P.E.R.C. NO. 31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY MEDICAL CENTER

Public Employer

and

LOCAL 428 LAUNDRY, DRY CLEANING INTERNATIONAL, AFL-CIO

Docket No. R-9

and

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 1959

DECISION AND DIRECTION OF ELECTION

Pursuant to a Decision and Direction of Election, a secret-ballot election was conducted under the supervision of the Commission's election officer on July 11, 1969, among the employees in the unit described below.[1/] The Commission's election officer served upon the parties a tally of ballots, which showed that of approximately 370 eligible voters, 87 voted for Local 1959, AFSCME, 107 for Local 428, LDIU, and 16 for neither organization; 35 ballots were challenged and two were void. The challenged ballots affect the results of the election. Local 1959, AFSCME filed timely objections to the conduct and the results of the election.[2/]

1/ The appropriate unit shall consist of all blue-collar employees at the Jersey City Medical Center, excluding craft employees, professional employees, supervisors within the meaning of the Act and other employees.

2/ By letter dated November 12, 1969, the attorney representing Local 428 requested that a certification of representative be issued to Local 428 based on the finding in Jersey City Department of Public Works, P.E.R.C. No. 23, that the President of Local 1959, AFSCME, holds a supervisory

(Continued)

Pursuant to Chapter 303, New Jersey Public Laws of 1968, a hearing to resolve challenges and objections was held on October 3, 1969 before Robert Silagi, ad hoc Hearing Officer of the Commission.

On November 25, 1969, Hearing Officer Silagi issued his Report and Recommendations, recommending that the challenges to 13 of the ballots cast be sustained and that the challenges to 22 of the ballots cast be overruled. Hearing Officer Silagi further recommended that the objection be sustained, the election be set aside and a second election be directed. No exceptions to the Report and Recommendations have been filed.

The Commission has considered the Hearing Officer's Report and Recommendations and in the absence of exceptions, the Commission adopts the Hearing Officer's findings and recommendations. 3/

Accordingly, challenges to the ballots of the following individuals are overruled:

Edward Greiger	Louis Moccia
Ronald Gallagher	Frank Finn
John Horan	Stanley Tomaszewski
Robert Keating	Mary Sherry
Theodore Gorski	Herbert Bell
Sabbath LaSalla	Lucia Carreno
Charles Koch	Rodella Machlinchag
Raymond Andruscwiez	Thomas Corbales
Anthony Flora	George Faliero
Francis Lowery	Corita White
Peter Thrunk	Felicitas Alivay

The remaining challenges are sustained.

2/ (Continued) position with the city of Jersey City and that his conduct in the cited case was the basis for setting aside the election therein. The Commission considers this request to be in the nature of an objection to conduct affecting the results of the election, and without deciding the merits, rejects it as untimely filed.

3/ The Hearing Officer, on page 9 of his report, recommended that the challenge to the ballot of Donald Haske be sustained in accord with the parties stipulation that "...he is a stationary fireman and within the unit." (Continued)

If, as a result of counting the ballots, the challenges to which have been overruled, the revised tally shows that Local 428 has received a majority of the ballots cast, the election shall be set aside on the basis of the meritorious objection found herein and a second election shall be conducted. If, on the other hand, the revised tally shows that no choice has received a majority of the ballots cast, a runoff election shall be conducted between the two choices receiving the largest and second largest number of votes.[4/]

In either event, the election shall be conducted among the employees in the unit set forth in Footnote 1, shall be conducted as soon as possible following service of the revised tally of ballots but not later than thirty (30) days from the date of such service, and shall be conducted in accordance with the Commission's Rules and Regulations and Statement of Procedure.

