

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
Public Employer

and

NEW JERSEY CIVIL SERVICE ASSOCIATION -
NEW JERSEY STATE EMPLOYEES ASSOCIATION
Petitioner

Docket No. RO-496

and

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

DECISION AND CERTIFICATION OF REPRESENTATIVE^{1/}

Pursuant to an Agreement for Consent Election, a secret ballot election was conducted by the Commission by mail between January 19, 1973 and February 12, 1973 among the stipulated appropriate unit of administrative and clerical employees employed by the State of New Jersey. By agreement of the parties, the appropriate collective negotiating unit includes "all employees employed by the State of New Jersey performing administrative and office clerical services excluding managerial executives, supervisors within the meaning of the Act, confidential employees, professional and craft employees, policemen and all employees employed by the State of New Jersey in negotiating units in which prior certifications of representative have issued by the Public Employment Relations Commission."

Subsequent to the counting of the ballots on February 15, 1973, Election Officer James W. Mastriani served upon the parties a Tally of Ballots which revealed that of approximately 10,500 eligible voters, 3,122 voted for the petitioner, 1,117 for the intervenor, 429 for neither representative, and 353 were challenged. The challenged

^{1/} The Commission, pursuant to Section 19:15-11 of its Rules and Regulations, transfers this case to itself for decision. The Commission is aware that under the terms of the Consent Election Agreement, the Executive Director is authorized to make final determination of questions relating to the election. It is also aware that under Section 19:15-1(c) any decision of the Executive Director in representation matters is subject to a request for review filed with the Commission. Since the grounds for granting such request are limited and not easily satisfied (see Sec. 19:15-3), consideration of this case by the Commission in the first instance represents an expansion of due process rather than a denial.

ballots were not determinative of the results of the election. The intervenor filed timely objections to conduct affecting the results of election on February 22, 1973.^{2/}

After receipt of the objections, the intervenor was requested on February 23, 1973 to submit probative evidence substantiating the objections.^{3/} Pursuant to this request, the objections were supplemented by a letter dated March 16, 1973.^{4/}

In the first objection, AFSCME states that there is:

"1. The clearly documented evidence that representatives of the employer engaged in negotiations with the State Employees Association, (SEA) and the Civil Service Association, (CSA). The occurrence of these meetings was openly admitted by the President of the Civil Service Commission and the fact of the meetings received full publicity. Our correspondence of January 9, 1973 and January 16, 1973, as well as several communications from other representatives of AFSCME, made clear the status of our objection on these grounds as well as our complaint that the offending activity would and has in fact caused irreparable harm to AFSCME. As you will recall, that correspondence sought emergent relief by way of an order delaying the election until these objections could be resolved. You will further recall that our correspondence of January 16, 1973, made clear that the alleged violations contravene specific provisions of the Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., the regulations promulgated pursuant to that act, and all relevant precedents under the National Labor Relations Act and the regulations of the National Labor Relations Board."

In response to the Commission's request that the intervenor submit probative evidence in support of its objections, AFSCME submitted the following statement to supplement its first objection:

"Our principal objection to the certification of the election results is the clearly documented fact that representatives of the employer engaged in negotiations with the State Employees Association

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- ^{2/} PERC Rules and Regulations, Section 19:11-19(f) N.J.A.C.
^{3/} Pursuant to the Rules and Regulations, Section 19:11-19(i), the "objecting party shall bear the burden of proof regarding all matters alleged in the objections..."
^{4/} Upon receipt of a Commission Agent's request to submit evidence in support of the objections, AFSCME on March 5 requested an extension of time for the purpose of preparing evidence.

(SEA) and the Civil Service Association (CSA). These meetings were openly acknowledged by the President of the Civil Service Commission. I am attaching a copy of the December, 1972 Spot-lighter, published by the SEA, which contains the statement that representatives of the SEA and the CSA presented their negotiating demands to Civil Service Commission President James Alloway, as well as their letter to Governor Cahill dated December 17, 1972, repeating such demands. I have attached a copy of a memorandum from Mr. Alloway to the Governor's office summarizing his telephone conversation with the President of the SEA concerning that group's negotiating demands. Despite our continuous protests and letters to you dated January 9, 1973, January 16, 1973 and February 22, 1973, copies of which are attached, the New Jersey Public Employment Relations Commission has not taken any corrective action to publicly state that SEA and CSA are not the authorized majority representative of the clerical and administrative services unit.

The employer has not only conducted negotiating sessions with SEA and CSA, but has done everything possible to foster the impression that the SEA and CSA were already recognized as the collective negotiating representative.

As our letter of January 9, 1973 indicates, these actions are in direct violation of the Public Employer-Employee Relations Statute, and have been grounds for voiding several National Labor Relations Board elections. That letter cited specific holdings of the National Labor Relations Board to the effect that election results which were held subsequent to pre-election meetings or negotiations between an employer and a prevailing labor organization, would be invalidated because such activity interfered with the free choice of a bargaining representative."

