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

In the Matter of:)

Fraternal Order of Police/)
Department of Corrections)
Labor Committee,)

Petitioner,)

and)

District of Columbia)
Department of Corrections,)

Agency,)

and)

District of Columbia Department)
of Corrections Correctional)
Employees, Local Union No. 1714)
a/w International Brotherhood)
of Teamsters, Warehousemen,)
Chauffeurs and Helpers of)
American, AFL-CIO,)

Incumbent-Intervenor,)

and)

Alliance of Independent)
Corrections Employees, Inc.,)

Intervenor.)

PERB Case No. 93-R-04
Opinion No. 374

**DECISION AND ORDER ON OBJECTIONS
AND CERTIFICATION OF ELECTION RESULTS**

On September 2, 1993, the Public Employee Relations Board (Board) issued a Decision and Order (Opinion No. 362) in this

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proceeding directing that an election be held among eligible employees at the Department of Corrections (DOC) to determine whether employees desire to be represented by the Petitioner, Fraternal Order of Police/Department of Corrections Labor Committee (FOP); or the Incumbent-Intervenor, District of Columbia Department of Corrections Correctional Employees, Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, CLC (Teamsters); or the Intervenor, Alliance of Independent Corrections Employees, Inc. (AICE), or no union. Pursuant to that Decision and Order, an on-site secret ballot election was conducted in the above-captioned proceeding. The ballots received were counted in the presence of observers at the offices of the American Arbitration Association (AAA).

The election was conducted by AAA, under the auspices of the Board, in accordance with the Election Procedures Section in the Board's Rules and an election agreement duly executed by the parties to this proceeding.^{1/} On November 12, 1993, AAA issued a report with the results of the election as follows.^{2/} A total of two-thousand three-hundred nine (2,309) ballots were received.^{3/} There were sixty-one (61) challenged ballots and three (3) void ballots received.^{4/} The secrecy of the ballots

^{1/} After proper notice and opportunity, the Teamsters declined to sign the election agreement. However, Teamsters' representatives and counsel attended and actively participated in the pre-election conferences held by the Board.

^{2/} AAA actually issued a report entitled "Certification of Results". Pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Law 1-618.10(d)(1) and Board Rule 515.3, however, the Board shall certify the results of each election "if: [w]ithin the meaning of such rules and regulations the Board may issue, no objection to the election is filed alleging that there has been conduct which affected the outcome of the election". As discussed in the text, such objections have been filed. Therefore, the Board must first consider these objections before the election results can be certified.

^{3/} According to the Eligibility List submitted by DOC just prior to the election, there were a total of 4,220 bargaining-unit employees on DOC's pay roll who were eligible to vote in the election. Therefore, a majority of the unit employees participated in the election.

^{4/} One of the three ballots was classified by AAA as "blank". We consider this ballot to be void.

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was maintained at all times.

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

For the purposes of collective bargaining, do you wish to be represented by Teamsters, Local 1714; Fraternal Order of Police\DOC Labor Committee; Alliance of Independent Corrections Employees, Inc.; or No Union?

The results were reported by AAA as follows:

Teamsters	303
FOP	1819
AICE, Inc.	107
No Union	16
Blank	1
Void	2
Challenged	61 ^{5/}

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 November 15, 1993, the Teamsters filed Objections to the Election followed by supporting affidavits and documents submitted on December 8, 13 and 14, 1993. The Teamsters allege that by the acts and conduct set forth in its Objections, DOC and FOP "interfered with, restrained, coerced and prevented employees from freely voting for Local 1714 and prevented a fair election." (Obj. at 12.) The Teamsters request that the Board set aside the election results and direct that a new election be conducted.

FOP filed a Response to the Objections on November 23, 1993, followed by a Supplemental Response filed on December 14, 1993. The Office of Labor Relations and Collective Bargaining (OLRCB) filed a Response on behalf of DOC on December 8, 1993.

