

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision..

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

_____ )	
In the Matter of: )	
) )	
Vaughn L. Bennett, )	
Vincent Kyle II, )	
Nathan Queen and )	
Robert Wright, )	
) )	
Petitioners, )	
) )	
and )	PERB Case No. 95-RD-01
) )	Opinion No. 461
International Association )	
of Firefighters, Local 36 )	
) )	
Respondent, )	
) )	
and )	
) )	
D.C. Fire and Emergency )	
Medical Services Department, )	
) )	
Agency. )	
) )	
_____ )	

DECISION AND ORDER ON OBJECTIONS  
AND CERTIFICATION OF ELECTION RESULTS <sup>1/</sup>

On June 16, 1995, the Board issued a Decision and Direction of Election, Slip Op. No. 436, in the above-captioned case directing a decertification election pursuant to Board Rule 505 in order to determine whether employees in the bargaining unit represented by the Respondent, the International Association of Firefighters, Local

<sup>1/</sup> Board Member Leroy Jenkins has not participated in the consideration or disposition of this case.

36 (IAFF), wish to continue to be represented by IAFF.<sup>2/</sup>

In accordance with the above-referenced Decision and Order, the employees in the designated unit were polled on the following question:

Do you desire to continue to be represented by the International Association of Firefighters, Local 36 (IAFF) for purposes of collective bargaining on compensation and other terms and conditions of employment?

Pursuant to that Decision and Order, a secret mail-ballot election was conducted in the above-captioned proceeding. The election was conducted by LWV, under the auspices of the Board, in accordance with Board Rules regarding Election Procedures and an election agreement duly executed by the parties to this proceeding. On September 6, 1995, a tally of the ballots was conducted in the presence of party observers at the offices of the League of Women Voters of Washington, D.C. (LWV).

LWV then issued its report on the election as follows. A total of one-thousand one-hundred seventy-five (1,175), ballots were mailed of which six-hundred (600) valid ballots were returned.

The results were reported by LWV as follows:

Yes	521
No	79
Void	35 <sup>3/</sup>
Challenged	7 <sup>4/</sup>

---

<sup>2/</sup> Respondent's Motion requesting that the Board reconsider its Decision and Direction of Election was denied on July 31, 1995, in Slip Opinion No. 445.

<sup>3/</sup> Nineteen ballots were voided because the outer envelopes were returned unsigned, thereby precluding eligibility determination before the tally. The remaining sixteen ballots arrived after the polls closed on September 1, 1995.

<sup>4/</sup> The challenged ballots were not resolved by the parties nor are they sufficient to affect the outcome of the election. Therefore they shall not be opened and counted, or treated as objections to the election. Board Rules 514.2 and 514.3.

Decision and Order on Objections and  
Certification of Election Results  
PERB Case No. 95-RD-01  
Page 3

Pursuant to Board Rule 515.2, any party may file objections concerning the election proceeding within five (5) days after service of the report of election results. On September 22, 1995, the Petitioners filed Objections to the Election with supporting documents. The Petitioners alleged that by the acts and conduct set forth in its Objections, IAFF, the D.C. Fire and Emergency Medical Services Department (FEMSD) and LWV "improperly affected the results of the election." (Obj. at 1.) The Petitioners requested that the Board invalidate the results of the election.

Because material issues of fact concerning employees' freedom of choice were raised by the Petitioners' Objections, in accordance with D.C. Code § 1-619.10(e) and Board Rule 515.4, this matter was referred to a Hearing Examiner to hear and take evidence on all issues relevant to the disposition of the Objections. The Hearing took place on October 6, 1995. Following the submission of a post-hearing brief by IAFF, the Hearing Examiner issued a Report and Recommendation ( a copy of which is attached).

