
BOSTON WATER AND SEWER COMMISSION AND UNITED STEELWORKERS OF AMERICA, MCR-3628
(8/6/86). RULING ON OBJECTIONS TO THE ELECTION.

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RULING ON OBJECTIONS TO THE ELECTION

The Labor Relations Commission (Commission) conducted an election on April 17, 1986 to determine whether United Steelworkers of America, AFL-CIO (Steelworkers) or United Local 1, Water and Sewer Independent Union (Local 1) would represent certain blue collar employees of the Boston Water and Sewer Commission. On April 24, 1986, Steelworkers filed objections to the Conduct of the election pursuant to Commission Rules and Regulations 402 CMR 14.12(3).¹ An investigation of the Steelworker's objections was conducted on May 7, 1986. Having considered the evidence adduced at the investigation, we overrule the objections for the reasons set forth below.

In allegations 1 and 2, Steelworkers charge that the delayed opening of the polls at 2 voting locations precluded certain voters from casting ballots. Both allegations are hereby dismissed due to insufficient evidence that the late opening prevented any employee from voting. In *Jim Kraut Chevrolet, Inc.*, 240 NLRB 460, 100 LRRM 1227 (1979), the National Labor Relations Board declined to set aside an election where the Board agent opened the polls an hour and a half late. The Board stated that "in order to find such conduct objectionable, we require also that the late arrival of the Board agent caused, or may have caused, eligible voters to be disenfranchised." *Id.* In the instant case there is no evidence that any employee was disenfranchised.

Allegation 3 concerns five alleged incidents of objectionable conduct at the Union Park Pumping Station. We treat them seriatim.

- a. One of the incidents concerns alleged confusion regarding the location of the "conference room" where voting took place. The evidence presented at the investigation indicated that the building contained only 4 rooms, of which two could be considered "conference rooms." Voting was conducted in one of the conference rooms as had been the

¹This rule provides:

"within seven (7) days after the tally of the ballots has been furnished, any party may file with the Commission an original and three copies of objections to the election or to conduct affecting the result of the election which shall contain a short statement of the reasons therefor."



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practice in previous Commission elections. Of 23 eligible voters, all but 4 voted. No evidence indicates their failure to vote was a consequence of confusion concerning the voting location. No hearing is required where an objecting party relies on inferences to establish its case, or where the facts set forth in the allegations do not warrant setting aside the election. Kenneth Hudson, Inc., d/b/a Hudson Bus Lines, 4 MLC 1736, 1740 (1978). Also see NLRB v. Wolverine World Wide, Inc., 477 F.2d 969, 83 LRRM 2309, 2311 (6th Cir. 1973); NLRB v. Smith Industries, Inc., 403 F.2d 889, 69 LRRM 2660, 2661 (5th Cir. 1968). Furthermore, four additional votes in favor of the Steelworkers would not have affected the outcome of the election.

- b. The Steelworkers purport that Local 1 supporters engaged in coercive and intimidating conduct near the polling location. To reach the polling room, voters ascended a short staircase. Certain Local 1 adherents emitted offensive sounds from the top of the stairway, and campaign literature of both unions was posted on the walls of the stairwell. The same literature had been posted in many locations for several weeks and neither party had objected. Campaign posting in such close proximity to the polling place is not encouraged, but does not constitute impermissible electioneering. The noises, although annoying, were not shown to have affected the election outcome. Evidence presented by the Steelworkers was insufficient to establish coercive or intimidating conduct. The National Labor Relations Board, as well as this Commission, has frequently held "that the mere presence of Union representatives at or near the polling place is not sufficient for setting aside an election." Teamsters, Local 829, 3 MLC 1696, 1698 (1977) citing Houston Shell and Concrete Division, McDonough Co., 118 NLRB 1511, 40 LRRM 1409 (1957). In the absence of evidence showing sustained conversations or campaigning with prospective voters the objection will be dismissed. City of Boston Department of Health and Hospitals, 2 MLC 1275, 1280 (1976).
- c. The objecting party asserted that the location of the ballot box precluded election secrecy. However, this contention remains speculative as no supporting evidence was presented. An inference does not warrant a hearing. Kenneth Hudson Inc. d/b/a Hudson Bus Lines, 4 MLC at 1740.
- d. The integrity of the ballot box itself was also challenged. It was closed with transparent tape, and seals meant to be affixed to the tape failed to properly adhere. However, upon examination, the Commission determined that the box was not insecure and had not been tampered with. Further, the number of ballots in the box matched the number of votes cast. Thus, it is highly unlikely that ballots inside the box could have been prematurely extracted. As the National Labor Relations Board has observed, it is not every conceivable possibility of irregularity which requires the setting aside of an election, but only reasonable possibilities. Trico Products Corp., 238 NLRB 380, 381, 99 LRRM 1265 (1978).



