

LOWELL SCHOOL COMMITTEE AND LOWELL TEACHERS ORGANIZATION, MTA/NEA AND UNITED TEACHERS OF LOWELL, AFT, AFL-CIO, MCR-3411 (4/30/84). RULING ON OBJECTIONS TO ELECTION.

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RULING ON OBJECTIONS TO ELECTION

Pursuant to an Agreement for Consent Election approved by the Labor Relations Commission (Commission) on February 24, 1984, and the Amended Notice of Election issued March 29, 1984, a secret ballot election was conducted by the Commission on April 3, 1984 for the purpose of determining whether teachers in the Lowell School Department desire to be represented by the Lowell Teachers Organization, MTA/NEA (LTO), or by the United Teachers of Lowell, MFT, AFL-CIO (UTL), or by no employee organization.

On April 3, 1984, the ballots were counted and tabulated and, after the challenges were resolved, the results were as follows:

Ballots cast for LTO/MTA/Nea	318
Ballots case for United Teachers of Lowell, MFT,AFT,AFL-CIO	319
Ballots cast for no employee organization	1
Challenged Ballots	0
Protested Ballots	0
Void Ballots	2

On April 10, 1982, the UTL filed Amended Objections to the conduct of the election pursuant to the Commission's Rules and Regulations, 402 CMR 14.12(3). The objections were as follows:

Objection No. 1: On or about March 26, 1984, the Educators Services Corporation, a subsidiary of Massachusetts Teachers Association, sent to Lowell Teachers a letter which was reasonably construed and understood by those teachers receiving such letter to threaten termination of insurance benefits purchased from Educators Services Corporation if the insured voted for the United Teachers of Lowell, AFT, AFL-CIO, in the election. Termination of such benefits because of a vote cast in a representation election would be unlawful under Massachusetts law, a fact known to the party making such representation. A copy of said letter is attached hereto and incorporated herein as Exhibit 1.

Objection No. 2: On or about March 26, 1984, the Lowell Teachers Organization distributed to all Lowell teachers a notice of election and sample ballot which appears to be a representation of a ballot favoring one party to the election, specifically the Lowell Teachers Organization, MTA/NEA. Such sample ballot may have been reasonably construed and understood to represent endorsement of the Lowell Teachers Organization by the Massachusetts Labor Relations Commission.



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Objection No. 3: After the count of ballots commenced, a second table was set up; many people in addition to authorized observers were present in the area. One of the individuals observing the count noted that the Commission agent appeared to have tallied a vote called for the UTL as a vote for the LTO.

The Commission conducted a conference on April 20, 1984 for the purpose of investigating the UTL's objections to the conduct of the election.

For the reasons set forth below, we conclude that the UTL's Objection No. 1 warrants a hearing.¹ We further conclude that objection No. 3 does not require a hearing, since it does not establish a sufficient legal basis for setting aside either the tally of votes or the election.

A. The March 26, 1984 Letter

Objection No. 1 asserts that a letter dated March 26, 1984, and mailed to teachers who receive insurance through an MTA group insurance plan, contained misrepresentations regarding the consequences of voting for the UTL. The text of the March 26 letter is as follows:

Dear Lowell teacher,

It has come to my attention that there will be a representation election this Thursday between MTA and MFT for the right to represent Lowell teachers.

Our records indicate that you hold a policy with us in one of the following three areas:

1. Automobile Insurance (a 5% savings over average costs);
2. Homeowners' Insurance (an average 20% savings); or
3. Life or Hospital Income Program.

I'm sure you've benefited from the savings these programs offer to MTA members, and we certainly look forward to serving you in the future.

But I must inform you that these services are available only to MTA members. Please consider that fact when you vote this Thursday. While I firmly believe that MTA is the best union for teachers in Massachusetts, I also know from personal experience that the savings you achieve through these programs can offset a large amount of what you pay in dues.

That is why I would strongly urge you to continue your affiliation with MTA, for reasons both professional and financial. Joining a union means buying protection, among other things, and only MTA offers the kinds of insurance protection, through ESC, that you now receive.

¹ Objection No. 2 was withdrawn by the UTL at the investigation.



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We look forward to serving your needs in the coming years.

Sincerely yours,

/s/

Edward F. Downey, Jr.

