

P.E.R.C. NO. 86-112

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERKELEY TOWNSHIP,

Public Employer

-and-

TEAMSTERS LOCAL 97 OF  
NEW JERSEY,

Docket No. RO-86-101

Petitioner,

BERKELEY TOWNSHIP MUNICIPAL  
EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission declines to review the Director of Representation's decision to order a new election since the polls opened 40 minutes late due to the late arrival of the Commission election agent and the delay could have affected the election results. The Commission finds that the Director's decision was consistent with Commission precedent and the statutory mandate to ascertain the free choice of the employees in representation proceedings.

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Appearances:

For the Public Employer, Murray & Granello, Esqs.  
(Stephen E. Trimboli, of Counsel)

For the Petitioner, Goldberger & Finn, Esqs.  
(Howard A. Goldberger, of Counsel)

For the Intervenor, Oxfeld, Cohen & Blunda, Esqs.  
(Mark J. Blunda, of Counsel)

DECISION AND ORDER

On February 25, 1986, a staff agent of the Public Employment Relations Commission conducted a secret ballot election to determine the majority representative of a negotiations unit of blue and white collar employees of Berkeley Township ("Township"). The unit consists of 105 employees. 95 votes were cast: 49 voted for the petitioner, Teamsters Local 97 of New Jersey ("Teamsters"); 46 voted for the intervenor, Berkeley Township Municipal Employees Association ("Association").

On March 4, 1986, the Association objected to the conduct of the election pursuant to N.J.A.C. 19:11-9.2. It alleged that the polls opened 40 minutes late<sup>1/</sup> due to the late arrival of the Commission election agent and that this delay could have affected the election results. It seeks a new election.

On March 14, 1986, the Teamsters filed its response. It contended that the objections should be dismissed because there was no proof that the late opening affected the election results.

On March 17, 1986, the Township advised that it "takes no position regarding the election objections, and is prepared to take such action on this matter as the Commission may direct."

On March 25, 1986, the Director of Representation, based upon an administrative investigation, issued his decision. Berkeley Township, D.R. No. 86-17, 12 NJPER \_\_\_\_ (¶\_\_\_\_ 1986). He found that the Commission agent was 40 minutes late and that this could have affected the results. Therefore, he ordered a new election. In pertinent part, he said:

The Commission is statutorily empowered to "resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees (emphasis added) N.J.S.A. 34:13A-6(d). In Somerset County College and S.C.C.S.C.F., Local 3254, E.D. No. 59 (1974), the Executive Director set aside a Commission election and directed a second election among unit employees because the Commission agent

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<sup>1/</sup> The parties had consented to an election with the polls open from 1:00 p.m. to 5:00 p.m. The polls opened at 1:40 p.m.

assigned to supervise the election arrived late at the polling place and the employees who did not vote could have affected the results of the election.

Commission policy governing the conduct of secret ballot elections closely parallels that of the National Labor Relations Board. In re Englewood Board of Education, D.R. No. 82-47, 8 NJPER 251 (¶13111 1982), req. for rev. den. P.E.R.C. No. 82-98, 8 NJPER 275 (¶13120 1982). See also Lullo v. IAFF, Local 1066, 55 N.J. 409 (1970). In Nyack Hospital and Local 200, SEIU and Local 363, IBEW, 238 NLRB No. 39, 99 LRRM 1362 (1978), the Board held that a Board agent's forty minute late opening of a polling place required that a representation election be set aside. The Board's rationale is particularly appropriate in resolving the issues raised in the objections to the election filed in this case:

"[I]t is frequently impossible to determine to what extent a substantial departure by the Board agent from scheduled election voting hours has affected the outcome of the ensuing election. In this case, the votes of those possibly excluded from voting could have been determinative. Moreover, the ensuing votes may have been affected by the conduct of the Board agent. To preclude such occurrences as this, which cast doubt on the results of elections which we are responsible for certifying, and to carry out our responsibility for assuring properly conducted elections and maintaining our own standards, we see no alternative but to set aside this election and direct a second election."

That employees may not have arrived at the polling place at a time when the polls were scheduled to open is wholly beside the point: the Commission cannot sacrifice its duty to properly conduct elections. Accordingly, I find that the late arrival of the Commission agent so disturbed the conditions necessary "to ascertain the free choice of the employees" as to require the election be set aside and a second election be directed in the stipulated unit within thirty (30) days from the date set forth below.  
Slip op. at 4-5.

On April 4, 1986, the Teamsters filed a request for review of the Director's decision.<sup>2/</sup> It contends that review should be granted because his decision raises a substantial question of law and that compelling reasons exist for the Commission to consider this policy decision. It argues that the Director's decision should be reversed because "none of the eligible voters who did not vote were influenced in any way by the late opening." In support, it relies on an affidavit submitted by two Berkeley employees purportedly explaining that the non-voting employees were not influenced by the late opening.

N.J.A.C. 19:11-8.2 sets forth the standard in determining whether to grant a request for review of the Director's representation decision. It provides:

(a) The commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important commission rule or policy.

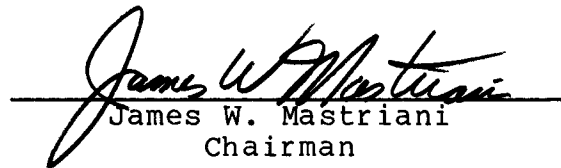
<sup>2/</sup> On April 9, 1986, the Teamsters requested the election be stayed.

We do not believe the Teamsters' claims meet this standard. Therefore, we deny the request for review. The Director's decision was consistent with the then Executive Director's decision in Somerset County College, E.D. No. 59 (1974), NLRB precedent and our mandate "to ascertain the free choice of the employees." N.J.S.A. 34:13A-6(d). The late opening could have affected the results and thereby affected the employees' free choice. Post-election subjective reasons why employees did not vote cannot be considered. G.H.R. Foundry Division, The Dayton Malleable Iron Company, 123 NLRB 1707, 44 LRRM 1213 (1959). Therefore, we see no reason to disturb or review the Director's ruling.

ORDER

The request for review and stay of election is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey  
April 18, 1986  
ISSUED: April 21, 1986