

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

In the Matter of

MAGNOLIA BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2001-9

MAGNOLIA SCHOOL EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses the Board's post-election objections alleging:

- (a) lunch aides were included in the petitioned-for unit without their approval;
- (b) lunch aides do not work full time and therefore should not be included in a negotiations unit;
- (c) the Association never informed the lunch aides of the amount of membership dues it would charge and such dues or fees would constitute a financial hardship for the lunch aides;
- (d) the Association did not properly advise the lunch aides of the voting process; as a result, some of the lunch aides discarded their ballots and other eligible aides did not receive ballots.

The Director finds that the Board failed to meet the procedural or evidentiary standards set forth by the Commission necessary to state a prima facie case as to any of its objections. With respect to the Board's first objection, the Director finds that the Association's showing of interest was sufficient and that the Act does not require a petitioner to ask all petitioned-for employees for their support prior to filing a petition. The Director further finds no evidence that employees were misled, and all employees were informed of the nature and process of the election and their eligibility to participate through public notices provided by the Commission and posted by

the employer. As to Objection II, the parties agreed in the Agreement for Consent Election that the lunch aides were eligible as regularly employed part-time employees.

The Director finds that Objection III fails to assert irregularities in the conduct of the election as required by N.J.A.C. 19:11-10.3(h), or that the petitioner misrepresented its dues structure to the employees.

Finally, as to Objection IV, the Director finds that "Notices of Election" posted by the Board described the eligible voters and the voting process. There was no evidence that eligible aides did not receive ballots, being ommitted from the eligibility list, or mistakenly discarding their ballots.

The Director issues a Certification of Representative to the Association.

D.R. NO. 2001-5

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Appearances:

For the Public Employer
Dr. Frances Colon Gibson, Superintendent

For the Employee Representative
Betty Hickey-Perna, NJEA Field Representative

DECISION

Pursuant to an Agreement for Consent Election, the Public Employment Relations Commission conducted a mail-ballot election among 20 support staff employees of the Magnolia Board of Education (Board). The collective negotiations unit included secretaries, teacher assistants, classroom aides, lunchroom aides, and the principal's clerk. The eligible employees voted on whether they wish to be represented by the Magnolia School Education Association. A majority of the valid votes were cast for representation by the MSEA.

On October 27, 2000, the Board filed timely objections to the election.^{1/} The Board objects to the inclusion of part-time lunch aides in the unit and requests that the election be set aside. In this regard, the Board contends the following:

1. Lunch aides were included in MSEA's formal request to PERC without being asked or properly advised regarding the purpose of the ballot vote.
2. Lunch aides only work a maximum of 2 1/2 hours per day at minimal wages and do not have full time status.
3. Membership dues for the MSEA constitute a financial hardship on lunch aides who were never advised by MSEA what these fees would be.
4. Some lunch aides did not receive ballots and some did and discarded them because they were not properly advised by MSEA of the ballot vote process. Lunch aides thought that it was an error that they were included at all.

By letter dated October 27, 2000, I acknowledged receipt of the objections and advised the Board of its responsibility to furnish sufficient evidence to support a prima facie case demonstrating that conduct occurred which would warrant setting aside the election as a matter of law. On November 2, 2000, the Board submitted affidavits from lunch aides in support of its objections. It submitted no statement of position or legal argument.

Based upon my review of the procedural history of these matters, together with the Board's submission, I find the following:

^{1/} N.J.A.C. 19:11-10.3(h).

FINDINGS OF FACT

On July 24, 2000 and August 15, 2000, the MSEA filed a timely petition for certification and amended petition, seeking to represent the Board's secretaries and aides. The MSEA proposed to add those employees to the existing MSEA unit of professional, certified personnel and custodial and maintenance staff. The MSEA petition was supported by an adequate showing of interest.^{2/}

On September 7, 2000, the MSEA and the Board met with the Commission's assigned staff agent to discuss the parameters of the negotiations unit and the mechanics of a secret ballot election. The parties discussed the structure of the negotiations unit and agreed that the unit would include those part-time employees who could be considered regularly employed, and that those employees would be eligible to vote in the election. The parties specifically agreed that lunchroom aides, who work at least two hours per day, five days per week, are sufficiently regularly employed to be included in the negotiations unit.^{3/} The parties executed an Agreement for Consent Election, which stipulated the appropriate unit as follows:

Included: All regularly employed secretaries,
teacher assistants, classroom aides, lunchroom aides

^{2/} N.J.A.C. 19:11-1.2(a)(9).

^{3/} The Commission favors broad-based units of all regularly employed employees in a given employment classification, and generally will not approve a unit which excludes regularly employed workers based upon their work hours alone. Kearny Bd. of Ed., D.R. No. 2001-4, __ NJPER __ (1____ 2000).

and principals clerk employed by the Magnolia Board of Education to be added to the existing unit of professionally certified personnel and full-time custodial, maintenance employees employed by the Board.