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No such reasonable possibility exists in this case as evidence presented by the Steelworkers was inadequate to establish that the integrity of the ballot box was violated.

- e. It is alleged that 5 of 23 voters at the Union Park Pumping Station did not vote because of the conduct described in (a) through (d) above. No evidence was offered to confirm this alleged causal connection.

Therefore, we will not conclude that the employees were prevented from voting when the evidence merely establishes that they did not vote. Our reasons for overruling this objections are subsumed in our ruling on sub-allegation 3a.

Allegation 4 was withdrawn at the investigation.

Allegation 5 charged that the voting locations were not marked by signs or arrows. We do not find that the absence of such signs interfered with the conduct of the election. The locations of the polls in this election were the same as in other elections conducted by the Commission at this employer's premises. More importantly, there was no evidence of voter confusion regarding the polling sites.

The subject of Allegation 6 is a letter to employees issued on or about March 1, 1986 by Local 1. The letter accuses the Steelworkers of obtaining signature cards by improper means, and contains other language considered offensive by the Steelworkers. The various comments in the letter constitute "campaign puffery," a permissible form of campaign propaganda, to which the Steelworkers had sufficient time prior to the election to respond. See Commonwealth of Massachusetts, Commissioner of Administration and Finance (Unit 1), 7 MLC 1293, 1300 (1980). Further, the Steelworkers did not demonstrate that statements concerning their signature cards were untrue. The Commission will not overturn an election on the grounds of misrepresentation unless a party has substantially misrepresented a highly material fact the truth of which lies within the special knowledge of the party making the representation. Commonwealth of Massachusetts (Unit 5), 3 MLC 1067, 1071 (1976). Even when the Commission so finds, it will not set aside an election if it finds that the voters in general have independent knowledge or intelligence with which to evaluate the misrepresentation or if, in its discretion, it finds the misrepresentation has no substantial impact on the election. Commonwealth of Massachusetts, Commissioner of Administration and Finance (Unit 1), 7 MLC 1293, 1300 (1980).

Allegation 7 concerns a document distributed by Local 1 several days before the election. The posted communication compared a xerox copy of a letter written by an agent of the Commission to a portion of campaign literature previously issued by the Steelworkers. It then asked rhetorically "who is lying -- the Labor Relations Board [sic] or the Steelworkers?" The documents referred to in the posting are accurately quoted, but certain underscoring was added to the facsimile of the Commission's letter. The underlined words read out of context might suggest that the Steelworkers were seeking to exclude certain Working Foremen from the collective bargaining unit. The Steelworkers contend that this misrepresentation interfered with the election because some Foremen were disturbed at the prospect of being excluded, while other employees were concerned that their collective bargaining unit



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was being diluted. We find no merit to this argument. Our agent's letter² is innocuous upon its face and was not materially altered. It cannot reasonably be interpreted to imply that the Commission preferred one Union over the other. Further, our standard notices of election were posted well in advance of the election itself. A voter had only to read the official notice to determine who was, or was not, included in the bargaining unit. Finally, the objecting party vaguely alleges that the challenged posting was issued only "several days" prior to the election. However, the actual date of publication was not alleged. This omission precludes any inference that the Steelworkers were unable to remedy any unfavorable effects of such a communication prior to the election.

The Commission determines on a case by case basis whether the reproduction of an official agency document reasonably could have misled employees to believe that the Commission favored a particular employee representative. See e.g. Commonwealth of Massachusetts, Commissioner of Administration and Finance (Unit 1), 7 MLC at 1297. In the instant case there is insufficient evidence that employees reasonably could have construed the questioned reproduction to be a Commission endorsement.

In sum, the facts alleged are either unsupported by substantial evidence or do not provide grounds to invalidate the election. On the basis of the discussion above, we conclude that no hearing is warranted on any of the Steelworkers objections.

For the preceding reasons the objections to the election must be, and hereby, are DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

MARIA C. WALSH, COMMISSIONER

²Written to identify possible outstanding issues prior to a hearing upon the representation petition.