In the event a runoff election is indicated as a result of the aforementioned tally of ballots, the eligibility period shall be measured by the same payroll period used for the election of July 11, 1969; if a rerun election is indicated, the payroll period immediately preceding the

---

3/ (Continued) This inadvertent error is corrected so that the sentence concludes "not within the unit." Also, on page 13 of his report, the Hearing Officer recommended that challenge to the ballot of Wilhelmina Hardy be sustained because she was not employed in the unit as of the eligibility date, having "resigned" in November 1968. Local 428 stated it was about to file suit to challenge the termination. Absent a charge timely filed with this Commission alleging discriminatory discharge, the termination is presumptively lawful. No such charge has been filed. The Commission agrees that the challenge be sustained.

4/ This latter resolution is in accordance with the request of Local 1959, filed with its objections, that in the event a runoff is indicated, its objections need not be considered.

date below shall begin the eligibility period. Those eligible to vote shall include employees who did not work because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

BY ORDER OF THE COMMISSION

WALTER F. PEASE
CHAIRMAN

DATED: January 22, 1970
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
JERSEY CITY MEDICAL CENTER,	:	
Public Employer,	:	
and	:	Docket No. R-9
LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,	:	
and	:	
LOCAL 928, LAUNDRY, DRY CLEANING INTERNATIONAL, AFL-CIO.	:	

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO THE CONDUCT OF THE ELECTION AND CHALLENGES TO BALLOTS

APPEARANCES:

Jersey City Medical Center
by Raymond A. Kierce,
Director of Personnel

Local 1959, AFSCME, AFL-CIO
by Rothbard, Harris & Oxfeld,
Abraham L. Friedman, Esq., of counsel

Local 428, LDIU, AFL-CIO
by Friedland, Schneider & Friedland
Daniel S. Solomon, Esq., of counsel

Pursuant to a Decision and Direction of Election issued by Public Employment Relations Commission, hereinafter the Commission, an election was held in a unit

of "blue collar" workers employed in the Jersey City Medical Center. Said election was held on July 11, 1969. The ballots of 35 votes were challenged upon varying grounds. The results of the election are such that the challenged ballots may affect its outcome. Thereafter, on July 18, 1969, Local 1959 filed objections to the conduct of the election alleging inproprieties by Local 428.

On October 3, 1969, a hearing was held before the undersigned ad hoc hearing officer on the objections and the challenged ballots. The parties waived the filing of briefs.

THE OBJECTIONS

Some time prior to the election the Commission had distributed notices of election and sample ballots (Local 1959 Ex. No. 1) to the employees on the list of eligible voters. During the two or three days immediately preceding the election and, on the day of the election itself, Local 428 distributed to the same persons marked sample ballots (Local 1959, Ex. No. 2). The two ballots were identical in color, size and content with the following exceptions:

(a) The official sample ballot (Local 1959, Ex. No. 1) had stamped in red ink across its face the words "Sample Ballot". The marked sample ballot (Local 1959, Ex. No. 2) had the words "Sample Ballot" written at the top of

the paper.

(b) The official sample ballot carried three boxes wherein the voter could indicate his preference; for Local 1959 on the left, for "neither" in the center and for Local 428 on the right. The three boxes were blank. The marked sample ballot had an X in the box on the right, indicating a preference for Local 428. At the bottom of the marked sample ballot appeared the words:

> 2 Lefts don't make a right -- to start off right -- vote in the R I G H T box -- vote for Nursing Homes and Hospital Union, AFL-CIO, L.D.I.U. L O C A L 428

Local 1959 contends the marking of the sample ballots in this manner and its distribution violates the rules of the Commission. At the time of the election the Commission had "temporary" rules which, since August 29, 1969, have been superceded by "permanent" or official rules. Both temporary Rule, Section 2.14 and the current official Rule 19:11-18 are the same. The rule states, in pertinent part:

> "The reproduction of any document purporting to be a copy of the Commission's official ballot, other than one completely unaltered in force and content and clearly marked "sample" on its face, which suggests either directly or indirectly that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

The public employer took no position in regard to this objection.

