the counting of ballots for the purposes of issuing a revised tally of ballots, SEA/AFT and AFSCME advised the Director of their desire to request review of his decision. The Director voluntarily ceased procedures to count the ballots and advised all parties including the State and CWA who did not object to the counting procedure, that he would count the ballots he deemed eligible on April 6, 1981 unless otherwise directed by the Commission. Inasmuch as this decision has considered and denied the request for review, it is not necessary to rule on the requests for a continuance of the voluntary stay.

The ballots which the Director ordered counted fall into several different categories which are set forth in his decision and involve employees whose names appeared on the eligibility list and thus received ballots and those whose names failed to appear and received ballots by the Commission upon request of any of the three employees organizations or by an individual.

It is significant that neither party seeking review ever asserted a challenge to any voter whose name appeared on the eligibility list, nor does either party now assert that the ballots ordered counted by the Director are those of ineligible voters.^{6/} Employees who were placed on the list of eligible voters by the State in lists provided to the Commission and to all employee organizations all received ballots. Pursuant to Commission election procedures, all parties were entitled to challenge returned mail ballots. The State challenged the ballots of certain voters alleging they should be excluded on the basis of "confidentiality". The position of the SEA/AFT and AFSCME, and also of CWA, the other employee organization on the ballot, at that critical time was that these voters were eligible to cast ballots and each of these organizations failed to assert challenges to these returned ballots. The Director, pursuant to his administrative investigation, required the State to submit documentary evidence to support its challenges and after the investigation failed to reveal a substantiation of these challenges, he ordered that the ballots be counted.

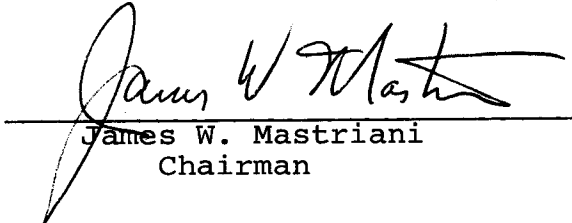
^{6/} The Commission's rules require and the Director requested that any party asserting the ineligibility of a challenged ballot submit documentary and other evidence. N.J.A.C. 19:11-9.2(k).

The SEA/AFT and AFSCME assert that hearings should be held to "finally adjudicate" or establish "permanent unit placement" of these employees before there is a revised tally. Since the Director determined that these are valid ballots cast, it is without merit for a party having failed to assert a challenge or to have produced any evidence, to now request a hearing merely on a claim that at some time in the future the employer might assert a question of unit placement.

Equally without merit are assertions that the status of employees not on the list who received ballots should now be the subject of plenary hearings, after an administrative investigation has determined that their ballots should be counted and neither party seeking the hearing asserts their non-eligibility.

Additionally, AFSCME has stated that the Director should not issue a revised tally until subsequent to the issuance of a decision on the objections to the conduct of the elections which have been filed by SEA/AFT. There is no such requirement in the Commission's rules nor in the absence of the submission of any compelling consideration should there be such a limitation.

Accordingly, in the absence of grounds as set forth in N.J.A.C. 19:11-8.2(a), the requests for review are hereby denied.



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 6, 1981