The Board has held that to sustain objectionable conduct it must disturb laboratory conditions to such an extent as to interfere with employees' freedom of choice and affect the outcome of the election. Fraternal Order of Police/Metropolitan Police Department Labor Committee and the D.C. Metropolitan Police Department, Slip Op. No. 33, PERB Case No. 81-R-05 (1982). In making this determination, in addition to preserving the principle of majority rules, other conflicting interests must be maintained such as "minimizing unwarranted and dilatory claims by objecting parties merely opposed to the election results" and "insuring the certainty and finality of the election results." N.L.R.B. v. A.J. Tower Co., 329 U.S. 324 (1946).

In this regard the Hearing Examiner concluded that written statements made by IAFF to employees were "not false, misleading or otherwise improper." (R&R at 4.) <sup>5/</sup> The Hearing Examiner found

---

<sup>5/</sup> The statements contained in the letter at issue were as follows:

To decertify Local 36 will prohibit members of the bargaining unit from engaging in any other form of collective bargaining for at least one year after the decertification.

To decertify Local 36 will remove your protection covered by the Union contract. A collective bargaining agreement does not

(continued...)

that regardless of the veracity of these statements, "Petitioners did not present any evidence showing that unit members were deprived of an opportunity prior to the election to evaluate Respondent's statements or showing that Respondent's statements

---

<sup>5</sup>(...continued)  
survive decertification.

If Local 36 is decertified, members of the bargaining unit will have to wait, according to rules established by the Public Employee Relation (sic) Board, for at least a year before they can have an election for a new bargaining representative; therefore you will be without any representation.

Petitioners contend that the first and second statements, which essentially assert similar consequences, misrepresents Board Rule 505 governing decertification petitions by imputing into Board Rule 505.8 the effect of a majority determination in a representation proceeding under 502.9.

Board Rule 502.9 provides in relevant part that "[a] petition for exclusive recognition shall be barred if... [d]uring the previous twelve (12) months, a valid majority status determination has been made for essentially the same bargaining unit... ." The Hearing Examiner concluded that while the effect of an election may not be explicitly restated under Board Rule 505, Board Rule 502.9 logically extends to the effect of an election "upon a successful decertification." (R&R at 3.) While we agree with the Hearing Examiner's reasoning as it applies to elections in decertification proceedings where the union prevails, it does not apply when there is a successful decertification. Board Rule 502.9 bars petitions for exclusive recognition for 12 months when there is a determination of "majority status." A successful decertification is not a majority status determination since the incumbent union would have been determined not to have majority status. However, whatever the rule, we adopt the Hearing Examiner's conclusion that the statements did not strip employees of their freedom of choice and therefore, did not affect the outcome of the election.

With respect to the second statement, the Hearing Examiner, citing United Paperworkers International Union, Local 14 v. International Paper, F. Supp (1994), found no basis in law or in the record for finding the statement to be a misrepresentation of the status of IAFF's collective bargaining agreement with FEMSD upon the decertification of IAFF as a party to the agreement. We agree.

Decision and Order on Objections and  
Certification of Election Results  
PERB Case No. 95-RD-01  
Page 5

purported to be something other than campaign propaganda." (R&R at 5.)<sup>6/</sup> With respect to the objections concerning the LWV and FEMSD, the Hearing Examiner found no evidence to support Petitioners' contentions or that the Objections, if true, rose to the level of disturbing laboratory conditions to the extent of altering the outcome of the election.<sup>7/</sup> The Hearing Examiner therefore recommended that the Petitioners' Objections be denied.

No exceptions were filed by either party to the findings, conclusions and recommendations made by the Hearing Examiner in his Report.

---

<sup>6/</sup> This is the standard we applied to assess election conduct alleged to be objectionable in Fraternal Order of Police/Department of Corrections Labor Committee and the D.C. Department of Corrections, Slip Op. No. 374, PERB Case No. 93-R-04 (1994). IAFF's letter to employees was sent on August 10, 1995. Ballots were not sent to eligible employees until August 17, 1995, and were to be received by LWV on or before September 1, 1995.