Local 428 defends its acts by claiming that its marked sample ballots are not interdicted by the rule quoted above. As its first argument, Local 428 claims that there were no rules and regulations of the Commission in effect on the date of election; consequently there was nothing to violate. Local 428 claims that the "temporary" rules merely indicated what would probably be adopted officially at a later date. Since what it did was not prohibited at the time of the act, Local 428 maintains that it may not be punished by a subsequently adopted rule. In support of this argument, Local 428 relies upon Rule 19:19-2 which holds that

> "Any valid action by the parties prior to the effective date of the Rules and Regulations will not be held invalid because of failure to comply with the procedure requirements set forth herein".

To reach the conclusion urged by Local 428 one would have to hold that there were no rules in effect whatever prior to August 29, 1969. Local 1959 argues that there were rules in effect and these rules were "temporary" in nature. Actually the rules referred to were proposed rules but this is not to say that they could under no circumstances serve as guide lines. There is a clear distinction between a rule which is purely procedural in nature and one which regulates conduct of the parties. Thus the former might establish time limitations for filing papers and the

latter might exclude supervisors and union officials from the polling place. Strict adherence to a time table could hardly be expected if the rule regarding time limitations were not in effect. However, equity could well enforce the exclusion of certain persons from the polling place to guarantee an uncoerced, fair election even in the absence of a specific rule to that effect.

As an alternative to its position that there were no rules of the Commission in effect on July 11, 1969, Local 428 argues that the rules of the American Arbitration Association, hereinafter AAA, were effective since the balloting was conducted by the AAA. This occurred because the Commission, being newly organized and without adequate staff, delegated this function to the AAA. Upon the close of the polls the AAA employee in charge queried the parties as to whether they had any objections to the conduct of the election. Since no objection was raised at that moment, Local 428 claims that all parties waived their right to object. Local 428 further complicates its argument by claiming that the objections filed by Local 1959 should be rejected because they were not received within the time limitations prescribed by the "temporary" rules of the Commission!

There is no merit to the arguments of Local 428. Assuming, arguendo, that the election was held under the rules of the AAA, no evidence was adduced to show an AAA

rule which requires that objections to the conduct of an election be stated orally immediately at the close of the polls or else they are waived. It is desirable that all objections be stated in writing; it is therefore necessary that the parties be afforded a reasonable time after the close of the polls to file such a document. This is the practice of the National Labor Relations Board as contained in its rule, Sec. 102.69(a) which allows objections to the conduct of an election to be filed within 5 days after a tally of ballots has been furnished to the parties. This rule was followed by the Commission in adopting Rule 19:11-19(f). Local 1959 did file its objections within the limit prescribed by Rule 19:11-19(f). This rule must be read in the light of Rule 19:17-1 which excludes intermediate Saturdays, Sundays and holidays when the total time prescribed is less than 7 days.

Turning now to the more serious problems of the marked sample ballot, inspection thereof shows that it is almost identical with the sample ballot distributed by the Commission. That the marked sample ballot had a box on the right side which is slightly larger than the other two boxes on the sheet and the fact that "Sample Ballot" appeared in handwriting instead of printed letters, does not cure the defect. The purpose of the rule prohibiting reproduction of the sample ballot is to prevent confusion among the voters, no matter how unsophisticated. Any party

is at liberty to reproduce and distribute the official sample ballot, but then it cannot be marked so as to suggest that the Commission endorses a particular choice. While the parties have every right to be partisan and to engage in active campaigning to urge voters to vote for them, the Commission has a statutory obligation to remain neutral. This impartiality is lost if literature is distributed which suggests that the Commission advocates the election of one of two contestants. In short, if the official sample ballot is reproduced by a union, then it must be reproduced in its entirety, unmarked and exactly as printed by Commission. Any other kind of reproduction of the ballot must be of such nature that the document instantly is identifiable as a partisan appeal published by a contestant. The marked sample ballot distributed by Local 428 fails to meet this test. In form and content the marked sample ballot was so similar to the official sample ballot that it could not help but have the effect of confusing voters by suggesting that the Commission endorsed Local 428.