The facts which AFSCME relies on to support the allegations contained in its first objection and supplementary statement in response to the request for evidence were enclosed in a letter from Robert R. Klingensmith, International Union Area Director, AFSCME, to the Executive Director of the Commission dated December 27, 1972. In this letter Klingensmith alleged that illegal negotiations were being conducted by representatives of the State of New Jersey and officials of the NJSEA and NJCSA and that AFSCME was in possession of documentary

evidence to support this allegation.^{5/} The documentary evidence accompanying that letter consists of an alleged confidential memorandum from Civil Service Commissioner James A. Alloway to the Honorable Pierre P. Garven, Counsel to the Governor, dated November 28, 1972. The memo is reproduced below in its entire form.

CONFIDENTIAL

MEMORANDUM

To: The Honorable Pierre P. Garven
Counsel to the Governor

From: Commissioner James A. Alloway

Re: New Jersey State Employees Association's
List of Priorities for 1974 Budget Year

"I just received a telephone call from Mr. Lawrence Arcioni, President, New Jersey State Employees Association, wherein he gave me the following priorities with regard to their 1974 salary request:

1. Money. They want a minimum salary of \$5,500 for all employees. At the Present time, they feel comparability is +19.2%. (They honestly do not expect that much.)
2. They want 100% cost of living for people already retired.
3. They want a retirement bill for age 55 with a change in the denomination to 1/55 and no penalty.
4. Dental and eye care.
5. Conversion of unused sick leave for early retirement.
6. Liberalized vacation.

^{5/} No further documentary evidence concerning the first objection was submitted beyond the alleged facts and documentation enclosed in this letter. Reference is made to these alleged facts and documents in AFSCME's objections and evidence submitted in support of objections. Therefore, the Commission will analyze the enclosures of the December 27, 1972 letter in its determination as to whether substantial issues of fact or law have been demonstrated which would warrant the setting aside of the election or the use of a hearing for further investigation.

He does have some question regarding priority 2 and 3. In the near future, he plans to meet with Miss Louise Brizzi, President, Civil Service Association, in order to determine a joint approach to the economic package decision.

I gave no indication as to the State's position on any of these matters. This is sent to you for information."

November 28, 1972

JAA:plo

cc: Comr. Alloway
Walter Wechsler
William Druz
Frank A. Mason

Also accompanying the December 27th letter is a news release of the NJSEA, December 18, 1972 in which the NJSEA publicized the announcement of a seven-point benefit proposal substantially similar to the items listed in the above memorandum. The release indicates that the benefit package was communicated to Commissioner Alloway and that communications with the Governor's office were established along with a request that a meeting be held with the Governor concerning the proposals. Thirdly, Klingensmith enclosed a copy of a letter dated December 18, 1972 from Lawrence Arcioni, President, NJSEA, and Louise Brizzi, President, NJCSA to the Governor containing the proposed benefits and informing him that the items had been discussed with Mr. Alloway and representatives from the Governor's office. The final enclosure of Mr. Klingensmith's letter is a copy of the December, 1972 edition of the Spotlighter, a publication of the NJSEA, which features a headline and article concerning the above proposals and communications. The article, in substance, publicizes the facts (but not the conclusions) alleged by AFSCME.

The proposed benefit package as reported in the Spotlighter includes a request that the State adopt a specific minimum salary schedule for all administrative employees, several additional items applicable to all state employees and one item concerning retired State employees. This first objection alleges that the facts, as outlined above which we will presume herein to be true, constitute illegal negotiations, illegal acts and improper interference with the exercise by state employees of freedom of choice of a negotiating representative. The Commission has thoroughly considered this objection, the evidence in support of this objection and all pertinent correspondence from the intervenor which was received prior to the election which relate to this objection. The Commission finds that this objection is not supported by the evidence. Assuming all of the evidence submitted to be accurate, the Commission cannot conclude that such conduct constitutes objectionable behavior which would warrant the setting aside of the election. The investigation reveals

no evidence that the incidents, as set forth by AFSCME, constitute negotiations as the term in its simplest form is commonly defined. The unilateral overture made by telephone to Commissioner Alloway received no response concerning the employer's position on any of the benefit items submitted to him. The article in the Spotlighter, letter to the Governor and press release issued by the N. J. State Employees Association reveal nothing more than a unilateral overture addressed to state representatives with no indication that such items were negotiating demands from which counter-proposals issued or were anticipated. Nor is there any suggestion or implication that it was the recognized negotiating representative for administrative and clerical employees. Having found that the facts, as set forth, do not constitute objectionable conduct, the Commission further finds that the publication of the events by the N. J. State Employees Association does not constitute interference with the employees' exercise of freedom of choice of representative, nor that the events interfered with what we presume to have been a valid exercise of employees' choice of representative.^{6/} Having failed to find that the petitioner and employer engaged in negotiations, the Commission finds the National Labor Relations Board cases cited by the intervenor to be inapposite. In Electric Auto-Light Company, 116 NLRB 788 (1956) and Kirfhaefer, 120 NLRB 117 (1958) the Board held that negotiations prior to representation elections with incumbent unions which were subsequently publicized prior to the conduct of an election constituted interference with freedom of choice of the employees. As the instant investigation is barren of any indication that negotiations transpired, the Commission cannot conclude on the basis of what has been submitted, that the facts herein constitute interference as set forth in the Board decisions.