President

Educators Services Corporation²

The letter was sent to all of the 124 teachers who have purchased one or more insurance policies through Educators Services Corporation. The letters presumably were received by the employees on March 27 or March 28. The election was scheduled to occur March 29, but because of a snowstorm that required the Lowell schools to be closed on March 29 and 30, the election was rescheduled and held on Tuesday, April 3.

We find that the UTL has presented prima facie evidence that the letter of March 26 presents substantial and material factual issues which could warrant setting aside the election. MLRC Rules and Regulations, 402 CMR 14.12(5); Hudson Bus Lines, 4 MLC 1736, 1739 (1978).

B. Election Tally

In its third objection to the conduct of the election, the UTL claims that Commission agents at one of the two tables at which ballots were being counted and tabulated made two errors in tabulating the ballots and that, because of these alleged errors, the Commission should re-count the ballots cast in the election.

The procedure used in counting and tabulating the ballots was as follows. There were two tables at which Commission agents were counting ballots. At each table, one Commission agent declared whether the ballot had been marked for the LTO, the UTL, or for no employee organization. A second Commission agent tabulated the results. On several occasions, Commission agents reversed roles, so that the agent who had been calling the ballots tabulated them for a period of time, and vice versa. Ballots were counted in blocks of fifty, and each block was separately tabulated.

The official UTL observer at the table at which the alleged tabulation errors occurred was Brendan Sullivan. Sullivan observed each ballot to assure that the Commission agent had correctly called the vote for that ballot. He did not undertake his own tally of the results. Instead, John Casey, an unofficial UTL observer, stood behind Sullivan and tallied the results.

On at least one occasion, Commission agents recounted a block of ballots because of some confusion that occurred during the counting of that block. On two occasions, during the tabulation of two separate blocks of ballots, Casey's tally differed from that of the Commission agents. Casey did not bring this discrepancy

²Educators Services Corporation is a subsidiary of the MTA.



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to the attention of either the Commission agents or the official UTL observer during the counting and tabulation process. In fact, after the counting and tabulation of ballots had been completed, a representative of the UTL signed a Certification of Counting and Tabulation of Ballots, certifying that the ballots were fairly and accurately counted and tabulated.

The UTL requests that, based upon these alleged discrepancies between the Commission's count and that of an unofficial UTL observer, we should recount the ballots cast in the election. The UTL has produced insufficient evidence to establish either that the Commission's final count was inaccurate or that these alleged discrepancies affected the outcome of the election. The evidence presented simply indicated that Casey's tally differed from that of Commission agents regarding two blocks of votes. Casey's Tally was not submitted in evidence.

The UTL had ample opportunity to question the tabulation of a given block of ballots at the time of the count. A question concerning the accuracy of the count, if raised at the election, would have permitted an immediate recount of a specific block of votes. Similarly, had the UTL questioned the Commission's Final tally, it could have raised its question before certifying the tally. Neither the UTL's official observer nor Mr. Casey questioned the Commission's tally until after the date of the election and after the UTL had certified that the count was fair and accurate. No evidence has been submitted to explain why the UTL failed to question the tally when the alleged discrepancy occurred. We are not satisfied that the evidence presented warrants a recount of the ballots cast in the election. The Commission's regulations do not establish any right to a recount after the official tally has issued. The certified tally of ballots will be set aside only where the objecting party submits evidence sufficient to demonstrate that the tally is incorrect and that the error materially affects the results of the election. Accordingly, Objection No. 3 is hereby dismissed.

CONCLUSION

Based upon the foregoing, we find that the UTL's Objection No. 1 relating to the March 26 letter requires a hearing, since the UTL has supplied prima facie evidence presenting substantial and material factual issues which could warrant setting aside the election. With regard to Objection No. 3, this burden has not been met and we find that no hearing is warranted.

PLEASE TAKE NOTICE that, pursuant to Section 4 of the Law, the Commission hereby orders that a Formal Hearing be held regarding Objection No. 1 before the Labor Relations Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202 on Monday May 7, 1984 at 9:30 A.M.

All parties to the proceedings have the right to appear in person at the hearing, to examine and cross-examine witnesses, to produce evidence and otherwise defend or support this objection to the election.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