The Consent Agreement further provided that the Commission would conduct a secret ballot election among the employees in the defined unit (including lunchroom aides), and that the Board would provide a list of those employees it believed were eligible to vote pursuant to the terms of the Consent. I approved the Consent Agreement on September 8 and so advised the parties by letter dated September 15, 2000. Enclosed with my September 15 letter to the parties was a "Notice of Election" which described the voting unit, provided the dates and method of balloting and displayed a sample ballot. The Notice of Election also stated the purpose of the election, described the appropriate unit, detailed the rules for voter eligibility, explained that the election would be decided by a majority of the votes cast, and notified employees that they could obtain information or answers to questions by contacting the Commission.

The Board was instructed to post the Election Notices immediately. There is no assertion that the Board failed to post the Notices. The Commission received no inquiries concerning the reason for the election or the election mechanics prior to the objections.

On September 14, 2000, the Board provided a list of the eligible voters pursuant to the requirements of the Consent

Agreement. The MSEA was simultaneously sent a copy of the list, which contained names, addresses and job classifications for 20 eligible voters. On September 28, ballots were mailed to all employees on the Board's eligibility list. On the back of each ballot were instructions for voting in a mail-ballot election, and an address and telephone number at which a voter could contact the Commission with any questions he or she might have about the election.

On October 10, 2000, the Board's Superintendent informed the Commission that the principal's clerk had been inadvertently left off the voter eligibility list. The Commission mailed a ballot to the employee's home and the ballot was timely returned to the Commission to be counted on October 20. Throughout the balloting period and prior to the filing of the instant objections, the Commission received no notice from the Board, MSEA, or individual employees that any other eligible voters had been omitted from the list or had failed to receive a ballot.

On October 20, the Commission's election agent counted the ballots at the Commission's Trenton office. The Superintendent acted as the Board's election observer during the count. No challenges were asserted to the eligibility of any voter. Seventeen of the twenty voters on the eligibility list voted: ten votes were cast in favor of representation by the MSEA, while five were cast against representation. Two ballots were declared void for lack of the voter's signature on the

outside of the ballot return envelope. The parties were served with the tally of ballots. The Board's objections followed.

ANALYSIS

Elections conducted by the Commission carry a presumption that the voters' choice in a secret ballot election is a valid expression of their representational wishes. Thus, allegations of what may seem to be objectionable conduct must be supported by evidence that the alleged misconduct interfered with or reasonably tended to interfere with the employees' free choice. The objecting party must establish, through its evidence, that a direct nexus existed between the alleged objectionable conduct and the freedom of choice of the voters. City of Jersey City and Jersey City Public Works Employees, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd sub nom. Am. Fed. of State, County and Municipal Employees, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971), citing NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969); Hudson Cty. Schools of Technology, D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999).

The standard of review of election objections contemplated by N.J.A.C. 19:11-10.3(i) were discussed in Jersey City Medical Center, D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). There, the Director of Representation found that:

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant

setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-prong test is not met, the objections will be dismissed. [Id. at 314.]

Applying the above standards to the Board's objections, I find that the Board did not meet the evidentiary or substantive component necessary to warrant further investigation. The basis for this finding as to each objection is as follows:

Objection 1: Lunch aides were included in MSEA's formal request to [the Commission] without being asked or properly advised regarding the purpose of the ballot vote.

N.J.A.C. 19:11-1.2 provides in relevant part:

(a)9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate. An alphabetical list of such designations also shall be submitted to the Director of Representation.

Additionally, N.J.A.C. 19:10-1.1 provides in relevant part:

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months

prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations;

In the instant case the MSEA petitioned for a unit including, among other categories, "all aides." The number of employees in the entire petitioned-for unit was approximately 20. Neither section 19:11-1.2(a)9 nor 19:10-1.1 require that the petitioning labor organization ask all employees in a petitioned-for unit for their support prior to filing a petition for certification. The support of at least 30% of the unit employees is sufficient to trigger an election. Here, our administrative review of MSEA's showing of interest in support of its petition revealed that the showing was in fact sufficient to warranted an election. The MSEA had no obligation to obtain the support or consent of more than 30% of the petitioned-for unit prior to filing its petition.

