COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	
	:	Case No. PERA-R-98-120-E
	:	
MONTGOMERY COUNTY	:	

FINAL ORDER

On April 21, 1999, Montgomery County (Employer) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a Nisi Order of Certification issued on April 1, 1999, certifying the American Federation of State, County and Municipal Employees, District Council 88, AFL-CIO (AFSCME) as the exclusive bargaining representative under the Public Employe Relations Act (PERA) of a bargaining unit of all full-time and regular part-time nonprofessional employes of the Employer who are directly involved with and necessary to the functioning of the courts but who are not hired, fired and directed by the courts including but not limited to employes in the offices of the sheriff, prothonotary, register of wills, clerk of courts, district attorney, public defender, coroner and jury board. The Nisi Order of Certification was issued pursuant to an October 16, 1998 representation election, in which the final tally of ballots revealed that 114 ballots were cast in favor of representation by AFSCME, 108 ballots were cast against such representation, and five ballots were challenged. On May 10, 1999, AFSCME filed its response to the Employer's exceptions and a brief in support.

The Nisi Order of Certification incorporated findings of fact and conclusions of law contained in two previous orders issued by a duly designated hearing examiner of the Board. The first order was an Order Directing Submission of Eligibility List issued on August 4, 1998, in which the hearing examiner determined the appropriate unit for purposes of collective bargaining and directed the Employer to submit a list of employes in that unit. The election was subsequently held among the employes in that unit on October 16, 1998. The Employer filed objections to the conduct of the election and after a hearing was conducted on the objections, the hearing examiner issued an Amended Order Dismissing the Employer's Objections to the Conduct of Election on March 24, 1999.[1]

In its 26 separately enumerated exceptions, the Employer challenges various findings of fact made by the hearing examiner and also contends that the hearing examiner erred in failing to make other findings of fact. The Employer further argues that the hearing examiner erred in (1) failing to conclude that the processing of the petition for representation is unconstitutional as a result of the Supreme Court's decisions directing the Legislature to implement the unified judicial system; (2) excluding from the appropriate unit various nonprofessional employes in the domestic relations office, court administration, the district magistrates' offices, the youth center/shelter, the driving under the influence (DUI) office, the adult and juvenile probation offices, information services and the law library; and (3) dismissing the Employer's objections to the election.

The Employer initially contends that the hearing examiner erred in making various findings of fact and failing to make other findings of fact which the Employer contends support its position with regard to the composition of the bargaining unit and its objections to the election. With respect to the hearing

examiner's findings of fact, a thorough review of the record reveals that those findings are supported by substantial and legally credible evidence on the record and those findings will not be disturbed or amended. Indeed, the findings of fact involving the Employer's objections to the election are in many instances based upon the hearing examiner's credibility determinations in the face of conflicting testimony by the witnesses. Absent the most compelling circumstances, which the Board does not find present on this record, the Board will not disturb the findings made by the hearing examiner, who presided at the hearing and observed the demeanor of the witnesses. Township of Springfield, 12 PPER ¶ 12354 (Final Order, 1981); Transport Workers Union v. SEPTA, 17 PPER ¶ 17038 (Final Order, 1986). Additionally, the hearing examiner's failure to find facts as proffered by the Employer was not error. In Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975), the Pennsylvania Supreme Court stated as follows regarding a claim that the fact finder erred in failing to make findings inconsistent with the facts as actually found:

> "When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence which are relevant to a decision."

