

D.R. NO. 2014-13

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

In the Matter of

VINELAND BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2014-022

VINELAND EDUCATION ASSOCIATION,

Petitioner,

-and-

AMALGAMATED LOCAL 2327 - UAW, AFL/CIO

Intervenor.

SYNOPSIS

Petitioner seeks to accrete a currently represented unit of 813 food service workers, transportation workers, aides, security guards, attendance officers and interpreters to its existing unit of all full-time and part-time certificated and clerical personnel employed by the Vineland Board of Education through an on-site election. After considering all of the relevant factors, particularly the agency's limited resources relative to the number of unit members and their dispersal throughout the geographically largest city in New Jersey, the Director of Representation determines that a mail ballot best fulfills the agency's mandate to conduct a free and fair election within a reasonable time and cost for the petitioned-for employees.

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Appearances:

For the Public Employer,
Gruccio, Pepper, DeSanto & Ruth, attorneys
(Nichole J. Curio, of counsel)

For the Petitioner,
Selikoff & Cohen, attorneys
(Keith Waldman, of counsel)

For the Intervenor,
Cleary, Josem & Trigiani, attorneys
(Regina Hertzog, of counsel)

DECISION

On October 7, 2013, the Vineland Education Association (Association) timely filed a representation petition seeking to represent about 650 food service workers, transportation workers, maintenance workers, aides, security guards, attendance officers and interpreters, who are currently represented in a collective

negotiations unit. The Association seeks to add the petitioned-for titles to its existing unit of all full-time and part-time certificated and clerical personnel employed by the Vineland Board of Education (Board). The Amalgamated Local No. 2327- UAW, AFL/CIO (UAW) is the current majority representative of the unit sought by the Association. UAW intervened in this petition based upon its most recent collective negotiations agreement with the Board, which expired on June 30, 2013.

The Association provided a sufficient showing of interest to support its petition based upon the list of employees provided by the Board, which reflected a unit containing 813 employees. On November 15, 2013, a Commission staff agent convened an investigatory conference. Unable to obtain the consent of all parties to conduct the election by secret mail ballot, the Commission staff agent requested all parties to submit position statements regarding the method of balloting by the close of business on December 9, 2013.

All parties filed timely responses. The Association seeks an on-site election and in support of its position, provided the certification of Rena Kallio, a New Jersey Education Association UniServ representative who assisted with the gathering of the authorization cards from employees in the UAW unit and the subsequent filing of the representation petition. The Board opposes an on-site election, and the UAW consents to a mail

ballot election.^{1/} Based on the above position statements and an administrative investigation, the follow facts appear.

UAW is the majority representative of a negotiations unit of approximately 813 employees of the Board. UAW and the Board negotiated a collective agreement covering the unit that extends from July 1, 2010 to June 30, 2013. Its recognition clause identifies the following titles: senior cooks, assistant cooks, food service workers, school bus drivers, mechanical repairers, mechanical repairer helpers, mechanical repairers bilingual, bus attendants, building maintenance and building service workers, senior building maintenance workers, recreation maintenance workers, maintenance and construction plumbers and steam fitters, maintenance repairers, maintenance repairers- plumbers, carpenters, painters, electricians, building maintenance workers foreman, air conditioning-heating mechanic, equipment operators, aides, security guards, attendance officers, community aides, aides/educational interpreters for the auditorily handicapped, and educational interpreters for the auditorily handicapped. Appendix A in the current contract for the petitioned-for unit also lists titles in the unit. Some of the Appendix A titles

^{1/} The UAW responded more specifically to the issue in a letter dated January 7, 2014. I decline to address the January 7 letter in this decision, given that this letter was outside the deadline for responses and that in any event, the particular arguments contained therein do not conflict with its initial timely response indicating its consent to the mail ballot election.

identify titles contained in the contract's recognition clause. Others, such as a number of technology-related titles, are not reflected in the recognition clause. However, the parties agree that the unit is comprised of the titles in the recognition clause as supplemented by Appendix A.

The Association is the current majority representative of all full-time and part-time certificated personnel and clerical employees of the Board. The Association and the Board negotiated a collective agreement covering the unit, which extends from July 1, 2010 to June 30, 2013. There are approximately 1103 employees in its unit.

The Board oversees the Vineland School District. This district includes approximately seventeen (17) school buildings located throughout the City of Vineland. The City of Vineland has the largest geographical area of any city in the State of New Jersey, covering approximately sixty-nine (69) square miles.

The unit for which representation is sought contains a number of titles with different schedules. Some employees begin work as early as 6:00 a.m. and others complete their shifts at 11:00 p.m. The work shifts of some employees in the unit are based on the regular hours of operation of the particular school to which they are assigned. The elementary, middle and high schools all begin and end their school days at different times.

ANALYSIS

The New Jersey Employer-Employee Relations Act (Act) empowers the Commission to resolve questions concerning the representation of public employees through the conduct of a secret ballot election. N.J.S.A. 34:13A-6(d). Our mandate is to conduct "timely, free and fair elections, within reasonable time and cost." City of Newark, D.R. No. 2007-1, 32 NJPER 262, 263 ([107 2006]). Our election procedure under N.J.A.C. 12:11-10.3(a), provides:

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.

