

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Teamsters, Local 246,
Law Enforcement Division,

Petitioner,

and

The District of Columbia
Department of Corrections,

Agency,

The American Federation of
Government Employees, Local 1550,

Intervenor.

PERB Case No. 84-R-09

Opinion No. 117

DECISION AND ORDER

On November 7, 1984 the Board ordered a Representation Election in the Department of Corrections (DOC). On February 19, 1985, the American Federation of Government Employees, Local 1550 (AFGE) and Teamsters Local 246 received the two highest number of votes in a representation election to determine the exclusive bargaining agent for DOC employees. Neither labor organization received a majority of ballots therefore a runoff election was ordered. On March 1, 1985 the parties entered into a preelection agreement and an on-site election was conducted on March 19, 1985 by the American Arbitration Association (AAA).

The result of the vote was Teamsters 752; AFGE 750; challenged ballots 32. On March 20, 1985 a AAA appointed arbitrator ruled on the challenged ballots. The result was Teamsters 764; AFGE 761. On March 23, 1985 AFGE requested a recount and recheck of the voter eligibility list due to an alleged charge that some voters may have voted twice at different polling sites.

On March 28, 1985 the AAA conducted a recount with the AAA appointed arbitrator making rulings on several ballots as well as procedural issues. The result of the recount was Teamsters 764; AFGE 760; and 6 voided ballots.

On April 2, 1985 the American Federation of Government Employees filed "Objections to the Representation Election Held on March 19, 1985". This March 19 runoff election between AFGE Local 1550 and Teamsters, Local 246 was to determine the exclusive bargaining agent for the District of Columbia Department of Corrections (DOC). In its "Objections ..." AFGE alleged procedural violations and conduct during the election which may have improperly affected the outcome of the election. AFGE requested, as a remedy, that the election be set aside and declared invalid.

AFGE in its request specifically alleged the following:

1. The voter eligibility list provided by the DOC to the two labor organizations and the American Arbitration Association, the neutral agency conducting the election, was defective because it contained names of approximately thirty-nine individuals outside the bargaining unit. AFGE also claims the list given to it had those 39 names blackened out by hand, but the list provided to AAA did not have all the 39 names completely blackened out. This procedure resulted in AAA improperly allowing those individuals to vote.
2. Two DOC employees were apparently allowed to vote twice at different polling sites.
3. A former DOC employee who had been terminated prior to the runoff election was improperly allowed to vote.
4. For a few hours during the election several DOC employees were erroneously denied access to the D.C. Jail and therefore were denied their right to vote.
5. The Teamsters received a majority of valid ballots cast but not a majority of ballots cast as provided for in Section 1-618.10(a) of the D.C. Code.

On April 9, 1985 Teamster Local 246 filed its response to the "Objections ..." opposing them for the following reasons:

1. AFGE's objection to the voter eligibility list is untimely. It is a post election challenge and an AAA appointed arbitrator previously dismissed the objection on March 28, 1985 because it was untimely.
2. There is no evidence that two employees voted twice and an AAA appointed arbitrator previously dismissed this objection.
3. The objection alleging that eligible voters were denied the right to vote at the D.C. Jail is without merit and untimely. There is no evidence that anyone was denied the right to vote.

4. The terminated employees' grievance was being processed by AFGE and her eligibility was not challenged prior to casting her ballot therefore it is an untimely post election challenge.
5. The clear intent of the D.C. Statute is that the one who receives the majority of the valid ballots cast is the winner. PERB Rule 102.14 uses the wording "valid ballots cast."

The issue before the Board is whether any or all of the objections raised by AFGE are sufficient to warrant the election results being set aside.

On April 30, the Board conducted a hearing giving each party full opportunity to present argument and file post hearing briefs. Briefs were filed on May 24, 1985. In its post hearing brief AFGE stated that it was withdrawing two of its objections and that it had so notified the Teamsters on May 13, 1985. The objections withdrawn were:

1. That two DOC employees voted twice and;
2. That an ineligible terminated employee voted.

The Board finds that the evidence supports AFGE's allegations that thirty-nine (39) ineligible voters voted. Management did not comply with the preelection agreement to supply a list of eligible voters. It is not stated or charged that management intentionally provided a defective list. This error does point out the necessity for all parties involved to be diligent in their efforts and responsibilities relative to the use of eligibility lists in representation elections. The response by the Teamsters that AFGE was estopped in filing this objection because of timeliness is without merit. The reason AFGE was not estopped was because of the issuance and use of the defective voter eligibility list. The Board holds that the voting of 39 ineligible voters is sufficient to warrant the setting aside of the election results.

The Board finds it unnecessary to rule on the remaining two objections based on its decision to set aside the election.

ORDER

IT IS ORDERED THAT:

The election results of March 19, 1985 be set aside and a new runoff election be conducted to determine the exclusive bargaining agent of the Department of Corrections.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 15, 1985.