^{5/} The challenged ballots were not resolved by the parties nor were they sufficient in number to affect the outcome of the election. Therefore, it is unnecessary to open or count these ballots. Board Rule 514.2 and 514.3.

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On October 26, 1993, just prior to the scheduled date of the election, the Teamsters filed an Unfair Labor Practice Complaint, PERB Case No. 94-U-03. The Teamsters alleged that DOC encouraged the support of the FOP with the intent of eroding support for and undermining the status of the Teamsters as the collective bargaining agent of the unit of employees it represents. Asserting that by this conduct DOC violated D.C. Code Sec. 1-618.4(a)(1) and (2), the Teamsters contended that the election could not go forward.^{6/} On November 17, 1993, OLRCB, on behalf of DOC, filed an Answer to the Complaint denying the commission of any unfair labor practices.

In view of the fact that the Teamsters' Objections in PERB Case 93-R-04 incorporate the allegations made by the Teamsters in PERB Case No. 94-U-03, we will investigate separately the Complaint allegations and address only those objections that are not encompassed by the Complaint. We nevertheless make the threshold determination regarding PERB Cases No. 94-U-03 and 93-R-04. Upon review of the parties' pleadings and applicable authority, we find, for the reasons discussed below, that even accepting as true the Teamsters' assertions, we cannot reasonably conclude that the alleged conduct affected the outcome of the election.

The ultimate objective in a representation proceeding under the CMPA is to effectuate employees' right to "bargain collectively through representatives of their own choosing" as "selected by a majority of employees in an appropriate unit who participated in an election". D.C. Code Sec. 1-618.6(a)(3) and 1-618.10(a). The Board has previously stated that this objective is achieved in a secret ballot election, unless an objecting participant can demonstrate that "laboratory conditions were so disturbed as to interfere with employees' freedom of choice" to the extent that it "affect[s] the outcome of the election". Fraternal Order of Police, Metropolitan Police Department and District of Columbia Metropolitan Police Department and International Brotherhood of Police Officers, 29 DCR 1045, 1046

^{6/} By letter dated October 29, 1993, the Board's Executive Director denied the request made by the Teamsters in its Complaint that the Election in PERB Case No. 93-R-04 be delayed pending the disposition of the complaint allegations. The Teamsters were advised that "to delay the election pending the investigation of these allegations would not be in the best interest of all concerned, particularly since the Board, should it find [the] allegations meritorious, could set aside the election results as a possible remedy." The Executive director, however, expedited the disposition of the Complaint.

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Slip Op. No. 33 at p. 2, PERB Case No. 81-R-05 (1982). Cf., N.L.R.B. v. A.J. Tower Co., 329 U.S. 324 (1946) and Midland National Life Insurance Co., 263 NLRB 127 (1982) (The Supreme Court and National Labor Relations Board (NLRB) making a similar observation as to election proceedings under the National Labor Relations Act).^{7/}

Before turning our attention to the series of related objections filed in this proceeding, we will first summarize the events that we consider pertinent to our review of the Teamsters'

^{7/} The NLRB in Midland, citing A.J. Tower Co., made the following observation:

Although the Board's exercise of discretion must be consistent with the principle of majority rule, the Supreme Court has held that the Board is not precluded from making 'practical adjustments designed to protect the election machinery from the ever-present dangers of abuse and fraud.' [citation omitted] In making these rules, the Board must weigh and accommodate not only the principle of majority rule, but several other conflicting factors, such as preserving the secrecy of the ballot, insuring the certainty and finality of election results, and minimizing unwarranted and dilatory claims by those opposed to the election results. [citation omitted]

Accordingly, a Board rule governing a representation proceeding need not be an 'absolute guarantee' that the election will, without exception, reflect the choice of a majority of the voting employees. Rather, the rule simply must be 'consistent with' and constitute a 'justifiable and reasonable adjustment to the democratic process.' [citation omitted]

Midland Nat'l Life Ins. Co., 263 NLRB supra at 131.

