

D.R. No. 2007-1

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

NEWARK INSPECTORS ASSOCIATION,

Docket No. RO-2006-74

Petitioner,

-and-

AFSCME COUNCIL 52, LOCAL 2299,

Intervenor.

SYNOPSIS

The Director of Representation directs an in-person election for inspectors employed by the City of Newark. The Petitioner sought a mail ballot election, the Intervenor sought an in-person vote. The Director reviewed the factors to be considered in deciding our election methodology and concluded that because of the potential problem in obtaining accurate employee addresses, an in-person election was more appropriate in these circumstances. But, the Director also held that where the factors supported our ability to conduct a free and fair election by mail or through other technologies to be developed, there would be no preference or practice favoring in-person elections even in contested cases.

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Appearances:

For the Employer,
Gregory J. Franklin, Personnel Director

For the Petitioner,
Bucceri and Pincus, attorneys
(Sheldon H. Pincus, of counsel)

For the Intervenor,
Szaferman, Lakind, Blumstein,
Blader & Lehmann, attorneys
(Sidney H. Lehmann, of counsel)

DECISION

On April 1, 2006, the Newark Inspectors Association (NIA) filed a Petition for Representation seeking to represent all inspectors employed by the City of Newark (City). This unit is currently represented by the American Federation of State, County, and Municipal Employees, Council 52, AFL-CIO Local 2299

(AFSCME). AFSCME intervened in this matter based upon its current collective negotiations agreement with the City covering this unit.

On May 18, 2006, a Commission staff agent convened an investigatory conference. The parties stipulated the appropriateness of the negotiations unit, and cutoff date for voter eligibility and ballot wording. However, they were unable to agree on the method of balloting.

Pursuant to our request, the NIA and AFSCME submitted position statements regarding the ballot method issue.^{1/} The City did not submit a position statement.

The NIA seeks a mail ballot election while AFSCME seeks an in-person election, and the City agrees to either method. The parties agreed that if an in-person election is ordered, it should be conducted between the hours of 11:00 a.m. and 2:00 p.m. on a payday. The NIA proposed that any in-person election be held at the City's Health Department facility located at 110 William Street in Newark. AFSCME and the City prefer any in-person election be held in Conference Room B29 in Newark City Hall.

^{1/} Though AFSCME's brief was dated and received after the deadline, it generally raised the same issues and arguments which it raised during the investigatory conference. I have considered those issues and arguments.

At our request, the City provided a list of all unit members' names and last known home addresses. There are approximately ninety-four (94) employees in the unit. While some employees start the work day earlier or end later than others, all employees are at work for some period during the three-hour block of time from 11:00 a.m. to 2:00 p.m. week days. Approximately twenty-four (24) unit members work at the 110 William Street location while none work at City Hall.

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 a Consent Election Agreement for the unit except the election

mechanics. According to the above rules the methodology of the election is within my discretion.

The NIA requests a mail ballot election because it believes the unit members' opportunity to exercise their free choice is better preserved when a ballot is received and returned by mail. It believes that despite Commission supervision, an in-person election is more likely to subject unit members to intimidation in and around the voting site, thus chilling the free choice of eligible voters. Finally, the NIA asserts that an in-person vote in City Hall is less conducive to laboratory conditions than the Health Department due to the many entrances/exits/approaches within City Hall, particularly with the current transition of City leadership.

AFSCME argues that voter participation should be the most important factor, and that in-person voting produces a higher participation rate than mail balloting. It further contends that the mail balloting procedures and instructions are more confusing than in-person voting, and may result in voided or unreturned ballots. AFSCME also expressed concern that ballots mailed to addresses provided by the City may never be received by employees because many unit members may not be in compliance with the City's residency requirement and the City's records may not show their actual addresses. AFSCME argued that any resulting

investigation to confirm addresses might jeopardize those employees' jobs and further delay the election.

* * *

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 has been to encourage the parties to agree upon the method by which an election will be conducted. While the Commission has historically conducted in-person elections, particularly when two or more organizations sought to represent the unit employees, we are not obligated to do so in every case, and have often conducted mail ballot elections in contested elections. We have also regularly conducted mail ballot elections when in-person elections would strain our financial and human resources, and when the unit workforce is geographically scattered or when employees do not share common working hours or work days (e.g., college faculty and State corrections officers). 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). The Commission has been conducting mail ballot elections since 1969. New Jersey Turnpike, P.E.R.C. No. 17, NJPER Supp. 1st 60 (¶17 1969).

No one election methodology guarantees maximum voter turnout or perfect laboratory conditions. There are positives and negatives with each method. Requiring employees to appear in person to vote risks disenfranchising employees who are unable to get to the polling site. Mail balloting is dependent on the Commission's ability to secure reliable home addresses for the employees. In-person voting generally produces a slightly higher voter turnout than mail balloting, but mail balloting virtually eliminates problems with electioneering, resulting in fewer election objections. We do not consider one method superior to the other.

Our mission to conduct timely, free and fair elections, within a reasonable time and cost can best be achieved by not allowing our election methodology to remain static. We have an obligation to explore new election technologies, enhance older methodologies, and use those systems that most reasonably accomplish our goals. 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.