464 Pa. at 287, 346 at 561.

The Employer next contends that the hearing examiner erred in not dismissing the petition for representation as unconstitutional because some, if not all, of the employes at issue will at some time in the future become state employes as a result of our Supreme Court's decision in County of Allegheny v. Commonwealth, 517 Pa. 65, 534 A.2d 760 (1987) in which the Court held that the system of county funding of the local courts violated the state constitutional requirement of a unified judicial system and directed the Legislature to implement state funding of the system. The Court stayed its order until the Legislature enacted implementing legislation. After the Legislature took no action in response to that decision, the Supreme Court in Pennsylvania State Association of County Commissioners, et al v. Commonwealth, 545 Pa. 324, 681 A.2d 699 (1996) commissioned Former Justice Montemuro as a special master to develop recommendations for the implementation of a unified judicial system. In July 1997, Former Justice Montemuro issued "The Interim Report of the Master on the Transition to State Funding of the Unified Judicial System" (Montemuro report) which set forth a four-phase transition from county to state funding of the unified judicial system. Although the Montemuro report recommended the commencement of the transition of county judicial employes to the state payroll to begin on July 1, 1998, the General Assembly has failed to enact the necessary implementing legislation to begin phase one of the transition. Nothing in the Montemuro report would suggest that currently certified bargaining units of county court employes be declared unconstitutional nor is there any indication in the report that the Employer's suggested moratorium on any further certifications of county units be implemented. The report recognizes the existence of current county court bargaining units and the possible need to restructure those existing bargaining units when the transition to state funding is implemented, and goes on to recommend that "appropriate actions be taken as necessary to accommodate all reasonable efforts to organize eligible personnel of the unified judicial system in the manner and to the extent provided by state and federal law." Montemuro report at 24. The Employer argues that this statement merely acknowledges that when the unified judicial system is fully implemented, the employes may then attempt to organize and bargain collectively under PERA. However, a fair reading of this statement, coupled with the absence of any suggestion in the Montemuro report that additional county court units not be certified in the interim, supports the

Board's continued certification of units of county court employes.

The Supreme Court rejected a virtually identical argument made on behalf of the Court of Common Pleas of Philadelphia County in Philadelphia County v. PLRB, 193 E.D. Misc. Dkt. 1996, per curiam order, December 23, 1996. In that case, an employe organization was attempting to organize court employes in Philadelphia County. In response, Philadelphia County filed an Application for Leave to File Original Process and for Extraordinary Relief with the Supreme Court seeking a declaration that the Board's processing of the petition was unconstitutional, relying upon County of Allegheny v. Commonwealth, supra, and Pennsylvania State Association of County Commissioners, et al v. Commonwealth, supra. The Supreme Court in its December 23, 1996 order granted the request to file original process and denied the County's request for relief. Accordingly, the argument raised by the Employer here has been rejected by the Supreme Court. It is of no consequence that the Supreme Court acted prior to the issuance of the Montemuro report because the constitutionality of county funding of the judiciary was decided in 1987 in Allegheny County, and the Montemuro report merely constitutes a recommendation for the implementation of that decision.

Further support for the hearing examiner's decision can be found in Commonwealth of Pennsylvania ex rel. Bradley v. PLRB, 479 Pa. 440, 388 A.2d 736 (1978), in which the Supreme Court upheld the constitutionality of PERA as applied to judicial employes and, in response to an argument that application of PERA to judicial employes would thwart the Court's effort to unify the judiciary, stated:

> "…[PERA] does not impose any threat to the unification of the judicial function because collective bargaining involving court personnel does not alter the judges' authority to administer justice."

479 Pa. At 448,n.6, 388 A.2d at 740, n.6 (citations omitted). Accordingly, the hearing examiner correctly denied the Employer's request to dismiss the petition for representation based upon the Supreme Court's decisions regarding funding of the unified judicial system.

The Employer next contends that the hearing examiner erred in failing to include employes in the district magistrates' offices, court administration, the domestic relations office, the adult and juvenile probation offices, the law library, information services, the DUI office, and the youth center/shelter in the unit because the Employer contends that all of these employes are "directly involved with and necessary to the functioning of the courts" within the meaning of Section 604(3) of PERA.

Any examination of the hearing examiner's unit determination must begin with the Board's long-standing policy of certifying broadly based county units. Shortly after the Supreme Court's 1978 decisions in what is commonly referred to as the Sweet II[2] litigation, the Board adopted its current policy of certifying broadly based county units under which the Board will certify, inter alia, a separate unit of court-appointed, court-related employes(commonly referred to as the court-appointed unit), a unit of noncourt-appointed, court-related employes (commonly referred to as the court-related unit), and a residual unit of county employes who are not directly involved with and necessary to the functioning of the courts (commonly referred to as the county residual unit). See Berks County, 9 PPER ¶ 9280 (Amended Nisi Order of Certification, 1978). In County of Lehigh v. PLRB, 464 A.2d 699 (Pa. Cmwlth. 1983), rev'd on other grounds, 507 Pa. 270, 489 A.2d 1325 (1985), the Commonwealth Court stated that "the PLRB's designation