Regarding the second part of the Board's first objection -- that the MSEA did not inform lunch aides of the purpose for the vote -- there is no claim that the lunch aides were misled as to the purpose of the petition or the vote. Moreover, the Director of Representation directed the Board to post a "Notice to Public Employees," which advised employees that the MSEA had petitioned for an election and was seeking to represent a unit which included "all aides." The Board certified that it posted the Notice to Public Employees on August 22, 2000, in places where notices to employees were normally posted, and that the notices remained posted for at least ten days thereafter. Further, on September 15 the Board was

sent copies of a Notice of Election and Attachment, which explicitly detailed those eligible to vote, the dates of the election, the purpose for the election, and provided that employees with questions concerning the election could obtain further information from the Director of Representation. There is no assertion here that the Board did not post the Notice of Election for employees' review.

Therefore, with regard to objection number 1, the Board has not established that the MSEA engaged in conduct which would warrant setting aside the election as a matter of law. Jersey City Medical Center at 314. Objection number 1 is dismissed.

Objection 2: Lunch aides only work a maximum of 2 1/2 hours per day at minimal wages and do not have full-time status.

The Board contends that because the lunch aides work part-time at minimal wages, the election which included them as part of the unit should be set aside. The Board has offered no legal argument, certifications, or affidavits in support of this objection. Even if true, there is no basis to find that lunch aides' hours and wages constitute "objectionable conduct" on the part of any party which would warrant setting aside this election.

When the issue of inclusion of part-time employees arises in a petitioned-for unit, the Commission determines whether, regardless of their part-time status, those employees are "regularly employed." Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982). In Mt. Olive, the Commission affirmed the yardstick applied by the Director of Representation to determine whether

petitioned-for part-time bus drivers were sufficiently regularly employed to be properly included in a unit of all full-time and part-time school bus drivers. The standard established there includes part-time employees who work at least 1/6 of the average number of hours worked by regular full-time employees in a like job classification. Mt. Olive at 103.

In the instant case, the Board asserts that its lunch aides work approximately 2 1/2 hours a day, 5 days a week during the school year. The job category "all aides" was petitioned for by the MSEA. Based upon the Board's admission that its lunch aides work approximately 12 1/2 hours per week, they are well within the Commission's standard for inclusion as regularly employed part-time employees.

Additionally, the Board and MSEA agreed, as evidence by the executed Consent Agreement that the lunch aides worked regularly enough to be included in the petitioned-for unit. With this objection, the Board is, in effect, attempting to assert that the petitioned-for unit was inappropriate and, therefore, the election should be set aside. When it signed the Consent Agreement on September 7, 2000, the Board waived its right to allege that the unit is inappropriate because of the inclusion of the part-time lunch aides. Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986) (Board waived its right to allege a lack of community of interest when it entered into an Agreement for Consent Election whereby the parties effectively stipulated that the unit petitioned for and agreed upon was appropriate.)

Finally, the Board included the names and addresses of those aides (including lunch aides) it believed were eligible to vote on the eligibility list it provided to the Commission. Any challenge to the eligibility of particular voters could have been raised by any party at the ballot count. N.J.A.C.

19:11-10.3(e).^{4/} In this case, no employee votes were challenged. Objections to the election are not an appropriate substitute for asserting a challenge to the eligibility of a particular voter, nor is the objections process a vehicle to challenge the nature of the unit already stipulated as appropriate.

Based upon the foregoing, I find no basis for the Board's objection number 2 to set aside the election. Objection number 2 is dismissed.

Objection 3: Membership dues for the MSEA constitute a financial hardship on lunch aides who were never advised by MSEA what these fees would be.

As a threshold matter, N.J.A.C. 19:11-10.3(h) requires that objections to an election assert irregularities in the conduct of the election or conduct which affected the results of the election. There is no assertion in the Board's third objection of irregularities in the conduct of the election. Moreover, the Board

^{4/} This Rule section permits each party to the election to have an observer present for the election and permits the observer to challenge the eligibility of any person to participate in the election. In the event that the challenged votes potentially effect the election outcome, the Commission will decide the voter(s)'s eligibility.

has provided no legal argument, certifications or affidavits to support this allegation.

There is no allegation here that the MSEA misrepresented its dues and/or membership policy. Based upon the foregoing, I find that the Board's Objection number 3 does not require the setting aside of the election as a matter of law. Objection number 3 is dismissed.

Objection 4: Employees' non-receipt of ballots and discarding of ballots by eligible voters.

The Board contends that several part-time lunch aides who were eligible to vote did not receive ballots, and that several others who did receive ballots discarded them because they were not properly advised of the voting process by the MSEA and, therefore, believed they were ineligible.

To support the first allegation in this objection, the Board has submitted affidavits from three employees who attest that they did not receive ballots but were eligible to vote. As noted previously, on September 14, 2000, the Board submitted an eligibility list to the Commission and the MSEA purporting to list all eligible voters pursuant to the unit description consented to by the parties in the September 7 Consent Election Agreement. None of the three employees who submitted affidavits were on the eligibility lists provided to the Commission. Ballots were mailed to all listed employees by the Commission on September 28.