In determining which election methodology will enable our agency to provide a free and fair election within a reasonable time and cost, the following factors are evaluated:

- (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 a common location at a common times;
- (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 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.

Bergen Cty., D.R. No. 2003-9, 28 NJPER 463, 465 (¶33170 2002) (citing San Diego Gas & Electric and Int'l. Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, 325 NLRB 1143, 158 LRRM 1257 (1998)); City of Newark, 32 NJPER at 263. In applying the above criteria, I find that a mail ballot election is the most appropriate methodology in these particular circumstances.

The Board argues that the City of Vineland's wide geographic area, which covers sixty-nine (69) square miles, weighs against conducting an on-site election. The Association argues that potential difficulties posed by Vineland's size are mitigated by the fact that all voters work within the confines of the City.

An on-site election presents more logistical problems than a mail ballot election when roughly eight hundred voters are spread throughout numerous school buildings in the geographically largest city in New Jersey. A mail ballot election would avoid a myriad of special considerations regarding parking availability, transportation availability, and travel time to designated polling location(s) that would need to be addressed to facilitate employees' participation in an on-site election. Therefore, I find that the scattering of voters over a wide geographic area favors a mail ballot election.

The Board argues that the employees have varying work schedules, ranging from a 6:00 a.m. start time to an 11:00 p.m. end time, that would frustrate our ability to conduct an on-site election at a common location within a reasonable time period. The Association argues that with the exception of janitors who work an evening shift, the rest of the employees work during regular school hours. While most of the numerous titles in the petitioned-for unit may work some portion of the school day for the particular building they staff, an on-site election would make it more difficult for any eligible employees working evening shifts to vote. The same is true for any employees that do not have a shift the day of a proposed on-site election, or who are absent due to leave. I find that a mail ballot election under

these facts would provide equal and ample opportunity for all titles to vote.

No facts indicate that a strike, lockout, or picketing is in progress for any of the bargaining units in the Vineland School District. Therefore, this factor does not apply in the instant analysis.

Only the Association is seeking an on-site election. The UAW consents to a mail ballot election. The Board opposes an on-site election. Therefore, this factor favors a mail ballot election.

The Board asserts that it has no basis to believe that its employees would have difficulty in reading and understanding mailed ballots. The Association contends that the mailed ballots would intimidate some unit members, while an on-site election would encourage voting because a Commission agent would be available for assistance. UniServ representative Rena Kallio certifies that many unit members are immigrants who are not proficient in the English language. Additionally, she certifies that some of these immigrants lack basic skills because they come from countries with inadequate education services. As an example, UniServ Representative Kallio certifies that one bargaining unit member mistook the Association's authorization cards for a "green card" due to the authorization cards' green color. The Association further argues that many of the immigrant

employees in the unit might be reluctant to accept official-looking mail because they may have co-habitants with questionable residency status and that even if the ballots were hand-delivered, it would likely be ineffective because the employees might be fearful of authority-figures.

I find that these objections are general and speculative, and therefore, should not be afforded any weight. Moreover, I find that an on-site election would not assist unit members' comprehension of the ballots any more than a mail ballot election under these circumstances. We can provide bilingual ballots^{2/} in either type of election to allay any concerns regarding language proficiency. The staff agent assigned to an election is available to answer questions during both on-site and mail ballot elections. In a mail ballot election, the Notice of Election, which the employer is required to post in places easily accessible to eligible voters, expressly informs voters that they can contact us for information concerning the election. A mail ballot election may be more appropriate when there are concerns about voters' understanding of the ballots because there is more

^{2/} No party specifically requested in their position statements that we provide ballots in both English and Spanish. However, our administrative investigation revealed that the Board provides personnel documents, such as the school calendar, in both English and Spanish to employees in the petitioned-for unit.

time for voters to review and ask questions about their ballots than an on-site election would permit.

Without more specific facts regarding the educational background of unit members, I decline to speculate about their ability to read and understand ballots based upon a certification that some unspecified number of unit members are immigrants from countries that provide inadequate schooling. The Association's "green card" anecdote seems more indicative of voter confusion about the representation process than illiteracy. Most importantly, voter confusion regarding the ballots, the overall election proceeding, and the consequences thereof, is properly addressed through voter education outreach as part of the unions' election campaigns. Finally, no facts indicate that if there are employees who are distrustful of official documents or of authority figures, they would be more willing to participate in an on-site election administered by agency officials than they would be to cast a mail ballot.

The Board represents that it maintains an accurate record of all of its employees' addresses and would be able to provide the same to the parties for a mail ballot election. The Association contends that accurate addresses likely could not be obtained. UniServ representative Rena Kallio certifies that she learned through her organizing efforts on behalf of the Association that

"many" of the eligible voters have transient residences and often live in multi-family homes.

