

D.R. NO. 2003-9

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

In the Matter of

COUNTY OF BERGEN,

Public Employer,

-and-

UNITED ELECTRICAL, RADIO AND  
MACHINE WORKERS OF AMERICA,

Docket Nos. RO-2003-30  
RO-2003-31

Petitioner,

-and-

NEW JERSEY EMPLOYEES LABOR UNION  
LOCAL #1, USW, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation determines that the best method for conducting elections among 1200 County employees in a blue-collar unit and a white collar unit is by mail balloting. The parties had signed Consent Agreements stipulating that all of the terms of the Consent but reserved the election methodology to the discretion of the Director. Considering all of the relevant factors, including size and geographic disparity of the unit, the diversity of the employees' workshifts, the literacy of the voters, the facility of mail balloting for these employees, the Commission's staffing resources, and the timing of the vote, the Director determines that a mail ballot provides these employees with the greatest opportunity to participate in a free and fair election.

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Appearances:

For the Public Employer  
Ralph Kornfeld, Personnel Director

For the Petitioner  
Carol Lambiase, International Representative

For the Intervenor  
Weissman & Mintz, attorneys  
(Steven Weissman, of counsel)

**DECISION**

On October 1, 2002, United Electrical, Radio and Machine Workers of America filed two Petitions for Certification seeking to represent separate, existing units of blue-collar employees and white-collar employees employed by Bergen County. These two units are currently represented by New Jersey Employees Local #1, USW,

AFL-CIO. Local #1 intervened in these matters based upon its current collective agreements covering each of these two units.

On October 16, 2002, the Commission's staff agents convened an investigatory conference with the parties. Local #1 declined to enter into a Consent Agreement at that conference but later the same day advised the Commission that it would consent to elections in each of the existing units. On October 28, the parties again met with the assigned staff agent, entered into Agreements for Consent Election in each unit and stipulated the appropriateness of the units, the wording on the ballot, and the payroll period cutoff for voter eligibility. However, the parties were unable to agree on the methodology for conducting the elections: Local #1 seeks a mail ballot election while UE wants in-person voting; the County agrees to either method. Accordingly, the parties stipulated in the Consent Agreements that I would determine the method for conducting the elections. The facts appear as follows:

There are approximately 391 employees in the blue-collar unit and 783 employees in the white-collar unit. At our request, the County provided information about employee work locations and shift times. This data, which is not disputed by either organization, shows that County employees are scattered over more than 36 work locations throughout Bergen County. There are 10 work locations in Hackensack and 6 more locations in the Paramus area. In addition, more than 200 employees work in various field offices, senior services centers, and other facilities peppered throughout

the County, including 137 employees in the Town of Rockleigh, 23 in Teterboro, 13 employees in Mahwah, and small groups of employees in facilities in 20 other towns.

3. Bergen County covers 234 square miles and is densely populated. Main traffic arteries such the Garden State Parkway, Route 17 and Route 4 are heavily traveled and often congested.

4. While about 800 of the voting employees work on a day shift, the County has five work facilities and a county dispatch operation which operate around the clock. The five facilities operating 24 hours per day, seven days a week employ 328 unit employees as follows: the Healthcare Center in Rockleigh has three shifts per day, the Juvenile Detention Center in Paramus has eight shifts, the Spring House in Paramus has three shifts, the Conklin Youth Center in Hackensack has five shifts, and the Crossroads Center has three shifts. In addition, the dispatch operation has four shifts. As is always the case with a 24/7 operation, on any given day some employees will be scheduled off.

The County also provided information concerning paydays. The County payroll calendar shows that upcoming paydays are November 15 and 27, December 13 and 27. The UE asserted that some employees may pick up their paychecks the day before payday. The County is willing to permit employees reasonable release time from work to vote if the election is conducted by in-person voting.

The parties agree that virtually all of the employees are at least functionally literate and will be able to read the ballot.

The UE expressed its concern that a small number of employees know english as a second language and may have difficulty with balloting instructions by mail. No party requested that the ballots be translated into spanish, although no one objected to a spanish ballot.

The Commission conducted elections among the blue-collar unit in 1984 and again in 1988. In 1988, the unit consisted of about 485 employees. Both elections were conducted by in-person voting over 10-hour polling times in each of four polling places: two in Hackensack, one in Paramus, and one in Teterboro. The Commission conducted an election among white-collar employees in 1972, but the details of the voting method are not available from the Commission's records.

#### ANALYSIS

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.

In addition, N.J.A.C. 19:11-4.1(b) provides:

The parties shall stipulate as to the composition of the collective negotiations unit, and may agree as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designations on the ballot, subject to the approval of the Director of Representation. In the absence of an agreement among the parties as to the eligibility period for participation in the election, the dates, hours and places of the election, and the designation on the ballot, the Director of Representation shall determine those arrangements. (emphasis added).

Here, the parties have stipulated to all of the terms of the Consent for each unit except the election mechanics. Accordingly, the methodology of the elections is within my discretion.

