

D.R. No. 2012-5

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

In the Matter of

COUNTY OF HUDSON,

Public Employer,

-and-

HUDSON COUNTY UNION LOCAL 1,
AMALGAMATED

Docket No. RO-2012-009

Petitioner,

-and-

LOCAL 1007, DISTRICT COUNCIL 711,
INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES (IUPAT),

Intervenor.

SYNOPSIS

The Director of Representation orders a mail ballot election on a petition seeking an election to determine who would represent approximately six painters employed by Hudson County. The Intervenor and Employer agreed to a mail ballot election, but the County sought an in-person vote. The Director reiterated the factors to be considered in determining election methodology (Hudson County, D.R. 2012-1) and concluded that a mail ballot election best supported the 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
Spear Wilderman, attorneys
(Martin W. Milz, 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 collective negotiations unit of about six painters currently represented by Local 1007, District Council 711, International

Union of Painters and Allied Trades (IUPAT), and employed by Hudson County (County). On August 1, 2011, the County consented to a secret ballot election to be conducted among the employees in the unit.

On July 26, 2011, IUPAT was provided a copy of the petition and invited to submit a request to intervene. N.J.A.C. 19:11-2.7. No response was filed. On August 26, 2011, IUPAT was advised that if it did not intervene by August 31, 2011, we would assume that it had no further interest in the petitioned-for employees, and its name would not appear on the ballot in any election conducted among them. On August 31, 2011, IUPAT intervened as the current collective negotiations representative of the petitioned for unit. The following facts appear.

On September 19, 2011, Local 1 and IUPAT consented to a secret ballot election by mail ballot and returned signed consent election agreements. The County objected to a mail ballot election. By email on September 22, 2011, the County forwarded the eligibility list, and advised that it had served copies on both organizations. It again declined to sign the consent agreement.

On Friday, September 30, 2011, the County filed a statement of position fully articulating its objections to the election, pursuant to my request. The County relies upon its previous position set forth in Hudson Cty. and Hudson Cty. Local 1

Amalgamated and NUHHCE District 1199J, D.R. 2012-1, in which I ordered a mail ballot election among a historical unit of blue collar and white collar employees. The County objects to a mail ballot election in this matter, asserting:

There are only five employees at issue; painters who have one central location, subject to being assigned on an as-needed basis. They share common work days and hours. Given the size of the unit, one staff agent could handle the election in less than half a day. Given that the choice of bargaining representative is such an important element in the working life of unionized employees that choice is best determined through the sobering experience of personally casting a vote as opposed to merely checking off a block and mailing it in.

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.

Our mission is to conduct free and fair elections within a reasonable time and at a reasonable cost. City of Newark. In determining how to conduct a free and fair election, the type of election, i.e., in-person or mail ballot, must be selected.

Accordingly, the methodology of the election is within my discretion. See Essex County, D.R. 2010-14, 36 NJPER 99 (¶40 2010) (Director of Representation orders mail ballot election over petitioner's request for in-person election where incumbent provided no documents or specific facts supporting assertion that employee addresses were inaccurate); NJ Transit, D.R. 2007-11, 33 NJPER 48 (¶19 2007) (Director exercises discretion under N.J.A.C. 19:11-10.3 to order mail ballot where parties preferred an on-site election; incumbent argued but did not support contention that reliable addresses were unavailable); But see, City of Newark, D.R. No. 2007-1, 32 NJPER 262 (¶107 2006) (where parties were unable to agree on method of balloting, Director explained presumption in favor of mail ballot, but ordered on-site election where it was apparent employer could not provide accurate addresses, resulting in disenfranchisement of eligible voters).

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

(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.

In City of Newark, the Director of Representation stated:

While the agency will continue to conduct in-person elections where circumstances dictate, there will not be a preference or practice in favor of in-person elections even in contested elections. When laboratory conditions for elections can be adequately met through the conduct of elections by mail, and/or in the future by telephone or internet systems or any combination thereof based upon the factors we consider, we will utilize those methodologies particularly when the financial and human resource cost to the agency in conducting in-person elections is unjustified. [32 NJPER 263]

In D.R. 2012-001, both the employer and incumbent requested an in-person election, asserting that the employer would be unable to furnish accurate addresses, thereby disenfranchising voters. I found that a mail ballot election was the most

appropriate method under the circumstances, having considered the geographic area over which the workforce is dispersed, the size of the unit (approximately 646 eligible voters) and the variation of work schedules for the workforce. I determined that a mail ballot election would be efficient, cost effective, and create the least burden on Commission and County resources. I also wrote that a mail ballot election would reduce the likelihood of election objections caused by in-person voting. Addressing the matter of the purportedly inaccurate home addresses, I ordered that Notices of Election shall be hand-delivered to all employees in the historical unit.

In this matter, all parties agree upon the historical unit and the County has communicated its consent to a secret ballot election. It disputes my interpretation of Commission policy favoring mail ballot elections.

Considering the parties' preferences and arguments in light of the facts of this matter and our precedent cases, I am not persuaded that an in-person election is the best method. The County has articulated no reason why a free and fair election cannot be conducted among these employees or why laboratory conditions cannot be maintained through a mail-ballot procedure. Applying the criteria set forth in Bergen Cty. to the facts of this case, I find that a mail ballot election is the most

appropriate method for determining the representational preference of the petitioned-for-employees.

Accordingly, I issue the following:

ORDER

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

Included: All regularly employed painters employed by the County of Hudson.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; professional employees, police employees, craft employees, casual employees, employees in other bargaining units, and all other employees employed by the County of Hudson.

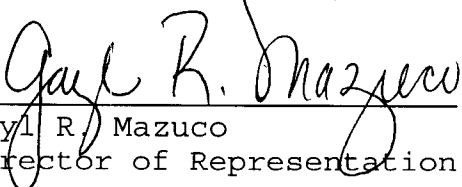
Unit employees must have been employed by the County of Hudson as of September 9, 2011, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees who resigned or were discharged for cause 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 Painters District Council 711, no representative or Hudson County Union, Local 1, Amalgamated.

Pursuant to N.J.A.C. 19:11-10.1, the public employer has already filed 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 mailing addresses and job titles, and provided the same to both employee organizations with a statement of service filed with us.

Ballots will be mailed by the Commission to eligible voters in the unit on October 28, 2011. Ballots will be returned to the Commission's Post Office Box by 9:00 a.m. on November 17, 2011. The ballots will be counted at 11:00 a.m. at the Commission's Trenton Office.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco
Director of Representation

DATED: October 24, 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 November 3, 2011.