

CITY OF SPRINGFIELD AND GENERAL TEAMSTERS, LOCAL 404, AND AFSCME, LOCAL 910, AFL-CIO, MCR-3716, 3717, 3718, 3720, 3722, 3723, 3724 (6/10/87). RULING ON OBJECTIONS TO ELECTION AND DIRECTION OF ELECTION.

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Commissioners participating:

Paul T. Edgar, Chairman  
 Maria C. Walsh, Commissioner  
 Elizabeth K. Boyer, Commissioner

Appearances:

- Robert J. O'Donnell, Esq. - Representing the City of Springfield
- David Rome, Esq. - Representing the General Teamsters, Local 404
- Augustus J. Camelio, Esq. - Representing the American Federation of State, County, and Municipal Employees, Local 910, AFL-CIO

RULING ON OBJECTIONS TO ELECTION  
 AND DIRECTION OF ELECTION

On May 7, 1987, the Labor Relations Commission (Commission) conducted an on-site representation election for employees of the City of Springfield (City) who were members of the Unit A<sup>1</sup> bargaining unit, in order to determine whether they wished to be represented by American Federation of State County and Municipal Employees, Local 910 (AFSCME), by General Teamsters, Local 404 (Teamsters, or by no

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<sup>1</sup>Unit A consists of: "All full-time and regular part-time blue collar nonprofessional employees in all city departments including the Civic Center and the Symphony Hall, and all nonprofessional employees at the Springfield Municipal Hospital, excluding all registered nurses, licensed practical nurses, building department inspectors, civil engineers, bath attendants, ushers and ticket takers at the Civic Center, and all casual employees, clerical and white collar administrative employees, supervisors, foremen, timekeepers and managerial and confidential employees.



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employee organization. AFSCME is the incumbent labor organization. On May 11, 1987, the Teamsters filed objections to the conduct of the election for Unit A pursuant to Commission Rules and Regulations, 456 CMR 14.12(3). On May 26, 1987, the Commission conducted an investigation concerning the Teamster's objections. On the basis of the facts adduced at the investigation, we find that because of the City's omission of the names of many eligible voters from the voter eligibility list we must set aside the results of the election in Unit A and order that a new election be held.

#### A. Accuracy of Voter Eligibility List

In its first objection to the conduct of the election, the Teamsters claim that the City provided a substantially inaccurate eligibility list by omitting a number of names of eligible voters from the list and by providing incorrect addresses for some of the names appearing on the list. The Teamsters argue that these omissions and errors not only precluded them from effectively campaigning among eligible voters but also disenfranchised eligible voters.

The consent election agreement was signed by all parties and approved by the Commission on March 25, 1987. On or before April 17, 1987<sup>2</sup> the Commission and parties received the voter eligibility list compiled by the City. There were 532 names and addresses on the list. On April 17, 1987 the Teamsters mailed campaign literature to each person on the list. Within a week 71 envelopes<sup>3</sup> were returned to the Teamsters by the United States Postal Service as undeliverable.

On May 7, 1987 the election was held. The results of the counting and tabulation of ballots were:

Total ballots cast .....	525
Ballots cast for General Teamsters, Local 404 .....	192
Ballots cast for AFSCME, Local 910 .....	211
Ballots cast for no union .....	2
Challenged ballots .....	117
Blank ballots .....	0
Void ballots .....	3
Protested ballots .....	3

All 117 challenged ballots were challenged by the Commission because the names of the voters were not on the eligibility list. In connection with the Commission's investigation of the challenged ballots, the City submitted to the Commission on May 13, 1987 a list of the names, and job classifications of the 117 voters whose eligibility was challenged. The City has posited that the names were omitted from the eligibility

<sup>2</sup>The exact date is unknown.

<sup>3</sup>Although the Teamsters claim that the number was 60, the returned envelopes which they submitted to the Commission during the investigation numbered 71.



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list because that list was taken from a computer list, generated by the City Treasurer's office which contained only the names of bargaining unit employees from whose salaries union dues are deducted weekly.

On May 15, 1987, the parties met at the Commission's office and stipulated that 84 of the 117 challenged ballots were cast by eligible voters. The 84 challenged ballots were counted and the final results were:

Ballots cast for General Teamsters, Local 404 .....	27
Ballots cast for AFSCME, Local 910 .....	57
Ballots cast for no union .....	0
Challenged ballots .....	22
Blank ballots .....	0
Void ballots .....	11
Protested ballots .....	2

Revised Tally

Ballots cast for General Teamsters, Local 404 .....	219
Ballots cast for AFSCME, Local 910 .....	268
Ballots cast for no union .....	2
Challenged ballots .....	22
Blank ballots .....	0
Void ballots .....	14
Protested ballots .....	5

As a result of the revised tally, the American Federation of State, County and Municipal Employees, Local 910, AFL-CIO (AFSCME) won a majority of the votes cast.