Except for notification from the Board concerning the Board's omission from the list of one eligible employee's name, neither the Commission nor the MSEA was informed of any other omissions prior to the election. The Commission, of necessity, relies on the employer to provide a complete and accurate voter eligibility list. The Commission's Rules require the employer to provide such a list. N.J.A.C. 19:11-10.1(a). The Commission did so in the instant case.

The Board has provided no evidence that the three employees at issue were not informed that a vote was taking place.^{5/} There is also no evidence that they were prevented from informing the Board, the MSEA or the Commission that their names were wrongfully omitted from the list, and/or that they were prevented from requesting that ballots be mailed to them in time for the vote. Additionally, the Board has provided no evidence that the employees who assertedly did not receive ballots were regularly employed and, therefore, eligible to vote, nor has it explained why it omitted the employees' names from the eligibility list it prepared. In any event, the omission of the three employees names from the list would

^{5/} As noted previously, a Notice of Election displaying categories of eligible voters and the method and time for voting was posted by the Board for a reasonable time prior to the election.

not have been sufficient to affect the results of the election in terms of vote count.^{6/}

In further support of Objection number 4, the Board submitted affidavits from three employees whose names were included on the Board's eligibility list and who admittedly received mail ballots but discarded them. These three employees assert that they did not believe the election included them because they work part-time, because they already belong to another labor organization apparently not related to the school district, because the "documents which they received in reference to the election" did not make it clear that the election applied to them, or that they were not aware that even if they did not vote they would be included in the negotiations unit.

With regard to these assertions, as in the case of the employees who allegedly were eligible to vote but did not receive ballots, the Notice of Election posted by the Board described "those eligible to vote" and further advised that an election is decided by a majority of those who vote. The ballots directed to "eligible voters," also (1) explain the purpose for the vote, (2) indicate the voting process and, (3) inform the voters that if they have any questions about the election they may contact the Director of

^{6/} The Tally of Ballots reveals that 15 of the 20 eligible voters on the list cast valid ballots. Out of the 15, 10 voted for the MSEA and 5 voted for no representation. Thus, the votes of the three employees allegedly omitted from the list, even if all voted against representation, could not have affected the election result.

Representation. An address and telephone number are provided. There is no allegation or evidence presented that these employees were misled into thinking they were excluded from the unit. The evidence reveals that the employees who discarded their ballots had the opportunity to view the notices, had their names proffered by the Board as eligible voters, and that their mistaken belief that they were not eligible to vote was not a result of any objectionable conduct by the MSEA or the Board.


Based upon the foregoing, I find that the circumstances surrounding their failure to return their ballots do not support a finding that the election in this case should be set aside as a matter of law. Objection number 4 is dismissed.

Based on all the foregoing, I find that the Board did not meet the procedural or evidentiary standards set forth in Hudson Cty. Schools of Technology and Jersey City Medical Center to state a prima facie case as to any of its post-election objections. For the above reasons, I dismiss all of the objections.

ORDER

The objections are dismissed. A Certification of Representative will issue forthwith.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: January 18, 2001
Trenton, New Jersey

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

In the Matter of

MAGNOLIA BOARD OF EDUCATION,
Public Employer,

-and-

MAGNOLIA SCHOOL EDUCATION
ASSOCIATION,
Petitioner.

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DOCKET NO. RO-2001-9

CERTIFICATION OF REPRESENTATIVE

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. A majority of the voting employees selected an exclusive majority representative for collective negotiations. No valid timely objections were filed to the election.

Accordingly, **IT IS HEREBY CERTIFIED** that

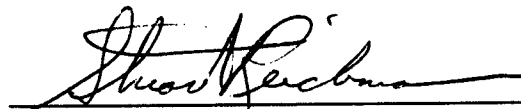
MAGNOLIA SCHOOL EDUCATION ASSOCIATION

has been selected by a majority of the employees of the above-named Public Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. Pursuant to the Act, the representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment. When an agreement is reached it shall be embodied in writing and signed by the parties. Written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

UNIT: Included: All regularly employed secretaries, teacher assistants, classroom aides, lunchroom aides and principals clerk employed by the Magnolia Board of Education are added to an existing unit of professionally certified personnel and full-time custodial maintenance employees employed by the Board.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police employees, casual employees, superintendent, clerk to the superintendent, principal, board secretary/business administrator and all other employees employed by the Magnolia Board of Education.

DATED: January 18, 2001
Trenton, New Jersey



Director of Representation

Attachment: Certification of Representative

Dated: January 18, 2001

In the Matter of

Magnolia Board of Education

-and-

Magnolia School Education Association

Docket No. RO-2001-9

Service on the following:

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