The Association does not provide any facts enabling me to quantify the purported "many" employees in transient residences in a negotiations unit of over 800. Moreover, the mail ballot election procedure contains adequate safeguards to ensure that ballots reach the appropriate addresses. For example, the official eligibility list, which contains the addresses of all eligible voters, is shared with all parties well in advance of the election, so they may ensure that the addresses are accurate and current. Additionally, the Notice of Election instructs employees to contact our agency directly if a ballot is not received by a particular date. Nothing prevents voters, or a union on their behalf, from informing us of alternative or changed mailing address. Therefore, I find that voters' addresses are sufficiently available and accurate to fairly conduct a mail ballot election.

I find that an on-site election would be too burdensome on limited agency resources. The petitioned-for bargaining unit has approximately 813 employees. I find that the agency would need to devote a significant number of employees to properly oversee potentially hundreds of voters at an on-site election in this matter.

The Board contends that an on-site election would disrupt the educational process of its students and pose administrative difficulties because it would require the Board to provide substitute coverage when some unit employees, such as security guards and classroom aides, left during their shift to vote. The Association argues that an on-site election would not disrupt students' educational process because the unit members are not responsible for student education. It also suggests that designating the Board's warehouse as the polling site would avoid any potential disruption of school activities.

I find that unlike a mail ballot election, an on-site election risks disrupting students' educational process. Although all unit members may not ultimately be responsible for students' education, some unit members such as aides, interpreters and security guards are a critical part of that process. I also find that the Association's suggestion of the Board's warehouse as a location for an on-site election is inadequate because it is unclear what amenities, such as heating or plumbing, the space offers and the location requires a special commute for all potential voters.

The Board argues that its duty to provide adequate security for its students and staff poses an additional obstacle to an on-site election. All individuals who enter a school building must sign in and provide proper identification. Additionally, the

Board asserts that an on-site election would compromise the school district's normal security procedures because school security guards, who are responsible for enforcing security procedures, are eligible to vote in the election. The Association counters that an on-site election does not pose security concerns because all of the voters are employees of the Board, and are therefore permitted on school property.

I find that a mail ballot election avoids security concerns potentially posed by an on-site election. First, elections at polling sites where children are present create heightened security considerations. Second, an on-site election potentially creates a conflicting role for security guards because they may be forced to choose between enforcing applicable security procedures at a particular polling site and facilitating voting for fellow unit members. Third, an on-site election risks unnecessarily disenfranchising eligible voters who may not bring appropriate identification to the polls.

No issues regarding employees' access to telephone and/or internet connections have been raised, and therefore, this factor does not apply in the instant analysis.

Finally, the Association argues that an on-site election would be more suitable for allaying voter intimidation concerns. However, no facts indicate that on-site elections pose a smaller risk of voter intimidation. An on-site election involving

potentially hundreds of voters casting ballots at numerous school buildings may be more vulnerable to voter intimidation than an election where the same voters have the opportunity to choose a majority representative in the privacy of their own residences.

Ultimately, consideration of the applicable factors above, particularly our limited agency resources relative to the number of unit members and their dispersal throughout the geographically largest city in New Jersey, persuade me that a mail ballot election fulfills our mandate to conduct a free and fair election within a reasonable time and cost for the petitioned-for employees.

Accordingly, I issue the following order:

ORDER

A secret mail ballot election is hereby directed among the employees in the following unit:

Included: All regularly employed nonsupervisory senior cooks, assistant cooks, food service workers, school bus drivers, mechanical repairers, mechanical repairer helpers, mechanical repairers bilingual, bus attendants, diesel mechanics, senior diesel mechanics, building maintenance workers, senior building maintenance workers, building service workers, senior building maintenance workers, recreation maintenance workers, senior recreation maintenance workers, senior stock clerk, maintenance repairers, senior maintenance repairers, plumbers, senior plumbers, plumber helpers, steam fitters, carpenters, senior carpenters, painters, electricians, senior electricians, building maintenance workers foreman, air conditioning-heating mechanics, HVAC

mechanics, equipment operators, locksmiths, custodians, senior custodians, clerk drivers, inventory control clerks, aides, interpreters, security guards, attendance officers, community aides, electronic system technicians, communication systems technicians 2, computer service technicians, senior computer service technicians, network administrators 1, audio visual specialists to be added to the existing unit of all regularly employed nonsupervisory certificated personnel and clerical employees employed by the Vineland Board of Education.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; police, craft employees, casual employees, and all other employees employed by the Vineland Board of Education.

Eligible voters are those employed on the last day of the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in 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 negotiations representative, if any, for the unit in which they are employed and will have the option to vote for UAW Local 2327, no representative or Vineland Education Association.

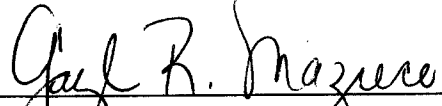
Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an

alphabetical list of the names of eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the Director no later than **February 11, 2014**. A copy of the eligibility list shall be simultaneously provided to the Petitioner and Intervenor 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 **February 24, 2014**. Ballots will be returned to the Commission's Post Office Box by 9:30 a.m. on **April 16, 2014**. The ballots will be counted at 12:00 p.m. at the Commission's Trenton office.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gay R. Mazuco
Director of Representation

DATED: January 27, 2014
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 7, 2014.