In County of Bergen, D.R. No. 2003-9, 28 NJPER 463 (¶33170 2002), relying on the National Labor Relations Board's decision in San Diego Gas and Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO, 325 NLRB 1143, 158 LRRM 1257 (1998) for guidance, we articulated a number of factors to consider in deciding the best method to conduct a secret ballot election among unit employees. Those factors include:

- (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 of addresses for employees;
- (7) Efficient and economic use of Commission agents and resources.

In Bergen, we applied these factors and found that mail balloting was most appropriate because the unit of almost 1200 voters was dispersed over 36 work locations and a significant number of them worked such diverse work shifts that there was no single day or time-block that all voters were working. 28 NJPER

at 465. We found concerns about confusing mail ballot instructions to be unfounded, and noted that both the incidence of voter failure to sign the certification on the return envelope and of mail ballot election objections based on coercion were low. Finally, the Director cited comparable voter participation rates for both mail and in-person voting, and noted how limited staff resources would make it difficult to schedule an in-person election at multiple sites and times.

In addition to the factors enumerated in Bergen we will also consider the size of the unit; potential disruption to employers and employees by conducting in-person elections; security issues for in-person elections; employee access to telephone and/or internet connections; and, I modify the sixth Bergen factor above to read: "Availability and accuracy of addresses for employees."

Applying the above factors/criteria to the facts here, I conclude that an in-person election is the most appropriate election method for this case under these particular circumstances. The factors of geographic scattering, work schedule scattering, and strike/lockout/picketing expressed above support mail balloting because they are situations which mitigate against the Commission's ability to run an in-person election in a timely and efficient manner, but none of these factors are

present here. Obtaining proper addresses for employees here is a problem and mitigates in favor of an in-person election.

This unit is comprised of only 94 eligible voters. While not all of the employees work at the same site, all work in the City of Newark, and while geographically scattered throughout the City in the performance of their jobs, they are not far away from either of the proposed election sites. There is no significant work schedule scattering, as the parties all agreed that the time-frame of 11:00 a.m. to 2:00 p.m. on a weekday is one during which all employees are working and could vote. Finally, such a single day, 3-hour election involving only 94 eligible voters presents no significant onerous burden on the Commission since the election should only require one or two election agents for a short period of time.

Additionally, the City verbally expressed at an informal conference that some of its employee address information may not be reliable. The possibility that we will be unable to obtain authentic addresses for some of the voters would potentially disenfranchise those employees from participating in the election. While I make no ruling on the propriety of employees' non-compliance with an employer's lawful residency requirement, our statutory mission is to ascertain the free choice of employees' representational desires. To fulfill that mission, we

need to get the ballots to the voters. In this case an in-person election can better accomplish that obligation.

The NIA's argument that attempted intimidation by AFSCME supporters during an in-person election will chill the right of unit members to freely choose a majority representative is not persuasive. No affidavits were submitted to support such a contention, nor are we aware of any unique circumstances in this case which would suggest that the Commission's supervision of the election, coupled with the ability of all three parties to station observers at the polling place to monitor potential improper campaigning, are not enough to ensure a free, fair secret ballot election.

On the issue of which particular site should be chosen for the in-person election, I find that the 110 William Street location proposed by the NIA is the most appropriate. City Hall is more accessible to the public than the William Street building, and it is more difficult to control the City Hall voting area and atmosphere. The William Street location also makes sense because about twenty five percent (25%) of the 94 unit members work there, whereas none of the unit members work in City Hall. The Commission reached a similar result in New Jersey Turnpike Authority, NJPER Supp. at 61.

Accordingly, I issue the following:

ORDER

An election is hereby directed for the employees in the following unit as stipulated by the parties:

Included: All inspectors, including code enforcement officer and code and sub-code officials.

Excluded: Managerial executives, confidential employees, police, supervisors within the meaning of the Act; craft employees, professional employees, casual employees, engineering specifications inspectors, purchasing inspectors, office clerical employees, department heads and deputy department heads employed by the City of Newark.

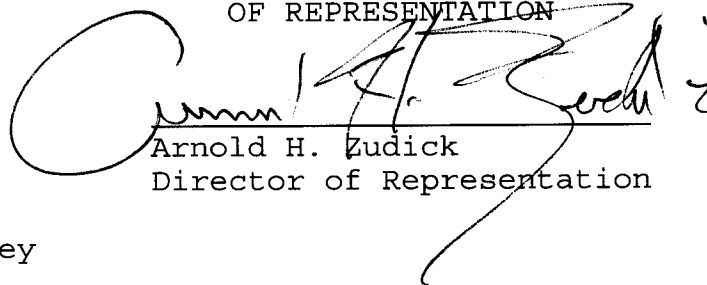
Employees in the unit described above shall vote on whether they wish to be represented by the Newark Inspectors Association, or by AFSCME Council 52, Local 2299, or by no employee representative. The election shall be conducted no later than thirty (30) days from the date of this decision. The election will be conducted on a pay day, if possible, and at the City's Health Department at 110 William Street, Newark, New Jersey between 11:00 a.m. and 2:00 p.m. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, 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 must appear in person at the polls in order to be eligible to vote. Ineligible to vote are 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.

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 listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the 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.

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



Arnold H. Zudick
Director of Representation

DATED: July 19, 2006
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 July 31, 2006.