

D.R. NO. 2022-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2022-020

ASSOCIATION OF BELLEVILLE SCHOOL
ADMINISTRATORS/NJEA,

Petitioner,

-and-

ASSOCIATION OF BELLEVILLE SCHOOL
ADMINISTRATORS/NJPSA,

Intervenor.

SYNOPSIS

The Director of Representation dismisses election objections filed by the NJEA-affiliated petitioner and certifies the NJPSA-affiliated intervenor and incumbent representative as the exclusive majority representative. The Director finds that the procedural and evidentiary component for evaluating objections was not met and that NJEA did not establish a *prima facie* case warranting an investigation. NJEA did not provide non-hearsay evidence based upon personal knowledge of affiants indicating that the alleged actions or inactions of the Belleville Board of Education or the United States Postal Service resulted in ballots not being received by the Commission from eligible voters and affecting the results of the election.

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Intervenor.

Appearances:

For the Public Employer,
Busch Law Group, LLC, attorneys
(Ari D. Schneider, of counsel)

For the Petitioner, NJEA
Oxford Cohen, LLC, attorneys
(Randi Doner April, of counsel)

For the Intervenor, NJPSA
Schwartz Law Group, LLC, attorneys
(Robert M. Schwartz, of counsel)

DECISION

The petitioner and intervenor in this matter are both identified as "Association of Belleville School Administrators," but are separately affiliated with the New Jersey Education Association (NJEA) and New Jersey Principals and Supervisors

Association (NJPSA), respectively, and will be referenced that way in this decision.

On October 15, and 18, 2021, NJEA filed a timely representation petition and amended petition, accompanied by an adequate showing of interest, seeking certification (by a secret ballot election) of a collective negotiations unit of principals, directors, and supervisors of the Belleville Board of Education (Board). The unit is currently represented by NJPSA, whose intervention was approved on October 21, 2021. On November 9, 2021, a Consent Election Agreement, signed by all parties, was approved. Among other things, the agreement set forth the unit description, the payroll period for eligibility, and the date when the eligibility list was due. The agreement also established when the ballots were to be mailed (December 3, 2021) and when they were to be received and counted (January 6, 2022). On November 10, 2021, a letter was sent by the election officer to the parties enclosing the conformed copy of the agreement and advising any party with information about eligible employees not appearing on the eligibility list to communicate with the election officer. NJEA confirmed receipt of the letter the same day.

The eligibility list generated by the Board, including the names and mailing addresses of 26 employees, was provided to NJEA and NJPSA on November 15, 2021. The parties were advised to

review the list for accuracy because the ballots were to be sent to the listed addresses on December 3, 2021; that anyone not on the list after ballots were mailed could call us to request a ballot; and that the parties could send a representative to the mail ballot count (if compliant with certain protections against COVID-19) but that attendance was not necessary to raise an eligibility challenge as such challenges could be sent by email.

On November 18, 2021, NJPSA sent an email to the election officer (with copies to NJEA and the Board), asserting that the names on the eligibility list appeared to be accurate. NJEA did not send a confirmatory email. On December 17, 2021, NJEA provided the names and addresses of three administrators who reported that they had not yet received a ballot - - Shannon Sharkey, Lucy Demikoff, and Caleb Rhodes. On December 17, 2021, we mailed duplicate ballots to the named employees at the addresses provided.

On January 6, 2022, the count was conducted and a tally of the ballots was sent to the parties. The tally provided that 7 votes were cast for NJEA and 8 for NJPSA. One other ballot was declared void because no signature appeared on the outer envelope in the allocated printed box captioned by the printed representation that the signator believed he/she/they were eligible to vote and personally voted the enclosed ballot. Of the employees who were sent duplicate ballots, we received

ballots from Lucy Demikoff and Caleb Rhodes but not Shannon Sharkey.

On January 11, 2022, NJEA filed objections. On January 12, NJEA withdrew objections related to ballot count procedures. The remaining objections are the subject of this decision. The purpose of this review, consonant with our regulations, is to determine whether NJEA has furnished sufficient competent evidence to support a *prima facie* case warranting further investigation (at which time submissions from the other parties would be requested) or whether the objections should be dismissed. N.J.A.C. 19:11-10.3 (h) and (i). I determine that NJEA has not provided sufficient competent evidence precisely and specifically showing conduct warranting setting aside the election or establishing a *prima facie* case warranting an investigation.

