

D.R. No. 2012-1

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

In the Matter of

COUNTY OF HUDSON,

Public Employer,

-and-

Docket Nos. RO-2012-006,
RO-2012-007 and RO-2012-008

HUDSON COUNTY UNION LOCAL 1 AMALGAMATED,

Petitioner,

-and-

NATIONAL UNION OF HOSPITAL AND HEALTH
CARE EMPLOYEES, DISTRICT 1199J,
AFSCME, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation orders a mail ballot election in a petition that had been filed seeking representation for blue and white collar employees of the County. The Petitioner sought a mail ballot election, however the Intervenor and Employer sought an in-person vote. The Director reviewed the factors to be considered in deciding our election methodology and concluded that a mail ballot election supported our ability to conduct a free and fair election.

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Appearances:

For the Public Employer
Donato Battista, County Counsel
(Louis Rosen, Deputy County Counsel)

For the Petitioner
Peter J. Cresci, of counsel

For the Intervenor
Oxfeld Cohen, attorneys
(Arnold S. Cohen, of counsel)

DECISION AND DIRECTION OF ELECTION

On July 22, 2011, Hudson County Union Local 1 Amalgamated
(Local 1) filed a representation petition seeking to represent a
historical unit of blue and white collar employees of the County

of Hudson (County)^{1/}. The National Union of Hospital and Health Care Employees, District 1199J (District 1199J or 1199J) is the current majority representative of the blue and white collar employees employed by the County of Hudson. District 1199J intervened in this matter based upon its current collective negotiations agreement with the County covering this unit.

Hudson County and 1199J do not consent to a mail ballot election and assert that the election should be conducted in-person at a designated polling place. Local 1 does not object to a mail ballot election.

On August 2, 2011, a Commission Staff Agent convened an investigatory conference. At that conference, PERC informed the parties that there was a sufficient showing of interest on the historical blue and white collar unit^{2/}, but not as to the units

1/ Local 1 originally filed a representation petition on July 7, 2011, seeking to represent various employees of Hudson County across numerous historical units. A conference was held on July 21, 2011, at which time Local 1 withdrew that petition and filed three (3) new representation petitions seeking to represent appropriate historical units - the blue and white collar employees, the non-supervisory nurses unit, and the professional unit.

2/ District 1199J argues that Local 1 initially filed its representation petition without an adequate showing of interest to proceed and, therefore, the petition should have been dismissed at that time. The determination of the adequacy of the showing of interest is solely an administrative matter. It is the Director's practice, however, to permit a petitioner the opportunity to cure, within a reasonable period of time, a showing of interest based on the employer's eligibility list. I find the

(continued...)

of nurses or professionals. PERC Staff Agent Deirdre Hartman requested that the parties consent to a mail ballot election for the blue and white collar unit. At that time, the parties were unable to agree on the method of balloting. Pursuant to our request, the County and 1199J submitted position statements regarding the method of balloting issue.^{3/}

The County and 1199J argue that the election should be conducted by in-person, on-site balloting. The County primarily relies on its inability to provide accurate mailing addresses for its employees, asserting that these circumstances create inherent untrustworthiness of the list of eligible voters and warrant an in-person election. In support of its position, the County has submitted a certification of Patrick M. Sheil, the County's Director of Labor Relations and former Director of Personnel. Sheil states that whenever the County has sent a county-wide mailing to staff, fifty (50) percent of the mailed material was returned as undeliverable; Sheil advises that the address records of County employees have not been updated in the last ten (10)

2/ (...continued)
petition submitted by Local 1 is supported by an adequate showing of interest.

3/ The County originally raised an issue regarding the composition of the unit sought to be represented, but retracted same with the understanding that the unit sought by Local 1 is limited to those employees currently represented by 1199J in the historical blue and white collar unit.

years, and that the County has chosen hand delivery whenever receipt of a document by employees is essential. Furthermore, in support of an on-site election, the County contends that it can easily transport the approximately 646 employees in the unit to a single, central voting location, County Plaza, in a single day. The County maintains the disruption to its operations will be minimal, that employees scheduled for work during voting hours will be given release time, and that the proposed voting site, County Plaza, already has a sizable security force of guards and sheriffs officers.