Reproduction and distribution of an official sample ballot defaced with an "X" in one of the boxes has long been held to constitute grounds for setting an election aside. See Allied Electric Products (1954) 109 NLRB 1270 and Custom Molders of P.R. (1958) 121 NLRB 1007. It can be safely assumed that local unions affiliated with the AFL-CIO are familiar with this line of decisions. Although the

Commission is not a slavish imitator of the National Labor Relations Board, nevertheless certain rules regulating the conduct of elections are so well established on a national scale that the parties herein should have reasonably anticipated that the Commission would adopt them locally. These standards are elementary codes of conduct of fair play which should be given effect even if no formal rules existed. For these reasons the undersigned recommends that the election of July 11, 1969, be set aside.

THE CHALLENGES

The tally of ballots shows the following results:

Approximate number of eligible voters	370
Void	2
For Local 1959, AFSCME	87
For Local 428, LDIU	107
For neither organization	16
Valid votes counted	210
Challenged ballots	35

It is obvious that the challenged ballots might affect the results of the election in the event that the Commission does not set the election aside. Accordingly, the challenged ballots will be discussed and treated as follows:

1. Dispatchers. The following names were omitted from the eligibility list. All parties agree that the names were properly omitted because they are supervisors not within the unit and hence the challenge to their ballots should be sustained.

Willis Hulings
Seymour Levin
Peter Rush
Fred Hatchett

2. Department of Health employees. All parties stipulated that the challenge to the ballots of the following named persons should be sustained because they are not within the unit.

Rhena Koch
Mary Sharp
Amy Hughes
Carmen Ramirez
Theresa Chenselewski

3. Bennie Peskins. The parties agreed that the challenge to this ballot be sustained on the ground that he was hired after the cut-off date for eligibility.

4. Donald Haske. The parties stipulated that the challenge to this ballot be sustained in that he is a stationary fireman and within the unit.

5. Mary Sheehy. The parties agreed that the challenge to her ballot be overruled. The name as it appeared on the eligibility was incorrectly spelled. It should be Mary Sherry. Her ballot should be counted.

6. Helpers. The ballots of 14 voters were challenged on the ground that they are craft employees who should not vote in a unit of noncraft employees. Their names and classifications are:

NAME	CLASSIFICATION
Edward Greiger	Steamfitter Helper
Ronald Gallagher	Plumber Helper
John Horan	Carpenter Helper
Robert Keating	Plumber Helper

Theodore Gorski	Plumber Helper
Sabbath LaSalla	Electrician Helper
Charles Koch	Electrician Helper
Raymond Andruscwiez	Carpenter Helper
Anthony Flora	Steamfitter Helper
Francis Lowery	Electrician Helper
Peter Thrunk	Painter Helper
Louis Moccia	Carpenter Helper
Frank Finn	Steamfitter Helper
Stanley Tomaszewski	Electrician Helper

The testimony shows that employees in any craft are divided into two categories: journeymen and apprentices. Assisting these employees are the helpers. An apprentice is someone who is learning the trade or craft. The goal of the apprentice is to complete his training and become a journeyman who is able to perform all of the duties within the full scope of his title. Thus an apprentice learns to use the tools of his craft by assisting, by using them and by observing the journeyman. Typical of the manner in which an apprentice learns his craft is the program established by the Newark Housing Authority. Under this apprenticeship program an apprentice spends 4 years. Upon completion of the program, the Department of Civil Service holds a promotion examination to painters which is open to apprentice painters. A successful candidate may then be appointed to the journeyman title. Those apprentices who fail the examination must end their apprenticeship program; they may not remain as apprentices indefinitely. Apprentices may enter training between the ages of 17 and 25.

The helper in any craft does as his title indicates; he helps the journeyman. The helper does routine, minor

repairs which do not require the knowledge or skill of a journeyman. A helper assists the journeyman with his tools, cleans the tools, helps hold work which a journeyman cannot handle alone, and cleans up after the job is completed. A helper may, unlike an apprentice, remain a helper indefinitely. There is no age limit for helpers.