A summary of NJEA's objections are: (1) based on NJEA's own survey and our tally, three ballots were allegedly mailed to our designated post office box, but were lost or delayed due to ongoing U.S. Postal Service (USPS) issues; (2) three allegedly eligible voters did not receive a ballot; and (3) the Board allegedly failed to post the Notice of Election in areas where dispersed voters could see it, and if it had posted appropriately, the employees who did not receive a ballot would have learned what to do to cause a duplicate ballot to be sent to

them.

In support of its objections, NJEA provided a certification from Shannon Sharkey, an employee whose name appeared on the eligibility list, who certifies that she never received a ballot in the mail. NJEA also provided a certification from Thomas Delia, whose name did not appear on the eligibility list and who certifies that he did not receive a ballot in the mail.

NJEA also provided a certification of the president of the local association, Ryan Kline, who certifies that he conducted a survey of the members of the bargaining unit and that the exhibit provided with his certification is a true copy of his calculations related to that survey. The survey results purport to show which employees received a ballot and whether they mailed (back to us) the completed ballot.

I find that the survey isn't competent evidence for the purpose for which it is proffered. Kline does not have personal knowledge of the purported facts, and the employees' responses to the survey are hearsay. The reliability of those responses may properly be questioned because the employees, including those who may not have wanted to be represented by NJEA, were being asked about their mailing of ballots. Those who decided not to vote may have felt pressured to indicate that they mailed completed ballots, or that they did not receive one, so as to avoid disapproval of a decision not to vote. Kline's assumption that

three ballots purportedly mailed back to us were lost (in the mail) because 19 members stated they returned ballots and we received only 16, is speculative.

Similarly, the responses of unit members as to whether they saw the Notice of Election, referenced in Kline's certification, are hearsay. Kline refers only to those members with whom he spoke, leaving it unclear whether he otherwise heard from all members. Nor is it clear whether the members had in fact looked in areas where notices to employees are normally posted. N.J.A.C. 19:11-10.2(a). Kline also hasn't certified that he personally didn't see the Notice of Election posted in places where notices are normally posted. Kline's statement that only those members who would have seen a Notice of Election, (if it had been posted) might only then have learned how to request another ballot is also speculative. No evidence has been proffered showing that those members were unaware that ballots had already been mailed and received by other members, or that they did not seek advice from NJEA, which had been informed before the mailing how members could receive another ballot.

The survey (which is hearsay) otherwise indicates that three employees never received ballots; Shannon Sharkey, Thomas Delia, and Isabelle Ramirez. NJEA has provided certifications from two - - Sharkey and Delia - - but Delia's name was not included on the eligibility list. From November 15th, 2021, the day NJEA

received the eligibility list, to January 6, 2022, the day of the count, NJEA did not inform us that Delia should have been included on the eligibility list, despite our advice that it should review that list. After NJEA presumably reviewed the list and again, when it informed us on December 17, 2021 that three named employees hadn't received ballots, Delia's name wasn't among them. Nor has NJEA presented any evidence showing that Delia was eligible to vote, whose vote could have then affected the results of the election. I also note that NJEA did not request a ballot for Ramirez when it requested that duplicate ballots be sent, nor did it provide a certification from her that would suggest the election results would have been affected if she had received one.

We sent a duplicate ballot to Sharkey (at the address NJEA provided) when we sent ballots to Lucy Demikoff and Caleb Rhodes, whose ballots we received, counted and included in the tally of results. Because Sharkey had reported not receiving a ballot and a duplicate ballot was mailed to her, she would have been aware of how to get another duplicate ballot mailed if necessary, even if she had not seen a Notice of Election (though nothing in her certification indicates that she hadn't seen the Notice of Election).