of a bargaining unit exclusively comprising professional and nonprofessional court-appointed employes represents a reasonable response to, and recognition of, constitutional constraints flowing from the separation of powers doctrine and necessity for an independent judiciary." Id. at 702. The Board has consistently included in the court-appointed unit those employes who come within the appointive and supervisory authority of the courts including all employes in the domestic relations office, adult and juvenile probation offices, the district magistrates' offices, the court administrator's office, and the law library. See Somerset County, 10 PPER ¶ 10261 (Order and Notice of Pre-Election Conference, 1979); Cambria County, 10 PPER ¶ 10219 (Order and Notice of Pre-Election Conference, 1979); Allegheny County, 11 PPER ¶ 11035 (Final Order, 1980); Schuylkill County, 18 PPER ¶ 18104 (Nisi Order of Unit Clarification, 1987); Dauphin County, Case No. PERA-R-97-169-E (Nisi Order of Certification, 1997); Lehigh County, Case No. PERA-R-95-357-E (Nisi Order of Certification, 1995); Somerset County, Case No. PERA-R-95-525-W (Nisi Order of Certification, 1996).

The hearing examiner excluded employes in the district magistrates' offices, court administration, domestic relations, adult and juvenile probation, and the law library based upon his conclusion that the employes in those offices are appropriately included in a separate court-appointed unit. The Employer contends in its exceptions that because various employes in these offices are not appointed pursuant to an order of the Court of Common Pleas of Montgomery County, but rather are placed on the County payroll by a resolution of the Montgomery County Commissioners, those employes are not appropriately included in the court-appointed unit but belong in the court-related unit petitioned for by AFSCME. The hearing examiner correctly points out that in Chester County, 11 PPER ¶ 11186 (Order Directing Submission of Eligibility List, 1980), the Board rejected this same argument and concluded that a written court order is not necessary for each employe to be included in the court-appointed unit, but rather inclusion in the court-appointed unit is based upon the fact that "the ultimate appointing authority by statute is in the court." Id. at 325. The hearing examiner correctly concluded that the employes in the domestic relations office, the adult and juvenile probation offices, the district justice offices, the court administrator's office, and the law library come under the ultimate appointive and supervisory authority of the courts and are appropriately included in the court-appointed unit.

We further agree with the hearing examiner that the information services employes are not sufficiently directly involved with and necessary to the functioning of the courts to be included in the court-related unit. The hearing examiner found that the information services employes provide computer software, programming and technical support for all other County offices, including the court. Although computer technology is an important tool utilized by court employes in carrying out their various job functions, we do not believe that employes who program and service the courts' computer system are sufficiently directly involved with and necessary to the functioning of the courts to be included in the court-related bargaining unit. In support of its argument, the Employer cites Lehigh County, 11 PPER ¶ 11028 (Order and Notice of Pre-Election Conference and Nisi Order of Dismissal, 1980), which concluded that data processing employes were court-related employes based upon their preparing and sending notices to citizens selected for jury duty and providing the domestic relations collections department with computer printouts to determine which individuals are delinquent on their court-ordered support payments. However, the Employer failed to adduce specific evidence that the information services employes' functions are the same as the data processing employes in Lehigh County. The facts in that case reveal that the data processing employes did the actual work of preparing and sending out jury notices and of producing the computer printouts that were

used by the domestic relations department. Here, the record reveals that the information services employes are providing their technical support to the court employes who, after the information services employes program the computers, perform the actual court work. The information services employes thereafter provide technical support in the event of computer malfunctions. The work product of the information services employes in this case and the data processing employes in Lehigh County is simply different and leads to our conclusion that the information services employes are not directly involved with and necessary to the functioning of the courts. The Employer contends that PERA's prohibition against court-related employes' striking should apply to these employes. However, the Employer admits that it would take not only a strike by these employes to impact on the functioning of the courts, but the courts would only be impacted if the information services employes were on strike and the computer system simultaneously failed. The services provided by these employes are more akin to that of the maintenance, mailroom and purchasing employes whose support services were found to be too remotely connected with the courts to warrant their inclusion in a court-related unit. Lehigh County, supra.