1. Omissions from the voter eligibility list

The Teamsters contend that under Excelsior Underwear, 156 NLRB 1236, 61 LRRM 1217 (1966), and its progeny, we should set aside the result of the May 7 election on the ground that the omissions from the City's eligibility list prevented both effective campaigning and full employee participation in the election. We have adopted the view that an inaccurate voter eligibility list may constitute cause for overturning an election. City of Quincy, 1 MLC 1161, 1164 (1974); Commonwealth of Massachusetts, 9 MLC 1842 (1983). On the facts of the instant case, we find that the percentage of omissions from the voter eligibility list is so substantial as to warrant setting aside the election results.

It is undisputed that the City's eligibility list contained 532 names and addresses. The parties stipulated that 84 of the challenged voters were eligible to vote. In addition, three other challenged voters were eligible to vote although their ballots were subsequently voided when counted. In adding these figures together we arrive at a total of 619 eligible voters.<sup>4</sup> Since 87 eligible voters were omitted from

<sup>4</sup>The computation is based on the names submitted on the eligibility list plus (continued)



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the eligibility list, at least 14% of the total number of eligible voters were omitted from the list. Since, as is possible, the 22 remaining challenged ballots<sup>5</sup> may have been cast by eligible voters who were omitted from the list, the percentage could be as high as 17%.

The principal rationale underlying the Excelsior rule is that by having timely access to the names and addresses of eligible voters, the union(s) will be afforded an opportunity to inform all eligible employees of positions on various issues so that the employees will be able to vote intelligently. In cases where the employer has omitted a substantial number of names from the eligibility list, the National Labor Relations Board (NLRB) has consistently set aside the election and directed that another be conducted. E.g., EDM of Texas, Div. of Chromalloy American Corp., 245 NLRB 934, 102 LRRM 1405 (1979) (10% omitted); Chemical Technology, Inc., 214 NLRB 590, 87 LRRM 1626 (1974) (8% omitted); Sonfarrel, Inc., 188 NLRB 969, 76 LRRM 1497 (1971) (11% omitted). In the instant case a minimum of 14% of eligible voters' names were omitted from the eligibility list. We conclude that such a percentage of omissions deprived a significant number of eligible voters of the opportunity to become fully informed about campaign issues.

Furthermore, we consider that it is unnecessary for us to order a hearing on the objection concerning the omissions of names from the eligibility list. Issues of a union's actual access to employees other than through the eligibility list, or the extent to which employees omitted from the list are aware of the election issues, are not litigable matters. Sonfarrel, Inc., *supra*. A hearing need only be ordered when an objection raises substantial and material issues of fact. Bryce Corp., 261 NLRB 1154, 110 LRRM 1229 (1982). In the instant case the numbers are undisputed and a hearing would not serve any legitimate purpose.

## 2. Incorrect Addresses

The Teamsters contend that the 71 envelopes sent to eligible voters which were returned as undeliverable by the Postal Service signify that 71 names on the original eligibility list have incorrect addresses. Assuming that the Teamsters' assessment is correct, this would mean that in addition to 14% of eligible voters omitted from the list, 11% of the names appearing on the list have incorrect addresses. In Chromalloy, *supra* the NLRB set aside an election where an employer had omitted names of 10% of the unit and the list contained incorrect addresses for 18% of the employees. The NLRB noted that the omissions alone warranted setting aside the selection. See also, The Lobster House, 186 NLRB 148, 75 LRRM 1309 (1970) (omissions are more serious than inaccurate addresses). Since we have already concluded that the election must be set aside because of the substantial omissions from the eligibility list, we

<sup>4</sup> (continued)

those eligible voters whose names were omitted. Texas Christian University, 220 NLRB 396, 90 LRRM 1274, fn. 7 (1975).

<sup>5</sup> Because the remaining 22 challenged ballots were not determinative of the election result, the eligibility of the 22 voters was left unresolved.



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need not decide any issues involving the inaccuracies of the addresses submitted in this case.

**B. Access to Election Site**

The election was held at one location, the Parks Department Building, Forest Park in Springfield from 6:00 a.m. to 6:00 p.m. In its second objection the Teamsters claim that one of the gates at an entrance to the park was locked from approximately 3:00 p.m. to 4:00 p.m., and, therefore, that an undetermined number of eligible voters was prevented from voting. The City concedes that the gate was inadvertently locked during this period of time. The Teamsters presented no evidence to support its claim that because the gate was locked voters were prevented from voting. Moreover, there are at least five other entrances to the park containing the election site. It is reasonable to conclude if voters found one entrance closed, they then sought access to the voting sites through another entrance. For these reasons, we dismiss this objection for lack of evidence.