Ensuring the integrity of the representation proceedings under the CMPA requires the Board to accommodate these same factors and conflicting interests. Thus, the Board has reviewed objections to an election within the context and under the circumstances of each campaign and election, cognizant of these sometimes competing factors and interests. Fraternal Order of Police, Metropolitan Police Department and District of Columbia Metropolitan Police Department and International Brotherhood of Police Officers, Local 442, 28 DCR 5018, Slip Op. No. 23, PERB Cases No. 81-R-05, 81-S-02 and 81-R-09 (1981).

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objections. The Teamsters have been the certified exclusive bargaining agent for DOC employees in the designated unit since 1987. Local 1714 has negotiated collective bargaining agreements, filed grievances and initiated many actions on behalf of the unit employees before this agency.

Between June, 1993^{8/} and September 15, 1993, the date the pre-election agreement was signed, there was no formal agreement among the competing labor organizations and DOC that governed campaigning. Pursuant to the pre-election agreement, official Notices detailing the date, place and time of the election, among other items, were posted on October 29, 1993, at all locations where unit employees were employed. At this juncture, it should be noted that DOC unit employees work at several different sites located throughout the District and Lorton, Va. According to the information provided by DOC at the pre-election conferences, approximately one-half of the unit employees are assigned to various facilities located in Lorton, Va.

Cognizant of this background information, we now direct our attention to the first group of objections.^{9/} The Teamsters allege in Objections 7, 8, 11, 13, 14, and 18 that DOC either impeded or denied Teamsters' officials access to DOC premises at times and in locations agreed to by the parties for purposes of pre-election campaigning. According to the Teamsters, this alleged interference occurred between October 15 and October 29, 1993. Another similar incident is alleged to have occurred on November 6, 1993. Specifically, the Objections assert that the Teamsters were required by DOC to submit a schedule of its campaign activities and were prevented from campaigning until the schedule was approved by DOC. The Teamsters contend that there

^{8/} On June 10, 1993, the FOP filed, in this proceeding, a Petition seeking representation of the same unit of employees represented by the Teamsters. Notices of the FOP Petition were posted on July 29, 1993, in accordance with Board Rule 502.6, advising employees, throughout the Department, of FOP's challenge to the incumbent Teamsters. In response to the Petition, AICE, Inc, intervened, as did the Teamsters. An attempt by the International Union of Police Associations to intervene was denied due to the lack of the required showing of employee support.

^{9/} As mentioned previously in this Opinion, Objection Nos. 1, 2, 3, 4, 5, 6 and 9, which are encompassed by the Complaint in PERB Case No. 94-U-03, will be addressed specifically in the unfair labor practice proceeding. At this point, it is sufficient it to say that we overrule these alleged violations as objections sufficient to affect the outcome of the election.

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were no discussions during the pre-election conferences of any required schedule, nor does the agreement, on its face, require the parties to submit an advance schedule.

Having read the agreement, we conclude the contrary. Paragraph 10 of the agreement sets out the explicit details governing campaigning at DOC facilities. While it is true, as the Teamsters point out, that "non-employees may engage in campaigning in non-work areas at any time", the agreement goes further to specify that permission to use certain designated non-work areas must be requested by each participating labor organization in advance. Such a request, in our view, appears reasonable and practical given the competing interests presented in this campaign and the large population of employees in the unit. Moreover, the Teamsters neither contend nor present any evidence that the other participating labor organizations were not similarly required to submit schedules for the use of DOC facilities.

Despite the pre-election agreement's unequivocal terms that parties were to submit their proposed requests for reserving facilities for campaigning, the Teamsters did not submit a request until October 22, 1993 --one week after the agreement had been signed and delivered to the parties. While the objections assert that DOC delayed approving the Teamsters' request until October 26, 1993, we note that the request was submitted on a Friday and was approved on the following Tuesday. Accordingly, we find little substance in the Teamsters' assertion that two days constituted a delay that could significantly thwart their campaign efforts. Furthermore, all parties were furnished with the approved list by DOC of the facilities reserved by each labor organization on October 27, 1993. The distribution of the locations and times appears equitable.