AFSCME's second objection states:

"In addition to the allegations we have set forth above, we intend to show that the hearing we have demanded and to which we are entitled in accordance with the rules and regulations of the Commission, that there was massive and continuous interference on the part of supervisory personnel in the various departments of state government in which the employees participating in this election served, against AFSCME and in favor of CSA/SEA.

We accuse supervisors with the power to hire and fire, or to effectively recommend the same, of intimidating the clerical employees under their supervision to such an extent that the conduct of a fair election was impossible."

^{6/} The Commission has with judicial approval held that an election conducted under its supervision is a presumptively valid expression of employee choice. Jersey City Department of Public Works, P.E.R.C. No. 43, July 27, 1971; affirmed 114 N.J. Super 463 (App. Div., 1971)

No evidence was submitted in support of this objection, although additional time had been requested and granted in which supporting affidavits would be produced. Rather, AFSCME simply renewed its request for a hearing on this objection at which time witnesses would be produced in support of the objection. Absent any evidence in support of this objection, the Commission finds no demonstrated issue of fact present. The objection is dismissed for lack of evidence.

AFSCME's third objection is stated as follows:

"We renew our request to present evidence which we believe will categorically show that the SEA/CSA remain separate warring entities with no intention of entering a joint plan of representing the employees in question. Further, as you are well aware, the decision from the Appellate Division has not yet been rendered, and we feel that it would be inappropriate for PERC to certify this election pending the receipt of that decision."

The Commission has previously considered this issue and found it to be without merit. The Appellate Division rendered a decision on this question and has affirmed the decision of the Commission.^{7/} Accordingly, the objection is dismissed.

AFSCME's fourth objection states:

"We also find the continued use of the Great Seal of New Jersey by the CSA/SEA on much of its campaign literature and without proper authorization, to have confirmed to the employees that the CSA/SEA was in some way already an officially certified representative or officially designated organization."

Upon the request for evidence to support this objection, AFSCME again proposes that a hearing be held at which time such objection would be explored. While AFSCME refers to no specific evidence concerning this objection, the Commission notes in the December 1972 edition of the Spotlighter, that the Great Seal of the State of New Jersey appears on the stationery of an open letter to the Governor on behalf of the New Jersey Employees Association and the New Jersey Civil Service Association. No inference can be reasonably drawn that the use of the Seal in this manner demonstrates employer support for the SEA/CSA or that SEA/CSA was the certified or recognized representative of administrative and clerical employees.^{8/} The objection is clearly without substance and is overruled.

^{7/} American Fed. of State, County and Municipal Employees, AFL-CIO, v Public Employment Relations Commission, Civil Service Assoc., and State Employees Assoc., State of New Jersey, ___ N.J. Super ___, (App. Div., February 27, 1973).

^{8/} The Commission has been made aware that in at least one instance AFSCME literature in support of their campaign utilized the Great Seal of the State of New Jersey.

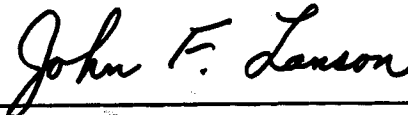
With respect to AFSCME's claim that it is entitled to a hearing at which it will produce evidence in support of various contentions, the Commission makes the following observation. Section 19:11-19(i) of the Commission's Rules and Regulations provides that where objections are filed "...the Executive Director shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged and to issue a report and recommendations." The Commission construes the words "where appropriate" to mean that in the course of the investigation evidence has been submitted demonstrating the existence of substantial questions of fact which, if resolved in favor of the objecting party, would require the setting aside of the challenged election. The Commission does not believe that the mere claim of objectionable conduct, unsupported in the investigative stage by any evidence should thereby entitle the objecting party to a hearing, or, alternatively, that a claim for which the evidence presented is found to be insufficient support for the objection, should create a right to a hearing. If there is to be protracted delay of the certification of the election's results, there should be some reasonable basis which would warrant such delay in the first instance. The Commission believes that the presentation of evidence raising substantial questions of fact is a reasonably imposed precondition to the holding of a hearing. The failure of the objecting party to satisfy such condition should permit the Commission to proceed to certify the outcome of the election.

Having overruled each of the objections, the Commission will certify the petitioner.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that the New Jersey Civil Service Association and New Jersey State Employees Association, joint petitioner herein, have been designated and selected by a majority of the employees in the unit described above as the exclusive representative for the purposes of collective negotiations. Pursuant to N.J.S.A. 34:13A et seq., the said organizations are jointly the exclusive representative of all employees in such unit for the purpose of collective negotiations with respect to terms and conditions of employment.

BY ORDER OF THE COMMISSION



John F. Lanson
Acting Chairman

DATED: April 26, 1973
Trenton, New Jersey