The UE requests that the elections be conducted by in-person voting. It points out that the Commission has previously conducted elections for Bergen County voters by in-person elections and that there are no compelling circumstances to require a mail ballot. It also maintains that mail balloting results in lower voter turnout, the instructions for voting in a mail ballot are complex and will lead to a high rate of voided ballots, particularly because english is not the first language of a small number of employees; and mail balloting is more susceptible to fraud or coercion. UE argues that there are no extraordinary circumstances that would compel a vote by mail ballot. UE proposes four to five polling places, including two in Hackensack, one in Paramus, one in Rockleigh, and one in Mahwah. It suggests that the employees in all outlying locations could drive in to vote.

Local #1 asks that the election be conducted by mail balloting. It suggests that the wide scattering of employees among work sites as well as the diversity of employees' work schedules, would make it difficult for employees to participate in an in-person election.

The County expresses no preference for a mail or in-person election. It states that it will cooperate with the Commission in

ensuring that employees are permitted an opportunity to vote. It has agreed to permit employees reasonable release time to vote by in-person balloting, or it will promptly supply an employee mailing list for mail balloting.

\* \* \*

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. Consistent with N.J.A.C. 19:11-10.3, we conduct elections by manual (in-person) elections, by mail balloting or by a mixture of both methods. Our policy is to encourage the parties to agree upon the method by which the election will be conducted whenever the parties are willing to do so. Where we must order an election, we favor in-person elections for contested elections; however, we have often directed elections for uncontested units by mail ballot. We have also run contested elections by mail as well. 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). Where the parties consent to all of the election details except the election methodology, we have established the election mechanics by letter. Therefore, no Commission caselaw precedent exists articulating the factors we consider in deciding the best method for conducting the vote.

The New Jersey Supreme Court has endorsed our reliance on private sector caselaw for guidance, particularly in representation issues. Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409 (1970).

The National Labor Relations Board formally announced its criteria for deciding the best methodology for conducting a representation election in San Diego Gas and Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, 325 NLRB 1143, 158 LRRM 1257 (1998). In that matter, the Board stated:

When deciding whether to conduct a mail ballot election or mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; n7 and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern. (footnote omitted). We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, in the absence of extraordinary circumstances, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.

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n7 Thus, employees may be deemed to be "scattered" where they work in different geographic areas, work in the same areas but travel on the road, work different shifts, or work combinations of full-time and part-time schedules. The "scattered" criteria are intended to apply in any situation where all employees cannot be present at the same place at the same time. (Citations omitted).



This standard meets our objective to provide all employees with an opportunity to vote in a free and fair secret ballot election.

Applying these criteria to the facts here, I find that a mail ballot election is most appropriate under these particular circumstances. There are almost 1200 voters dispersed over more than 36 work locations. A significant number of voters work such a diversity of workshifts that there is no one day or time-block that all employees are working. These factors make in-person voting impractical. A mail ballot, on the other hand, comes directly to the voter's home address, and the return postage is paid by the Commission.

Further, the fact that the Commission had previously conducted an in-person election is not controlling. The prior election was conducted among 485 blue collar employees only. This election calls for balloting among 1200 blue- and white-collar employees who are scattered much more broadly throughout county locations.

The UE's concern that the voters may be confused by the instructions accompanying the mail ballot appears unfounded. The instructions that appear on the mail ballot inform voters specifically how to vote by mail. The Notice of Election which is posted in places where employees work, and the instructions mailed to the voter along with the ballot, both advise voters having questions to contact the Commission directly. In addition, the

Commission has had very few election objections based upon coercion in a mail ballot election, and no objections based upon employees' confusion or failure to follow instructions. While occasionally, an employee fails to sign the "voter eligibility" certification on the return envelope, the incidence of that occurrence is low and not apparently tied to employee confusion.

The UE's concern about voter turnout is also not persuasive. Our statistics show that in fiscal year 2001, we conducted 32 elections by mail ballot and 14 elections by in-person voting. The turnout for mail ballot elections was 82 percent, while the turnout for in-person voting was 90 percent. In any event, our objective is to run elections in a manner which provides employees maximum opportunity to participate in any election, given the particular circumstances.

Finally, our staff resources are limited. To conduct an in-person vote with as many polling places and times as would be needed to assure all unit employees an opportunity to vote would require us to schedule the election for a later date to provide adequate time to make sufficient Commission staff available to supervise the election. On the other hand, we can commence voting weeks earlier if the election is conducted by mail. The Commission's policy is to expeditiously process representation disputes to an election so that the question concerning which organization, if any, will represent these employees can be resolved.

ORDER

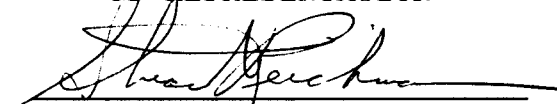
In consideration of all of the foregoing, an election is hereby directed for each of the voting units as described in the Consent Agreements. The elections will be conducted by mail ballot.

Ballots will be mailed to eligible voters in each unit on **November 25, 2002**. Ballots will be returned to the Commission's Post Office Box by 10:00 a.m. on **December 13, 2002**. The ballots will be counted on **December 13, 2002**, at 12:00 Noon in the Commission's Offices, 153 Halsey Street, 5th Floor, Newark, New Jersey.

Pursuant to N.J.A.C. 19:11-10.1, the County is directed to file with us an eligibility list for each unit consisting of an alphabetical listing of the names of all eligible voters in each unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by us no later than **November 12, 2002**. A copy of each 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 lists except in extraordinary circumstances.

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

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman  
Director of Representation

DATED: November 6, 2002  
Trenton, New Jersey