NJEA has proffered no evidence showing that USPS irregularities actually caused ballots not to arrive. No

employees certified that they (individually) sent ballots to us in the provided self-addressed stamped envelopes. Kline appears to have speculated based on a survey whose responses are, again, hearsay. In its position letter, NJEA simply refers to USPS "issues" that have become "commonplace" referencing CNET and CBS news articles from October, 2021 of USPS's planned change to its service standard for first class mail from delivery within three days to delivery within five days. News articles are hearsay. No evidence suggests that the delays have regularly been five days or longer or that mail has regularly been lost. If five days for delivery is now "commonplace," as suggested by NJEA, it could have been factored in the decisions of employees to mail their completed ballots. (NJEA consented to a mail ballot election after the publication of these articles).

We mailed out ballots on December 3, 2021 and retrieved returned ballots from our post office box on January 6, 2022, providing employees ample time to vote, even with the five day standard. As demonstrated by the duplicate ballots sent on December 17th, there was enough time for those ballots to be completed and returned, as evidenced by the fact that two of the three duplicates were returned and counted. I take administrative notice that even on January 10, 2022, when our staff retrieved ballots from the post office box for a different election count, no other ballots for this matter were present.

A party filing objections must furnish evidence such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. N.J.A.C. 19:11-10.3(h). The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election and shall produce the specific evidence on which that party relies in support of the claimed irregularity in the election process. Id. The Director of Representation must review the objections and supporting evidence to determine "if the party filing said objections has furnished sufficient evidence to support a *prima facie* case." N.J.A.C. 19:11-10.3(i). If sufficient evidence has not been submitted to support a *prima facie* case, the Director may dismiss the objections immediately. If sufficient evidence has been submitted, the Director will conduct an investigation into the objections.

There are two components to the Director's evaluation process that must be met for an investigation to be initiated: a substantive component and a procedural or evidentiary component. Jersey City Medical Center, D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). The latter refers to the proffer of evidence, such as affidavits and other documentation that precisely or specifically show the occurrence of the substantive conduct alleged. Id. The

procedural or evidentiary component will not be met when the objector relies only on hearsay and provides no direct evidence based on personal knowledge of affiants. Id.

The only non-hearsay evidence based on personal knowledge presented by NJEA are the statements by Shannon Sharkey and Thomas Delia that they did not receive ballots. Sharkey informed NJEA that she had not received a ballot; NJEA requested that we send a duplicate ballot, and we did. No certified statements from Sharkey indicate that she didn't see a Notice of Election, and it's apparent that she was made aware of a process for requesting another ballot. Delia was not included on the eligibility list, NJEA never notified us of such an omission, and hasn't presented any evidence that he was an eligible voter.

Accordingly, I find that the procedural component has not been met. NJEA's objections are therefore dismissed.

ORDER

NJPSA has received a majority of valid ballots cast in the above-captioned matter and is entitled to certification as the exclusive representative of principals, directors and supervisors employed by the Belleville Board of Education.^{1/}

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: February 9, 2022
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by February 22, 2022.

^{1/} A Certification of Representative is attached.

**STATE OF NEW JERSEY
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-and-

BELLEVILLE SCHOOL ADMINISTRATORS
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DOCKET NO. RO-2022-020

CERTIFICATION OF REPRESENTATIVE

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. A majority of the voting employees selected an exclusive majority representative for collective negotiations. No valid timely objections were filed to the election.

Accordingly, **IT IS HEREBY CERTIFIED** that

ASSOCIATION OF BELLEVILLE SCHOOL ADMINISTRATORS/NJPSA

has been selected by a majority of the employees of the above-named Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed principals, directors, assistant principals, assistant principals/athletic directors, and supervisors employed by the Belleville Board of Education.

Excluded: Managerial executives and confidential employees within the meaning of the Act; nonprofessional employees, craft employees, police, casual employees; employees in other existing negotiations units; and all other employees of the Belleville Board of Education.

DATED: February 9, 2022

Trenton, New Jersey

/s/ Jonathan Roth

Director of Representation

Attachment:

Certification of Representative dated: February 9, 2022

In the Matter of

BELLEVILLE BOARD OF EDUCATION

-and-

BELLEVILLE SCHOOL ADMINISTRATORS ASSOCIATION/NJEA

-and-

ASSOCIATION OF BELLEVILLE SCHOOL ADMINISTRATORS/NJPSA

Docket No. RO-2022-020

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