The hearing examiner also correctly concluded that the DUI office employes and the youth center/shelter employes are not directly involved with and necessary to the functioning of the courts. The DUI office processes those individuals who have been found guilty of driving under the influence or who have been placed in the accelerated rehabilitative disposition (ARD) program. The employes in this office administer a test to determine whether the individual has a drug or alcohol problem and provide a 12-hour training course on the effects of drug and alcohol use. The youth shelter houses dependent children such as runways, truants and ungovernables who are in the shelter by a court order, by the department of children and youth services or by the police. The youth center is a secure detention facility, housing children placed there by petition of a probation officer or as a result of a court order. Neither the DUI unit nor the youth facilities are sufficiently directly involved with and necessary to the functioning of the courts as to be included in a court-related unit. The employes in these areas either merely follow the court's orders regarding disposition of adult and juvenile defendants or house those individuals before they are processed by the court or by other county agencies. Indeed, the same argument could be made for the inclusion of the county prison employes in the court-related unit, even though those employes have never been included in the unit of court-related employes. The Employer again cites Lehigh County for its argument that the youth center/shelter employes should be included in the court-related unit. However, the Board has more recently included employes of the county youth facilities in noncourt-related units. See Lancaster County, 30 PPER ¶ 30058 (Order Directing Submission of Eligibility List, 1999); Dauphin County, Case No. PERA-R-97-329-E (Order and Notice of Election, 1997). Accordingly, the Employer's exceptions regarding the composition of the bargaining unit are meritless.

The Employer's remaining exceptions involve the dismissal of the county's objections to the conduct of the representation election conducted on October 16, 1998. In dismissing those objections the hearing examiner cited Kaolin Mushroom Farms, Inc. v. PLRB, 702 A.2d 1110 (Pa. Cmwlth. 1997), appeal dismissed as improvidently granted, ____ Pa. ____, 720 A.2d 763 (1998)(Kaolin), in which the Commonwealth Court characterized the standard for overturning representation elections as follows:

> "[T]he so-called 'laboratory conditions' standard is an abstract concept which must be applied in a practical manner; in this respect, it is more of a theoretical objective that a definitive legal standard. The mere fact that the election conditions were

> less than ideal is not, by itself, a sufficient basis for setting aside the election results altogether. The party challenging the representation election must establish a causal relationship that the irregularities materially affected the results of the election . . . ."

702 Pa. at 1117 (citations omitted). The Commonwealth Court quoted Millard Processing Services, Inc. v. PLRB, 2 F.3d 258 at 261 (8th Cir. 1993) as follows:

> "Representation elections are not to be set aside lightly . . . . The party challenging an election carries a heavy burden: the objecting party must 'show by specific evidence not only that improprieties occurred, but also that they interfered with employees' exercise of free choice to such an extent that they materially affected the election results."

702 A.2d at 1116 (emphasis added by the court)(citations omitted) (quoting Beaird-Poulan Division, Emerson Electric Company v. NLRB, 649 F.2d 589, 592 (8th Cir. 1981), cert. denied, 510 U.S. 1092, 1114 S. Ct. 922, 127 L.Ed 2d 215 (1994). The court in Kaolin also cited Certainteed Corp v. NLRB, 714 F.2d 1042 (11th Cir. 1993) as follows:

> "[A]ctivities of a union's employee-adherents which are not attributable to the union itself receives less weight in determining that an election should be set aside. NLRB v. Southern Metal Service Inc., 606 F.2d 512, 515 (5th Cir. 1997). Their coercive conduct or other actions must be 'so aggravated that a free expression of choice of representation is impossible.'"