<sup>7/</sup> Petitioners alleged that, contrary to a pre-election agreement, LWV failed to secure the incoming ballots in a locked box and their office was not open at various times on September 1, 1995, the last day ballots could be received. The Petitioners further asserted that many eligible voters did not receive ballots. The Hearing Examiner found that the Election Agreement contained no provision for a lock box and that there was no evidence that the methodology used, i.e., placing the ballot box in a locked room, compromised the security of the ballots. (R&R at 3.) Furthermore, he found that the Election Agreement contained no requirement that the LWV maintain office hours on the last day ballots could be received. The Hearing Examiner concluded from the record evidence that no eligible voter was prevented from hand-delivering his or her ballot in accordance with the election agreement since the LWV office door had a mail slot to receive such ballots. (R&R at 5.) The Hearing Examiner found no evidence that eligible voters attempted but were unable to vote on September 1, 1995, or that the LWV failed to send ballots to eligible voters at their assigned addresses in accordance with the election agreement. (R&R at 6.)

With respect to FEMSD, Petitioners had asserted that the Notice of Election was either not posted or not posted properly at some locations. Again, the Hearing Examiner found that there was no evidence in the record to support this objection. As the party bringing these objections, Petitioners carried a burden of proof by a preponderance of the evidence. Board Rule 550.14. The Hearing Examiner concluded that the Petitioners had failed to meet their burden of proof. (R&R at 3 and 6.)

Decision and Order on Objections and  
Certification of Election Results  
PERB Case No. 95-RD-01  
Page 6

Pursuant to D.C. Code § 1-605.2(2) and Board Rule 515.5, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them to be reasonable and supported by the record. The Board hereby adopts the Hearing Examiner's Report and finds that the Petitioners have failed to meet their burden of proof and that the Objections otherwise fail to meet the Board's standards for setting aside this election. See, Fraternal Order of Police/Department of Corrections Labor Committee and the D.C. Department of Corrections, Slip Op. No. 374, PERB Case No. 93-R-04 (1994). We therefore adopt his recommendation that the Objections to the election be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioners' Objections are overruled.
2. The results of the election, as reported, are certified.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
Washington, D.C.

January 24, 1996

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:	)	
	)	
Vaughn L. Bennett,	)	
Vincent Kyle II,	)	
Nathan Queen and	)	
Robert Wright,	)	
	)	
Petitioners,	)	
	)	
and	)	PERB Case No. 95-RD-01
	)	Certification No. 92
	)	
International Association	)	
of Firefighters, Local 36	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
D.C. Fire and Emergency	)	
Medical Services Department,	)	
	)	
Agency.	)	
	)	
	)	

**RECERTIFICATION OF REPRESENTATIVE**

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board (Board), in accordance with the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), the Rules of the Board and an Election Agreement among the parties, and it appearing that a majority of the valid ballots has been cast for a representative for the purposes of exclusive recognition;

Pursuant to the authority vested in the Board by D.C. Code, Section 1-618.10(a) and the Rules of the Board, Section 515.3;

**IT IS HEREBY CERTIFIED THAT:**

The International Association of Firefighters, Local 36 has been designated by the employees in the unit described below to

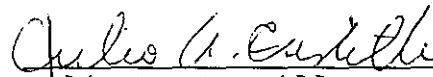
Certification of Representative  
PERB Case No. 95-RD-01  
Page 8

continue as their exclusive representative for the purpose of collective bargaining over terms and conditions of employment, including compensation, with the District of Columbia Fire and Emergency Medical Services Department.

**UNIT:**

"All uniformed members of the D.C. Fire and Emergency Medical Services Department in the ranks of Firefighter through Captain; excluding all other uniformed members of the D.C. Fire and Emergency Medical Services Department, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

January 24, 1996

  
\_\_\_\_\_  
Julio A. Castillo  
Executive Director