1199J argues that the parties have participated in on-site representation elections in the past which, it asserts, were smooth and uneventful. 1199J also argues that a mail ballot election will disenfranchise eligible voters because the County does not have accurate mailing addresses for unit employees.

1199J also argues that there is concern that Local 1 will engage in intimidation tactics or tamper with the mailing of ballots. These arguments are unsupported by any facts, and will not be addressed or considered. Voter intimidation, if proven, constitutes grounds to set aside an election, whether by mail ballot or on-site.

The following facts appear:

1199J is the certified representative of a negotiations unit of approximately 646 blue and white collar employees of the

County. The unit includes at least 190 titles. 1199J and the County negotiated a collective agreement covering the unit, extending from July 1, 2006 through June 30, 2011. Accordingly, the petition is timely. 1199J was permitted to intervene in this matter based upon its collective agreement.

I take administrative notice of the following facts:

In March and April of 2006, respectively, PERC ran an on-site election involving United Workers of America, Local 322; Local 1199J; as well as an option of "No Representative" and run-off election for the petitioned-for unit involving 1199J and Local 322. In 2006 there were approximately 656 employees in the unit and approximately 244 titles. Those elections were held at three (3) central locations, with eligible voters coming to those locations from twenty (20) locations around the County. PERC personnel conducted the election. To accommodate the voters' work hours, the election ran at various times of the day beginning at 6:30 a.m. and ending at 4:30 p.m. The ballot count was held at the Administration Annex at 5:00 p.m.

There were multiple problems with the on-site election, resulting in election objections filed by 1199J^{4/} as well as an unfair practice charge filed by a Local 322 organizer.

^{4/} 1199J filed election objections in connection with the election, but withdrew its objections as part of a settlement regarding the counting of challenged ballots.

ANALYSIS

N.J.S.A. 34:13A-6(d) empowers the Commission to resolve questions concerning the representation of public employees through the conduct of a secret ballot election. N.J.A.C. 19:11-10.3, Election Procedures, provides:

(a) All elections will be by secret ballot The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

Accordingly, the methodology of the election is within my discretion.

Our mission is to conduct free and fair elections within a reasonable time and at a reasonable cost. City of Newark, D.R. No. 2007-1, 32 NJPER 262 (¶107 2006). In determining how best to conduct a free and fair election, the type of election, i.e., on-site or mail ballot, must be selected.

In Bergen Cty., D.R. No. 2003-9, 28 NJPER 463 (¶33170 2002), the Director, citing a National Labor Relations Board decision, San Diego Gas and Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, 325 NLRB 1143, 158 LRRM 1257 (1998), articulated numerous factors in determining an election methodology:

- (1) Scattering of voters due to job duties over wide geographic area;
- (2) Scattering of voters due to significantly varying work schedules preventing presence at common location at common time;

- (3) Whether a strike, lockout, or picketing is in progress;
- (4) Desires of all the parties;
- (5) Likely ability of voters to read and understand mail ballots;
- (6) Availability and accuracy of addresses for employees;
- (7) Efficient and economic use of Commission agents and resources;
- (8) Size of the unit;
- (9) Potential disruption to employers and employees by conducting in-person elections;
- (10) Security issues for in-person elections;
- (11) Employee access to telephone and/or internet connections.

PERC will conduct elections by mail when laboratory conditions for elections can be adequately met through that method; when the costs in financial and human resources of the Commission in conducting in-person elections are unjustified; and when a unit workforce is not at a central geographical location or when employees do not share common work days or hours. *Id.* See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981); State of New Jersey, D.R. No. 90-25, 16 NJPER 244 (¶21097 1990).

Applying the criteria set forth in Bergen to the facts here, I find that a mail ballot is most appropriate under these particular circumstances. In reaching this determination, I

considered the geographic area over which the workforce is dispersed, the size of the unit and the variation of work schedules for the workforce. There are about 646 eligible voters, at over 20 locations in the County, with varying work hours and work days. There is no one day or common time-block that all employees are working. Conducting an in-person election at one central location during one day as suggested by the County could potentially disenfranchise some voters who either do not work during voting hours or at the suggested central location. Furthermore, the County has suggested it could bus eligible employee voters and/or provide release time for transport to a central location.^{5/} In our experience, we have found the least involvement by the employer on election day results in the fewest objections and the cleanest election outcomes.