702 A.2d at 1123 (citation omitted).

The Employer initially contends that the election should be set aside based upon the activity of eligible voter Ed Culbreath who made pro-union statements while waiting in line to vote. The Employer contends that this improper electioneering in the polling area, when viewed in light of the closeness of the representation election, must result in setting aside the election.[3] In is exceptions the Employer faults the hearing examiner for crediting the testimony of union election observer Capaldo and the Board's election officer in the hearing examiner's findings of fact that Mr. Culbreath made the statement "Go Union, Go Union! More money, more money!" two or three times while waiting in line to vote. The election officer testified that she did not hear Mr. Culbreath's pro-union statements and the union's observer testified that he heard Mr. Culbreath make the statement two or three times. The Employer contends that the hearing examiner should have relied on the testimony of its election observer and one other witness who testified that Mr. Culbreath constantly chanted his pro-union statements for approximately twenty minutes while he was in line to vote. As noted above, the Board will not, absent most compelling circumstances, overturn a credibility determination made by the hearing examiner. The Employer presents no such compelling circumstances for the Board to reject the credibility determination made with regard to Mr. Culbreath's activity. The hearing examiner correctly determined that Mr. Culbreath's statements are not the type that could reasonably render the free expression of voter choice impossible. In Kaolin, supra, the Commonwealth Court addressed similar non-party electioneering and cited Certainteed Corp., supra, for the proposition that absent evidence of intimidation or influence, the objecting party fails to carry its burden to establish that the impact on the election necessitates that the election be set

aside. It should be noted that the Employer failed to produce any witness who testified that the statements by Mr. Culbreath had any effect on their vote or their ability to freely cast a ballot in the election.

The Employer next cites the activity of voter T. Anthony Ellis, who was wearing a union T-shirt and expressed his opinion in favor of the union to voters around him. Like the actions of Mr. Culbreath, Mr. Ellis's conversations have not been shown to create such an atmosphere of fear or reprisal as to render any voter's free expression of choice impossible. Kaolin, supra. Additionally the wearing of a union T-shirt in the polling area is permitted and provides no basis for overturning the election. Elizabeth Forward School District, 11 PPER ¶ 11085 (Nisi Order of Certification, 1980), 11 PPER ¶ 11126 (Final Order, 1980).

The Employer next points to the comment that an unidentified deputy sheriff made to Marjorie Guziwicz. Ms. Guziwicz is an employe in the prothonotary's office whose husband Ed died less than a year before the election. The unidentified deputy sheriff stated three or four times to her "remember Ed." The Employer makes the incredible leap of logic that this conversation amounted to union electioneering even though Ms. Guziwicz testified that it was her opinion that her husband was "not involved with the union" (FF 51). Despite the fact that Ms. Guziwicz testified that it was her opinion that an unidentified sheriff's statement meant for her to vote for the union (N.T. 54-55), we agree with the hearing examiner that applying an objective standard to the statement renders Guziwicz's subjective belief as to what the other voter meant irrelevant. This brief exchange is not the type of activity that would render a voter's free expression of choice impossible. It should also be noted that Ms. Guziwicz did not testify that this comment in any way affected her vote in the election.

The Employer next contends that Milchem, Inc., 170 NLRB 362, 67 LRRM 1395 (1968) requires that this election be set aside. In Milchem the National Labor Relation Board concluded that an election would be set aside in the event of prolonged conversations between representatives of any party to the election and voters waiting to cast their ballots. The Employer initially relies upon the testimony of Kimberly Henry who testified that on one occasion at about 9:45 a.m. an unidentified person outside of the designated polling area shouted through an open door to someone inside the polling area about a celebratory get together (N.T. 85). The Employer cites Milchem, supra, as requiring the setting aside of the election based upon this exchange. However, while Milchem requires the setting aside of an election where prolonged discussions occur between representatives of one of the parties and voters waiting in line, the incident cited by the Employer can hardly be described as a prolonged conversation and the testimony fails to attribute the statement to any particular person. Accordingly, the hearing examiner was correct in dismissing the Employer's objection to the election with regard to this incident. Additionally, the record fails to support the notion that the greetings exchanged outside of the designated polling area between voters waiting in line and alleged union representatives were prolonged in nature. Further, while Milchem addresses conversations between the parties' representatives and voters in the polling area, the greetings that occurred outside were not in the polling area simply, as alleged by the Employer, because the line of voters extended into the hallway. The election officer designated the polling area as the inside of Courtroom F and, accordingly, any alleged electioneering or conversations that occurred outside of Courtroom F are not objectionable. Kaolin, supra. In Teamsters Local Union No. 77 v. PLRB, 492 A.2d 782 (Pa. Cmwlth. 1984), union representatives were stationed immediately outside the polling area and briefly greeted almost every voter before the voters entered the polling area to cast their ballots. The Commonwealth Court affirmed the Board's upholding of that election based upon the fact that the election officer

had designated the polling area and the conversations occurred outside of this area. So too, here, the greetings that occurred outside the polling area cannot justify the overturning of this election.

