STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

SERB OPINION 87-013

Service Employees International Union, District #925,

Employee Organization,

and

Cuyahoga Community College,

Employer.

CASE NUMBERS: 85-RC-07-3941
85-VR-07-3932

DIRECTION TO HEARING
(Opinion attached.)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané; May 28, 1987.

On March 11, 1987, a representation election was conducted in an appropriate unit of part-time employees of the Cuyahoga Community College (Employer). One hundred ninety six (196) votes were cast. District 925, Service Employees International Union (Employee Organization) received ninety one (91) votes, "No Representative" received eighty eight (88) votes, and there were seventeen (17) challenged ballots. The challenged ballots were sufficient to affect the results of the election.

On March 23, 1987, the Employer filed objections to the conduct of the election. On March 30, 1987, the Employee Organization filed a motion to dismiss the objections to the election, and on April 6, 1987, the Employer filed a response to this motion.

For the reasons stated in the attached opinion, incorporated by reference, the Employee Organization's motion to dismiss the Employer's objections to the conduct of the election is granted.

The above-styled cases are directed to hearing for the sole purpose of determining the challenged ballots issue.

It is so directed.

DAY, Chairman; SHEEHAN, Vice Chairman; and LATANE, Board Member, concur.

Jack G. Day

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 10th day of June, 1987.

JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

The results of the representation election in this case were inconclusive because the number of challenged ballots could affect the outcome. A directive to accomplish the determination of challenges has issued to accompany this opinion. However, Cuyahoga Community College (CCC, employer, or management) objections to the conduct of the election have been dismissed and this requires a few words of explanation.

The objections are facially insufficient. For even if all objections claimed are taken as true, nothing in the contentions is sufficient to warrant setting aside the election and conducting a new one.

The reasons for this conclusion are adduced below.

I

CCC has noted in its response to the "Motion to Dismiss Objections" by District 925/Service Employees International Union (925 or SEIU) that the State Employment Relations Board (SERB or Board) in another case stressed,

"that it is a 'virtually absolute' principle that representation elections be conducted under 'hygienic' conditions."[1]

The generalization attributed to SERB was the Board's view when made and remains so. However, the opinion in question (see fn. 1, supra) recognized that infractions could be so trivial as to be innocuous. The issue here is somewhat broader than whether the alleged objectionable acts are properly placed within the trivial/innocuous category. For in the present case, the inquiry is whether the claimed conduct is objectionable at all.

CCC summarizes its objection to the conduct of elections in this case in one paragraph:

> "The Employee Organization, District 925, SEIU, AFL-CIO, by and through the actions of its agent, Georgia Walker, President of the Cuyahoga Community College Chapter of the Employee Organization, interfered with the conduct of the election[2] by engaging in unlawful surveillance and intimidation of balloters and prospective balloters at the Metropolitan Campus polling site."[3]

These general allegations were made more specific by affidavits. The specifics indicated that:

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[1]CCC response, etc., p. 2. The quotations are from Sugarcreek Local School Employees/American Federation of State, County, and Municipal Employees and Sugarcreek Local School District (1986), Case No. 86-REP-03-0055. The context of the quotation from the case, which involved only minimal vices, said:

> Representation elections conducted by the State Employment Relations Board (SERB) require hygienic conditions. This is virtually an absolute. And here two violations of SERB's election rules are claimed. However, the transgressions, even when fully credited, are so innocuous that setting aside the election on the strength of them would be fatuous. It is equally obvious that the situation does not call for certification without an election as AFSCME contends. (Footnotes omitted.)

[2]The election in question was conducted on 3/11/87.

[3]Employer's Objection to the Conduct of Election, p. 1.

1) On March 11, 1987, at approximately 12:15 p.m., affiant Constance Burnley saw Georgia Walker, President of 925, standing "in the vicinity" of the entrance to the polling room where she could see everyone who entered the room. Georgia Walker was talking to an unidentified individual. At the time she was about 100 yards from the place she "normally" works.

2) On March 11, 1987, at approximately 12:15 p.m., affiant Betty Morgan saw Georgia Walker "in the vicinity" of the entrance to the polling place talking to another individual. She was "holding in her hand a pad normally used for writing purposes." Georgia Walker's "normal" workplace was about 100 yards away.

3) On March 11, 1987, between the hours of 1:00 and 3:00 p.m., John Rodgers saw Georgia Walker standing outside the entrance to the building where the balloting took place. she was talking with a group of unidentified individuals.

4) On March 11, 1987, at approximately 10:00 p.m., John Rodgers was called on the telephone by Theresa El Amin, whom he "believed to be an employee of the union." She asked how he voted, "expressing that, based on their information, how I voted might alter the outcome of the election."

The first three parts of this summary of the affidavits patently do not describe actions probative of unlawful electoral conduct even if true. Moreover, it is not alleged that Georgia Walker was inside the 25-foot perimeter defined by Ohio Administrative Code 4117-5-08. Significantly while CCC argues that the perimeter is only a "minimum" and that conduct outside the perimeter can be "intimidation and surveillance of voters," no unlawful conduct is even suggested by CCC unless it be the presence of a

lone woman, President of the Local, outside the polling place with a writing pad in hand--a tabula rasa so far as the management alleges. If allegations of conduct of this kind are deemed to state unlawful activity, it is doubtful that an unobjectionable election could ever be held.

The questioning of voters poses a different question. In the first place, it is not clear that the single interrogation alleged involved a union official or agent. However, assuming that it did, the only allegation is that a question was asked over the telephone. There is no claim of any action save a simple inquiry coupled with speculation about how one vote might affect the outcome of the election. Nor is there any suggestion or reason to believe that the interrogator controlled the employment security, job improvement, or any other employment expectation of the employee questioned. These actions, if proven, amount to neither explicit or implicit coercion. Thus, there is nothing to taint the election conduct.

It is fundamental that any voter can refuse to disclose his or her vote. But, while it might be wiser for both sides to eschew any voting inquiry, asking is illegal only when accompanied by intimidation, coercion or pressure, direct or indirect. Such tactics, by either management or labor, will be deemed to infect the electoral process. An election so infected will be set aside and a re-run held. However, actions of the proscribed varieties are not even suggested by the type of questioning claimed here.

Putting the best face on CCC's claims, unlawful conduct is not alleged. The objections are without merit.

Sheehan, Vice Chairman, and Latané, board Member, concur.

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