Between October 26, 1993 and November 6, 1993, the Teamsters contend that the incumbent was denied the use of DOC's facilities on five occasions, despite the approved reservation of these locations. If we view these assertions in the light most favorable to the Teamsters, we still cannot find that the impact of such conduct substantially impaired the incumbent's chances to successfully prevail in the election proceeding. For example, the Teamsters contend that it was twice denied access to employees at the Medium facility located at Lorton. According to the figures provided by DOC at the pre-election conference, there are only two-hundred and twenty-seven (227) employees at this location, less than one-tenth of the employee complement at Lorton. Moreover, the campaign schedule indicates that the Teamsters reserved various locations at DOC on 24 separate dates

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between October 26, 1993 and November 7, 1993.^{10/} According to the objections, the incumbent was denied access on only five occasions.

We are similarly unpersuaded by the Teamsters objections 10 and 16 that DOC'S alleged removal of its campaign literature from bulletin boards assertedly designated for its use, provides a basis for setting aside the election results. We find both alleged instances to be isolated and insubstantial vis-a-vis the overall opportunities available to the incumbent to disseminate campaign literature at other posted locations.

None of the Teamsters' evidence shows a pervasive or aggravated interference with employees' freedom of choice, thereby undermining the will of the employees to exercise their individual rights to participate in the election. See, Clothing & textile Workers v. NLRB, 736 F. 2d. 1539 (D.C. Cir. 1984). We reach this conclusion also mindful of the size of the bargaining unit and the overwhelming margin of the ballots cast in favor of one of the three participating labor organizations.

Objections 22, 23 and 24 contain allegations that employee representatives of FOP (and on one occasion, an FOP official) were present in the polling area on the day of the election. In Objections 25 and 27, the Teamsters assert that DOC supervisors, who were known supporters of the FOP, loitered in the polling area at two sites and refused to leave when requested by agents of AAA.^{11/} In the interest of avoiding potentially meritorious objections, polling areas should ideally remain free of non-

^{10/} By contrast, the FOP had only eleven (11) reserved dates and AICE, Inc. had nine (9).

^{11/} Objection 26 in this series of objections assert that DOC delayed the distribution of employee paychecks at one of its facilities. Although the Teamsters argue that this action was "designed to discredit Local 1714" and "had the effect of coercing employees to vote against Local 1714", we can glean no connection between DOC's action and employees' probable tendency, as a result, to vote against the Teamsters. The Teamsters fail to state how this alleged action by DOC influenced employees with respect to their ability to freely choose in the election. This allegation is neither actionable as a component part of these objections, nor is DOC's alleged action apparent as part of some pattern or scheme that would affect the outcome of this election. See, Clothing & Textile Workers v. N.L.R.B., 736 F.2d 1539 (D.C. Cir. 1984) and Mosler Safe Co., 129 NLRB 747 (1960). We therefore deny this objection.

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participating individuals (individuals not actively engaged in voting or conducting the election) and campaign material while the polls are open. However, we find the mere presence of bargaining-unit employees in the polling area does not constitute an objection sufficient to taint the laboratory conditions for a fair election. With respect to alleged supervisory misconduct, in none of these allegations has the Teamsters demonstrated how employees were coerced, threatened, intimidated or suffered reprisals by not voting consistent with the perceived wishes of DOC. See, N.L.R.B. v. Browning-Ferris Ind., 803 F.2d 345 (7th Cir. 1986).^{12/} The Teamsters do not claim that the secrecy of affected employees' ballots was not preserved during these incidents. For this and the foregoing reasons, we deny these objections as well.