The Employer contends that the election must be invalidated because the secrecy of certain ballots was not maintained. The hearing examiner found that three employes chose to mark their ballots outside of the voting booth and the Employer's watcher could see how one of these employes voted. The Employer contends that because of the closeness of the election, these alleged violations of the secrecy of the ballot must result in overturning the election. The Employer cites Kaolin for the proposition that the Board must assume that these ballots were cast for AFSCME, invalidate those votes and direct a hearing on the remaining challenged ballots. In Kaolin, the Board examined the election results by assuming that the ballots cast by voters who occupied the voting booth two at a time were cast for the prevailing party in the election. However, in that case the secrecy of the election was jeopardized in full view of employes waiting to vote in the election. There is no evidence that the isolated breach of ballot secrecy here was witnessed by any voter, as the Employer's observer was a nonsupervisory employe who was not even arguably eligible to vote. It cannot be said that this incident created an atmosphere that rendered the exercise of free choice in the election impossible. Although the secrecy of the ballot is of the utmost importance, the Board will not overturn the election based upon this minor breach of ballot secrecy.

The hearing examiner was also correct when he refused to overturn the election based upon the Employer's allegation of media presence outside the designated polling area. The record reveals that a television reporter with a camera appeared outside the polling area during the afternoon voting session and, after being refused admittance into the polling area to film during the voting process, pointed the camera at the Board election sign that completely covered the clear portion of the window of one of the double doors to Courtroom F. There was no testimony that could substantiate the fact that the television reporter ever filmed inside the polling area or indeed filmed anything at all. The Employer would have the Board overturn the election because of the mere presence of the media outside the polling area, noting that at least 22 eligible voters failed to cast ballots in the election. However, no employe testified that he or she was intimidated by, or failed to vote because of, the presence of the television camera outside of the polling area. In this regard it cannot be said that the presence of the media outside of the polling area had any material effect on the election. Kaolin, supra; Palmer Township, 11 PPER ¶ 11189 (Proposed Order, 1980). Accordingly, the Employer's exceptions regarding the objections to the conduct of the election must be dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Nisi Order of Certification issued by the Board Representative.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number be and the same are hereby dismissed and the Nisi Order of Certification issued by the Board Representative be and be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this twenty-first day of June, 1999. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

JOHN MARKLE JR., CHAIRMAN, CONCURS IN THE RESULT.

[1] On March 22, 1999, the hearing examiner had issued an order dismissing the Employer's objections that was amended by the March 24, 1999 order. The amendment involved the correct incorporation of findings of fact and conclusions of law from the Order Directing Submission of Eligibility List and the Order directing the Election. The Order did not involve any substantive change in the March 22, 1999 Order.

[2] Sweet II refers to the following companion cases: Ellenbogen v. County of Allegheny, 479 Pa. 429, 388 A.2d 730 (1978); Commonwealth of Pennsylvania ex rel. Bradley v. PLRB, supra; Sweet v. PLRB, 479 Pa. 449, 388 A.2d 740 (1978); Board of Judges, Court of Common Pleas of Bucks County v. Bucks County Commissioners, 479 Pa. 455, 388 A.2d 743 (1978); Board of Judges, Court of Common Pleas of Bucks County v. Bucks County Commissioners, 479 Pa. 457, 388 A.2d 744 (1978).

[3] Section 95.52 of the Board's rules and regulations provide as follows:

> "Section 95.52 Procedures for on-site elections.
> (b) Polling area. Before the commencement of an on-site election, the agent of the Board will designate the polling area. No electioneering of any kind may take place within this area. A violation of this requirement by any party or its agent may be ground for setting aside the election."
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> 34 Pa. Code § 95.52(b) (emphasis added).