

TOWN OF TISBURY AND AFSCME, COUNCIL 93, MCR-2924 (12/14/79). Decision on Challenged Ballot.

- (40 Selection of Employee Representative)
- 43.31 challenged ballot
- 43.8 voter eligibility

Commissioners Participating:

James S. Cooper, Chairman
 Garry J. Wooters, Commissioner
 Joan G. Dolan, Commissioner

Appearances:

- Joseph Sandulli, Esq. - Counsel for the Massachusetts Coalition of Police, International Union of Police Associations, AFL-CIO
- Joseph Wall - Representing the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO

DECISION ON CHALLENGED BALLOT

Statement of the Case

Pursuant to the Decision and Direction of Election issued by a Hearing Officer of the Labor Relations Commission (Commission) on September 10, 1979, and the Notice of Election issued October 3, 1979, a secret ballot election was conducted by mail between October 3, 1979 and October 19, 1979 for the purpose of determining whether permanent police patrolmen in the Town of Tisbury (Town) desired to be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (AFSCME), by the Tisbury Police Patrolmen's Association, by the Massachusetts Coalition of Police, International Union of Police Associations, AFL-CIO (Coalition), or by no employee organization. Ballots were mailed to seven employees on a list of eligible voters furnished by the Town. The Commission was informed by AFSCME that a David Welch was an eligible voter whose name did not appear on the Town's list. On October 9, 1979, a ballot was mailed to Welch. On October 19, the tabulation of ballots was held at the offices of the Commission and the vote was as follows:

| | |
|--|-----|
| Ballots cast for AFSCME, Council 93, AFL-CIO | - 4 |
| Ballots cast for Tisbury Patrolmen's Ass'n | - 0 |
| Ballots cast for Mass. Coalition of Police International Union of Police Associations, AFL-CIO | - 3 |
| Ballots cast for no employee organization | - 0 |
| Challenged ballots | - 1 |

The Commission challenged the ballot of David Welch on the basis that he was not on the eligibility list submitted to the Commission by the Town.



Town of Tisbury and AFSCME, Council 93, 6 MLC 1673

On November 16, 1979 a hearing was held before Jean Strauten Driscoll, a duly designated Commission Hearing Officer, to take evidence on the issue of Welch's eligibility to vote in the representation election. The Town informed the Commission that it would not appear at the hearing. All parties were given an opportunity to submit evidence in support of their positions. Upon its own Motion the Commission has re-designated this matter a Formal Hearing.

Jurisdictional Findings

1. The Town of Tisbury is a municipal corporation situated in Dukes County in the Commonwealth of Massachusetts and is a public employer within the meaning of Section 1 of the Law.
2. AFSCME is an employee organization within the meaning of Section 1 of the Law.
3. The Coalition is an employee organization within the meaning of Section 1 of the Law.

Position of the Parties

Both AFSCME and the Coalition have taken the position that Welch is eligible to vote and that his ballot should be counted.

Findings of Fact

The representatives of AFSCME and the Coalition testified as to their own knowledge of the factors involved in Welch's employment. From all of the testimony, we can find that in the Spring of 1979, Welch, a patrolman in Tisbury, notified the Town that he was filing for disability retirement. From that time to the present, he has not worked as a patrolman but has been receiving pay and benefits pursuant to M.G.L. c.41, § 111F.¹

At the time the election for union representation was conducted Welch's retirement application had not yet been approved.

Opinion

The standard to be applied in this case is whether or not Welch had a reasonable expectation of continuing employment. See City of Chelsea, 5 MLC 1094 (1978) and cases cited therein; NLRB v. Atkinson Dredging Co., 329 F.2d 158, 55 LRRM 2598 (4th Cir. 1964), cert. den. 377 U.S. 965 (1964). All of the evidence indicates that Welch was awaiting approval of his retirement application. He had not worked as a patrolman since the Spring of 1979 and nothing in the record indicates that he has either the intention or the physical capability of returning to permanent police duty. Therefore his ballot should not be counted.

¹This Section proves for full pay for an incapacitated officer until retirement or the end of his or her incapacity.



Town of Tisbury and AFSCME, Council 93, 6 MLC 1673

Order

Wherefore, the official vote in the representation election for permanent police patrolmen in the Town of Tisbury is as follows:

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|---|-----|
| Ballots cast for AFSCME, Council 93, AFL-CIO | - 4 |
| Ballots cast for Tisbury Patrolmen's Ass'n | - 0 |
| Ballots cast for Mass. Coalition of Police, Int'l Union of Police Associations, AFL-CIO | - 3 |
| Ballots cast for no employee organization | - 0 |

AFSCME, Council 93, AFL-CIO has received a majority of the valid votes cast. There being no other objection to the election and the tally being now conclusive, a certification of representative shall issue.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman
GARRY J. WOOTERS, Commissioner
JOAN G. DOLAN, Commissioner

