

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF OBJECTIONS TO THE CONDUCT
OF ELECTION INVOLVING:

CHRISTINA SCHOOL DISTRICT,	:	
	:	Representation Petition
AND	:	
	:	<u>12-02-851</u>
UAW LOCAL 1183.	:	

A petition for bargaining unit determination and certification of exclusive bargaining representative was filed by the United Auto Workers (hereinafter “UAW”) on or about February 8, 2012. The appropriate bargaining unit was determined to be “All Full-time and Part-time Bus Drivers and Attendants employed by the Christina School District”.

“Notices of Certification Election: Ballots to be Cast through U.S. Mail” were prepared by PERB and provided to the District for posting, by letter dated March 9, 2012. The Notice identified Eligible Voters as, “All Full-Time and Part-Time Bus Drivers and Attendants employed by the Christina School District”. The Notice also stated under the heading “Secret Ballot by U.S. Mail”:

The election will be conducted by SECRET ballot through U.S. Mail. Eligible employees will receive a Secret Ballot, Instructions, and a stamped, addressed return envelope at their home addresses. Ballots will be mailed by 5:00 p.m. on **Monday, March 19, 2012.**

The marked ballot must be sealed in the OFFICIAL SECRET BALLOT envelope provided. The voter will return the sealed ballot to the PERB in the stamped, addressed return envelope provided. The return envelope must contain the signature of the voting employee in the space provided in order to

be valid. The signed envelopes will be separated from the sealed ballot envelopes prior to the opening of the sealed ballots in order to maintain secrecy.

In order for a ballot to be valid, the ballot instructions must be followed and the ballot must be received in the PERB Offices by no later than 12:00 noon on Wednesday, April 11, 2012. The result of this Election will be determined by the majority of votes cast by eligible voters.

IF YOU BELIEVE YOU ARE AN ELIGIBLE VOTER AND DO NOT RECEIVE AN ELECTION PACKET BY Monday, March 26, 2012, PLEASE PERSONALLY CONTACT THE PUBLIC EMPLOYMENT RELATIONS BOARD IMMEDIATELY by calling (302-577-5070 to request a ballot.*(emphasis in original)*.

The Notice included an additional section entitled “Information Concerning Election” which stated:

Any employee who desires to obtain further information concerning the terms and conditions under which this election is to be held or who desires to raise any question concerning the holding of the election, the voting unit or the eligibility rules may do so by communicating directly with the Public Employment Relations Board at its offices located at {*the Board’s address and phone number provided*}.

The Notice also included a Sample Ballot which again advised voters, upon marking their ballots to fold and place the ballot in the Secret Ballot envelope, to place that envelope inside of the stamped, addressed return envelope, and to “sign the back of the return envelope and mail it.”

The District provided signed Certificates of Posting, indicating the Notices of Election were posted “in a conspicuous place at every place of employment of affected employees and in the offices of the employer” on March 12, 2012.

Pursuant to PERB Rule 4.3(a), the District provided a list of the names and addresses of all eligible voters, which was forwarded to the UAW on or about March 7, 2012. The transmission letter stated:

PERB Regulation 4.3(a) requires that any objections to the validity or completeness of this Eligible Voter List must be filed with this office, in

writing. The correspondence must set forth the reasons for the challenge. Listed employees who are not challenged in writing shall be eligible to vote and no further challenges to their eligibility will be honored. All challenges to the validity or completeness of this list must be received on or before Wednesday, March 14, 2012.*(emphasis in original)*

The UAW did not file any objections to the Eligible Voter List by the close of business on March 14. On March 15, 2012, however, the UAW sent a letter to PERB which stated:

...[W]e are requesting that the following voters who were not on the Excelsior list be allowed to vote:

Drivers:

Carl Batts
DarcyBatts
MaryaliceCrossan
Wesley Foster
Idette Glover
Mark Johnson
John Lasher
Michael Luzetsky
Sandra Moon
John Pennington

Aides:

Kristyn Sutton	Kathleen Hontz
Carolyn Thompson	Amber Winston
Daniel E. Thompson	
John R. Tucker	
Earnestine Vann	
Beth Welter	
Odessa Wiggins	
Brian Williams	
Michele Williams	

The following were included on the Excelsior should not be allowed to vote:

Drivers:

Ed Burke (retired)
John Guizzetti (no longer employed)
Marcella Reilly (short term disability)

Aides:

Janet Binkley
Phyllis D. Brice (not eligible to vote)
Judy E. Casula (deceased)

PERB followed up this March 15 correspondence with a letter to both parties dated March 19, 2012, which stated:

I am in receipt of the correspondence from the UAW of March 15 raising concerns about the completeness and accuracy of the Excelsior List. Because the concerns were not raised on or before the March 14 deadline for objections, ballots were mailed to all of the employees listed on the Excelsior List. The District did respond to the UAW's concerns, and I have summarized below the actions taken by this office:

- I. The UAW listed 19 drivers and 2 aides who they assert were improperly excluded from the list of eligible voters. Of those 21 employees, the District responded that the following individuals (3) were terminated and are therefore ineligible to vote under any circumstances:
 - Kristyn Sutton
 - Earnestine Walton-Vann

- Beth Welter

The driver listed as “Sandra Moon” is actually Sandra Moore who is included on the eligible voter list. A ballot was mailed to Ms. Moore today.

The District agreed that Daniel E. Thompson should have been included on the eligible voter list. He was added (as the 288th voter) and a ballot was mailed to Mr. Thompson today.

Kathleen Hontz and Idette Glover were both on the eligible voter list and a ballot was mailed to each of them today.

The District responded that the remaining 13 drivers and 1 aide are “reported time employees” (or what I would refer to as “substitute” or “pool” drivers and aides). It is my understanding these employees are hired on an as-needed basis to cover absences. The District argues they are neither full-time nor part-time employees as those terms are generally understood, and are compensated on an hourly basis. This list includes the following individuals:

Carl Batts	John Lasher	Odessa Wiggins
DarcyBatts	Michael Luzetsky	Brian Williams
MaryaliceCrossan	John Pennington	Michele Williams
Wesley Foster	Carolyn Thompson	Amber Winston
Mark Johnson	John R. Tucker	

If any of these employees call and request a ballot on or before **April 3, 2012**, PERB will send out a ballot to the employee. However, because they were not on the eligible voter list, PERB is required to challenge their ballots. The challenges would be resolved if the number of challenged ballots could affect the outcome of the election.

II. The UAW objected to 3 drivers and 3 aides who it asserts are improperly included on the eligible voter list, asserting they are not eligible voters. I note that neither Ed Burke nor John Guizzetti are on the eligible voter list; consequently neither received a ballot. Concerning the remaining four voters (Reilly, Binkley, Brice and Casula), the District did provide responses. I would ask that the UAW review the information the District provided to inform its decision as to whether to challenge these voters during the counting process.

Ballots were mailed to the 287 employees listed on the Eligible Voter List provided by the District and to Mr. Thompson on Monday, March 19, 2012.

During the balloting period, nineteen individuals¹ who were not listed on the Eligible Voter list contacted PERB to request ballots, asserting they were eligible voters under the Unit Definition. Ballots were provided to all nineteen individuals who were also advised that their ballots would be challenged because they were not on the Eligible Voter List. Eighteen of the nineteen returned ballots.

Both the UAW and the District were advised by letter and e-mail whenever a ballot was provided to an employee who claimed to be an eligible voter. In response to these notices, the District acknowledged two of the nineteen employees (John Pennington and Brian Williams) had become full-time drivers and were, therefore, eligible voters as asserted by the UAW. Both Mr. Pennington and Mr. Williams cast ballots that were counted.

At PERB's request (in response to the high number of individuals who claimed they were eligible voters who were not on the Eligible Voter List), the District provided a list of forty-two (42) Reported Time Employees. One of the listed individuals was Mr. Pennington whom the parties agreed was an eligible voter as he had been hired into a full-time position. Seventeen of the remaining 41 reported time employees requested and were mailed ballots. The April 9 letter from PERB to the parties stated:

I am attaching a copy of the list of "reported time" or substitute drivers kindly provided by the District last week. I have added a column on the left which indicates which of these drivers/aides requested ballots. All of these individuals were advised that their ballots would be challenged by PERB because they were not on the eligible voter list.

I am providing this information in order to facilitate any discussions which may be necessary concerning the status of substitute drivers and aides during the counting of the ballots.

Additionally, nine voters on the eligible voter list contacted PERB to request duplicate ballots either due to bad addresses or because they did not receive ballots at their home address.

¹ Only seven of these nineteen employees were on the list of belated objections filed by the UAW on March 15, 2012.

Duplicate ballots were promptly provided to all nine individuals. Seven of the individuals who requested duplicate ballots cast the duplicate ballots. One of those ballots was determined to be void when it was received unsigned on the morning of April 11, 2012.