Finally, in their last four objections, i.e., Objections 29, 30, 31 and 32, the Teamsters claim that employee supporters and an official of the FOP made certain misrepresentations to bargaining-unit employees. Two of these contentions, that uniformed and non-uniformed employees would be treated differently from each other with respect to service fees and membership in the FOP, is unfounded in the FOP's Constitution and Bylaws cited by the Teamsters in support of this allegation. These contentions would, however, if true, violate requirements under the Board's Rules and the CMPA for a labor organization seeking exclusive representation of an appropriate unit of District government employees. We have previously reviewed FOP's Constitution and Bylaws and found those documents met the requirements under the Board's Rules for labor organizations seeking exclusive representation and in accordance with the CMPA, D.C. Code Sec. 1-618.3 and 1-618.10. Fraternal Order of Police, Department of Corrections Labor Committee and D.C. Department of Corrections and Teamsters Local 1714 a/w International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America, AFL-CIO, ___ DCR _____, Slip Op. No. 3237, PERB Case

^{12/} The NLRB has ruled that an election may be set aside where a party demonstrates that prolonged electioneering conversations have taken place between representatives of any party and voters waiting to cast ballots. See Milchem Inc., 170 NLRB 326 (1968). This rule, however, does not require that comments between a representative of a party to the election and voters be treated as "per se" grounds for overturning a representation election. L.C. Cassidy & Son v. N.L.R.R., 745 F.2d 1059 (7th Cir 1984). In only one of the two incidents the Teamsters allege that any electioneering occurred. Based on our discussions in the text, we find neither of these incidents rise to the level sufficient to present a serious challenge to this election.

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No. 92-R-10 (1992).

The other two misrepresentations concern FOP's ability to obtain or achieve certain benefits and firearm privileges for bargaining-unit employees. According to the Teamsters these incidents occurred on October 22 and 27, 1993, and were repeated thereafter. The misleading nature or truth and falsity of parties' campaign statements do not per se constitute a basis for setting aside an election when, as here, employees are not deprived of an opportunity prior to the election to evaluate the statements. We agree with the approach adopted by the NLRB in Midland National Life Ins. Co., supra, quoting General Knit of Calif., 239 NLRB 619, 629 (1977)(Member Penello dissenting), that "[a]s long as the campaign material is what it purports to be, i.e., mere propoganda of a particular party, the Board would leave the task of evaluating its contents solely to the employees." Based on this standard of review, we deny Objections 29 through 32.^{13/}

As a result of the election and our disposition of the attending objections, we hereby certify the election results.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Objections in PERB Case No. 93-R-04 are overruled.
2. The results of the election, as reported, are certified.
3. The Certification of Representative is issued herewith.
4. PERB Case No. 94-U-03 is referred to a hearing.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
January 12, 1994

^{13/} The Teamsters made one other objection which alleged, generally, that DOC engaged in objectionable conduct. In an amended document filed December 14, 1993, the Teamsters listed, with greater specificity, Objection 33 consisting of four allegations, the nature of which fell into one of our previous discussions. See appendix. For the reasons discussed, we overrule this objection as well.

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

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Alliance of Independent)
Corrections Employees, Inc.,)

Intervenor.)

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Certification No. 73

CERTIFICATION OF REPRESENTATIVE

A representative 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;

**Certification of Representative
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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;

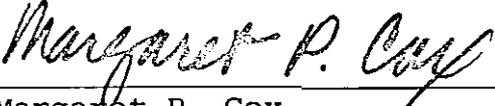
IT IS HEREBY CERTIFIED THAT:

The Fraternal Order of Police/Department of Corrections Labor Committee, has been designated by the employees in the unit described below as their preference for exclusive representative for the purpose of collective bargaining over terms and conditions of employment, including compensation, with the District of Columbia Department of Corrections.

UNIT:

"All employees of the D.C. Department of corrections excluding managerial employees, confidential employees, supervisors, temporary employees, physicians, dentist and podiatrist, institutional residents (inmates) employed by the Department, or any employees employed in personnel work in other than a purely clerical capacity and employees engaged in administering provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

January 12, 1994



Margaret P. Cox
Executive Director