A painter apprentice, who is typical of all apprentices, starts at $2.00 per hour. In the first half of his second year of training, he receives 50% of the journeyman's rate and then advances to 56% in the second half of that year. In the first half of the third year, he receives 60% and in the second half 66% of the journeyman's rate. In the final year of his training, the apprentice gets 72% during the first six months, and ultimately 80% during the last half of the year. A helper, however, starts at $5,079.00 per year and has a maximum of $6,178.00. The journeyman's rate is about $12,000.00.

There is no rule which prohibits a helper in one craft from working in another craft. Usually a carpenter's helper works with a journeyman carpenter but in an emergency he could be assigned to work with a journeyman plumber.

At the time the "blue collar" unit was established, all parties agreed that helpers should be included in the unit. Subsequently Local 428 learned, so it claims, that helpers actually perform the duties of craftsmen. Local

428 did not adduce any evidence on this point, but nevertheless seeks to withdraw from its agreement. Local 428 would, therefore, sustain the challenges to the ballots of the helpers while the public employer and Local 1959 would overrule the challenges and allow the helpers to vote.

Upon the entire record the undersigned holds that helpers are not craft employees. In reaching this conclusion the undersigned gives great weight to the fact that helpers always remain helpers regardless of their years of experience. The New Jersey Employer-Employee Relations Act does not define the term "craft"; therefore it is appropriate to look to other sources in reaching a definition. The National Labor Relations Board has stated "In our opinion a true craft consists of a distinct and homogeneous group of skilled craftsmen, working as such, together with their apprentices and/or helpers". American Potash & Chemical Corp. (1954) 107 NLRB 1418. But where helpers are not in the direct line of progression to any craft classification, they were not included in a craft unit. American Cyanamid Co. (1954) 110 NLRB 89. Helpers who are assigned to various crafts as their services were required were excluded from a craft unit. Cessna Aircraft Co. (1955) 113 NLRB 450; Shell Chemical Corp. (1949) 81 NLRB 965. It is therefore recommended that the challenges to the ballots of the helpers be overruled and their ballots be counted.

7. Herbert Bell, Lucia Carreno, Rodella Machlinchag, Thomas Corbales, George Faliero, Corita White Felicitas Alivay. The names of these voters were omitted from the eligibility list. Some were omitted because of a mistaken interpretation as to the date of eligibility, and others were omitted because of a simple clerical error. It is recommended that the challenges to these ballots be overruled and the ballots counted.

8. Wilhelmina Hardy. She was employed as a hospital attendant. She resigned on November 1, 1968. Her name was not on the eligibility list and her ballot was therefore challenged when she voted. Local 428 states that it is about to institute a suit to challenge the termination of Miss Hardy. Meanwhile it wants her ballot held aside. Both the public employer and Local 1959 agree that the challenge to her ballot should be sustained since she was not on the payroll as of the eligibility date. I agree and recommend that the challenge be sustained.

9. Frederick Servance. For three years prior to the date of eligibility, the voter held a title of Medical Records Clerk. This title is not within the "blue collar" unit. However, Servance's permanent title is Nurse's Aide, a title which is within the unit. As a Medical Records Clerk, Servance earns a higher wage than as a Nurse's Aide. He has the option of staying where he is or reverting to the lower paid job. Should the public employer terminate him in his higher paid job, he has the right to return to work in the lower paid job.

The public employer and Local 428 would overrule the challenge to this ballot and Local 1959 would sustain the challenge.

The direction of election declares eligible to vote all employees within the appropriate unit who were employed during the payroll period immediately preceding the date of the direction of election. Serrance does not meet this test since he was not employed in a title which is included in the unit. He likewise does not fit into any of the exceptions, such as employees who did not work during that period because they were ill, on vacation or temporarily laid off or in military service. It is apparent that Servance was employed in an excluded job title at the time of the date of eligibility. I therefore recommend that the challenge to his ballot be sustained.

ROBERT SILAGI, Hearing Officer

DATED: New York, New York
November 25, 1969.