There is currently no picketing in progress, and employee access to telephone and/or internet connections is not a factor. In a similar vein, security issues with respect to in-person elections have not been raised. The parties are not in agreement concerning how the election should be conducted, with the County and 1199J favoring an on-site election, and Local 1 urging a mail

^{5/} In a matter concerning a prior on-site election involving the same parties, District 1199J and County of Hudson and Patrick Desmond, H.E. 2008-2, 33 NJPER 243 (¶94 2007), a Hearing Examiner considered, among other assertions, the Charging Party's contention that the County and 1199J violated the Act when the County transported employees by bus to a polling site.

ballot. The likely ability of voters to read and understand mail ballots has not been raised as an issue by any of the parties.

The lack of an accurate address list for employees is a significant issue, and certainly raises concern about the viability of a mail ballot election. The County states that fifty (50) percent of the addresses it has on file for employees are inaccurate, and the employee address list has not been updated in ten (10) years. While not an insignificant impediment to a free and fair mail ballot election, I am not persuaded that the problem of inaccurate employee addresses cannot be overcome in this particular case. The County has indicated that important notices to employees, including W-2 forms, are routinely delivered to them by hand. An identical distribution of the notice of a mail ballot election in this matter, with a paragraph advising employees that ballots will be mailed on a specified date, and further instructs employees who have not received ballots by a certain date to contact the Commission so that a duplicate ballot can be mailed to them, would cure most, if not all, defects in the County's list of home addresses for employees in this unit. I also note that both 1199J and Local 1 are able to communicate with the members of the negotiations unit and explain the importance of updating their current mailing address with the County.

I am persuaded that the most efficient and economic use of both the Commission's and the County's resources tips the balance in favor of a mail ballot election. Given the particular circumstances here, conducting an on-site election will inevitably strain the resources of the County due to the need for release time to allow employees to cast their votes, additional security, and disruption to the workflow which is a by-product of conducting an election on-site for a unit of this size.

As in Bergen Cty., ". . . these factors make in-person voting impractical," and "the fact that the Commission had previously conducted an in-person election is not controlling." Id., 28 NJPER at 465. In-person voting poses a higher likelihood of claims of interference and improper electioneering resulting in more election objections than mail ballot election. New Jersey Transit, D.R. No. 2007-11, 33 NJPER 48 (§19 2007).

In Newark, PERC determined that an in-person election best served our mission, primarily based upon the employer's inability to supply reliable home addresses because at least some employees had provided the City false or outdated home addresses in order to comply with the City's residency requirement. Inaccurate addresses would have disfranchised eligible voters, because they would not have received mail ballots. The residency requirement in Newark may have inherently dissuaded eligible employee voters

to update or correct their mailing address to avoid violating the residency requirement. That is not the case here.

In this case, and contrary to the facts in Newark, the County simply acknowledges that "the address records of Hudson County have not been updated in the last ten (10) years." The County states that fifty (50) percent of material mailed to staff^{6/} is returned as undeliverable. As a result, the County hand delivers W-2 forms and any document where delivery is essential to ensure receipt. The County does not, however, state that it cannot update its employee addresses or that employees would not cooperate in that effort.

The County maintains that it has provided viable alternatives to the mail ballot election. However, the County has not provided any suggestions to obtain correct addresses of its employees. In these times, where fiscal resources must be carefully deployed, the most efficient, cost-effective means to ensure that eligible employee voters are enfranchised, without intimidation, coercion or inconvenience is to permit the County to update its employees' addresses prior to the mail ballot election. An accurate employee address list alleviates the concern that a voter will be disenfranchised by the process, by

^{6/} The County does not address what if any percentage of the blue and white collar unit is returned as undeliverable, so for purposes of this case we assume the return rate for overall staff to be representative of the return rate for unit employees.

not receiving a mail ballot and provides a secondary benefit to the County - an accurate employee address list for future correspondence.