**C. Organizational Activity**

The third objection raised by the Teamsters alleges that the City knowingly permitted AFSCME, the incumbent union, to campaign on City premises. The City denied this allegation and the Teamsters submitted no evidence to support its contention. Therefore, we will dismiss this objection for lack of evidence.

**D. Release Time for Third Shift**

The Teamsters in their fourth objection contend that the City refused to release certain third shift employees on paid time while allowing other employees to vote during their shift. The City admits that during certain times on May 7, employees were not allowed to leave their work site in order to vote. The City, however, had announced prior to the election the following release schedule for employees on the day of election: 8:15 a.m., 10:00 a.m., 3:00 p.m., 4:30 p.m., and 5:15 p.m. The hours of the election were 6:00 a.m. to 6:00 p.m. The third shift hours are 11:00 p.m. to 7:00 a.m. Thus employees who worked the third shift at City hospital were not allowed to leave in order to vote prior to the end of their shift. The City chose not to designate any release time between 6:00 and 7:00 a.m. because it is feeding time at the hospital, and the presence of employees is critical. The Teamsters presented no evidence that the denial of release time had prevented anyone from voting. Moreover, employees who left work at 7:00 a.m. still had eleven hours during which to vote. For these reasons, we conclude that employees were not prevented by the release schedule from voting and this objection is dismissed.



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ORDER

Therefore, on the basis of the numerous omissions of names of the eligible voters from the eligibility list, we order that the results of the May 7 election be set aside and that a new election for the employees of Unit A be conducted. A notice of the date, time and place of the new election will issue under separate cover.

DIRECTION OF ELECTION

The unit appropriate for collective bargaining consists of: All full-time and regular part-time blue collar nonprofessional employees in all city departments including the Civic Center and Symphony Hall, and all nonprofessional employees at the Springfield Municipal Hospital, excluding all registered nurses, licensed practical nurses, building department inspectors, civil engineers, bath attendants, ushers and ticket takers at the Civic Center, and all casual employees, clerical and white collar administrative employees, supervisors, foremen, timekeepers, and managerial and confidential employees.

IT IS HEREBY ORDERED that an election be held for the purpose of determining whether a majority of the bargaining unit described above wish to be represented by the American Federation of State, County, and Municipal Employees, Local 910, AFL-CIO, or by the General Teamsters, Local 404, or by no employee organization.

The eligible voters shall consist of all employees in the above-described bargaining unit whose names appear on the payroll of the City for the week ending June 13, 1987, and who have not since quit or been discharged for cause.

In order to assure that all eligible voters shall have their opportunity to be informed of the issues and to exercise their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER ORDERED that three (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen (14) days from the date of this Decision.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

COMMONWEALTH OF MASSACHUSETTS, LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN; MARIA C. WALSH, COMMISSIONER; ELIZABETH K. BOYER,  
COMMISSIONER



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June 18, 1987

CORRECTION TO RULING ON OBJECTIONS TO ELECTION  
AND DIRECTION OF ELECTION

Consistent with the Labor Relations Commission practice of establishing the cut-off date for eligible voters as the last day of the payroll period immediately preceding the date that the Decision and Direction of Election is issued, the Commission hereby corrects the eligibility date for participation in the election as follows:

The eligible voters in the election shall consist of all full-time and regular part-time blue collar nonprofessional employees in all city departments including the Civic Center and Symphony Hall, and all nonprofessional employees at the Springfield Municipal Hospital, excluding all registered nurses, licensed practical nurses, building department inspectors, bath attendants, ushers and ticket takers at the Civic Center, and all casual employees, clerical and white collar administrative employees, supervisors, foremen, timekeepers, and managerial and confidential employees whose names appear on the payroll of the City of Springfield for the payroll period immediately preceding June 10, 1987, the date of the Ruling on the Objections to Elections and Direction of Election, and who have not since quit or been discharged for cause.

To ensure that all eligible voters shall have the opportunity to be informed of the issues and their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER ORDERED that the City of Springfield file three (3) copies of an election eligibility list with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen (14) days from June 10, 1987, the date of issuance of the original Ruling on Objections to Election and Direction of Election.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this directive may be grounds for setting aside the election should proper and timely objections be filed.

In all other respects, the Decision and Direction of Election remains unchanged.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS, LABOR RELATIONS COMMISSION  
PAUL T. EDGAR, CHAIRMAN; MARIA C. WALSH, COMMISSIONER; ELIZABETH K. BOYER,  
COMMISSIONER