A mail ballot election is efficient, cost effective, and creates the least burden on Commission and County resources. More importantly, a mail ballot election will reduce the likelihood of election objections caused by in-person voting.

As the Director held in New Jersey Transit:

We safeguard our mail ballot processes. First, we provide a Notice of Election for posting which advises eligible employees that an election is being conducted and instructs voters who do not receive ballots to call the Commission to verify or correct their addresses. Second, we accept address correction information and/or requests for duplicate ballot mailings from any party to the election up to two days before the ballots are mailed and share that information with all other parties. Third, we generally allot at least three weeks between the mailing of the ballots and the date they must be received. Finally, employee work schedules and their place(s) of employment are not disrupted because eligible employees receive their ballots and vote in the privacy of their homes. Nor does absenteeism affect voter turnout.
[33 NJPER 50]

Considering the parties' preferences and arguments in light of the facts of this particular case, I am not persuaded that an in-person election is the best method for an election. A free and fair election can be conducted among these employees and

laboratory conditions can best be maintained through a mail-ballot procedure. Accordingly, I issue the following:

ORDER

The County is hereby directed to hand-deliver to all employees in the historical blue and white collar unit represented by 1199J a copy of the attached notice.

An election is hereby directed among the employees in the following unit:

Included: All regularly employed blue and white-collar employees employed by the County of Hudson including the attached classifications: **(See List of Titles attached.)**

Excluded: Managerial executives,

confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees, employees in other negotiations units, employees in the personnel department, county legal department, county adjuster's office, prosecutor's office, office of board of chosen freeholders, judiciary, office of the county executive, office of the county administrator and all other employees employed by the County of Hudson.

Unit employees must have been employed by the County of Hudson as of **August 12, 2011**, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or

reinstated before the election date are ineligible to vote.

Employees in the unit described above shall vote to determine the collective negotiating representative, if any, for the unit in which they are employed and will have the option to vote for District 1199J, NUHHCE, AFSCME, AFL-CIO, No Representative, or Hudson County Union, Local 1 Amalgamated.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical list of the names of all eligible voters in the unit, together with their last known and/or last updated mailing address and job title. In order to be timely filed, the eligibility list must be received by us no later than **September 15, 2011**. A copy of the eligibility list shall be simultaneously provided to both employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Ballots will be mailed by the Commission to eligible voters in the unit on **September 29, 2011**. Any employee who believes s/he is eligible to vote in this election and does not receive a ballot in the mail by **October 6, 2011** should contact PERC at 609-292-6780 immediately, if they wish to participate in this election. Ballots must be returned to the Commission's Post Office Box by 9:00 a.m. on **October 27, 2011**. The ballots will be

counted at 10:00 a.m. on **October 27, 2011** at the Commission's Trenton Office at 495 West State Street, Trenton, NJ.

The election shall be conducted in accordance with the Commission's Rules.

The representation petitions filed by Local 1 seeking to represent the nurses unit, RO-2012-006, and the professional unit, RO-2012-008, are hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Gayl R. Mazuco
Director of Representation

DATED: August 29, 2011
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 September 8, 2011.



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

Attachment

**Notice for Hand Delivery
for
All Blue & White Collar Employees**

You are hereby notified that the Public Employment Relations Commission shall be conducting an election to determine whether eligible blue and white collar employees want to be represented for the purposes of collective negotiations by District 1199J, NUHHCE, AFSCME, AFL-CIO, No Representative, or Hudson County Union, Local 1 Amalgamated.

A secret ballot election will be conducted by mail. You are encouraged to update your address with the County of Hudson, if necessary. Failure to do so may result in your not receiving a secret mail ballot if the address on record with the County of Hudson is not your current address.

We will be mailing ballots on **September 29, 2011**. If you wish to participate in the election and do not receive a secret mail ballot from the Public Employment Relations Commission by **October 6, 2011**, kindly contact PERC at 609-292-6780 to request that a ballot be mailed to you.

Any questions regarding this notice may be directed to the Director of Representation at 609-292-6780.