A total of 236 ballots were returned to PERB, of which seven were returned without the required signatures on the return envelopes. Consistent with PERB Mail Ballot Election Procedures, ballots which are received unsigned are void and cannot be counted because their authenticity cannot be confirmed. In five of the seven instances, letters and emails were sent to the voters to advise them that their ballots were void unless they made arrangements to either sign the envelopes or cast replacement ballots prior to the close of the polling period. Only one of these voters responded. She was provided with a duplicate ballot (which she cast) and the original unsigned ballot envelope was destroyed upon receipt of the properly executed duplicate ballot. Two unsigned ballots were delivered to PERB on the morning of April 11, 2012, just prior to the noon deadline; consequently, there was not time to contact the voters.

The ballots were counted on Wednesday, April 11, commencing at 2:00 p.m. There were 290 eligible voters; 236 ballots were cast of which 7 were void (because they were unsigned) and 16 were challenged by PERB because they were not on the Eligible Voter List (as described above). One hundred and thirteen (113) ballots were cast for No Representative and one hundred ballots were cast for UAW. At the conclusion of the count, the UAW representatives stated it was unnecessary to individually resolve the 16 challenged ballots because they agreed the challenged ballots were not cast by eligible voters.

A Notice of Election Results was prepared by PERB and provided to the District for posting in the workplace and in its administrative office which stated:

In accordance with the requirements of 14 Del.C. §4011, a secret ballot election was conducted through the U.S. mail under the supervision of the

Public Employment Relations Board. The purpose of the election was to determine whether unrepresented Bus Drivers and Bus Aides desired to be represented for purposes of bargaining.

ELECTION RESULTS:

“**No Representative**” received a majority of the valid ballots cast in this election. Consequently, Christina School District Bus Drivers and Aides are not represented for the purposes of collective bargaining.

Any objections to the conduct of this election or to conduct affecting the results of this election must be filed with the Public Employment Relations Board, at the address above, within five (5) days of the posting of this Notice.

14 Del.C. Section 4011(e) provides that no election shall be held within twelve (12) months from the date of a preceding valid election.

The completed certificates of posting indicate the Notices were posted in the workplace on or about April 13, 2012.

By letter dated April 20, 2012, the UAW filed objections to the conduct of the election.

The following objections were filed by a representative of UAW Local 1183:

On behalf of Christina School District bus drivers and attendants, UAW Local 1183 submits this petition on appeal to the election which was held on April 11, 2012.

Employees of the Christina school district have voiced concerns of the conduct of the election and have provided the following appeal issues and request an appeal of the election on the following issues:

- 1) Challenge list of Retired employees: List included 42 employees that were supplied from Christina School District. Both parties agreed that the submitted ballots of 18, one employee was eligible to vote. This ballot was never removed from the challenged ballots to be counted as an eligible vote. Accurate data would show that 2 additional employees did receive full time benefits in April that would allow 2 eligible votes. ²
- 2) During the election process, one vote was challenged and ballot was counted. Observers at the table challenged the ballot and the ballot was not

² In response to PERB’s request for clarification, UAW stated: “Additional employees that were eligible to vote from the challenge list include John Pennington, Odessa Wiggins, John Tucker and Amber Winston.”

removed from the ballot box.³

- 3) To date more than sixteen employees state that their voting rights were violated due to improper notification of the election. Some stated ballots were not received, other stated notices were not clearly posted at the worksite. Employees believed that the employer would include their names on the mailing of notification of the election including a ballot and they therefore would receive a ballot. Some did not receive a ballot. Sixteen statements are attached with date and signature of employees.⁴
- 4) More than ten sub drivers' ballots were counted as eligible to vote. More than six drivers receiving full benefits did not receive ballots. If one eligible substitute can vote all eligible substitutes should have been able to vote.⁵
- 5) Employees stated notice was not provided in a second language; Spanish. Due to the fact that these employees did not comprehend the process four Spanish speaking employees feel their voting rights were violated. Statement is enclosed from three employees with signatures.⁶
- 6) Seven ballots were voided and reported that there were no signatures on the envelopes. Ballots were not observed by all present.

³ In response to PERB's request for clarification, UAW stated: "Challenged ballot counted was employee Crystal Pagan. Observer who called the objection was Byron McNair."

⁴ Attached to the letter were individual statements requesting a new election, signed by:

Carl Batts	Sean Kilson	Markita Thomas
Darcy Batts	Errol Lee	Ikia Wade
Curtis Brown	Leonard Moody	Judith Webb
Shawn David	John Pennington	Amber Winston
Crystle Lee Guyer	Barbara Scott	
Brenda Hernandez	William E. Smith, Jr.	

⁵⁵ In response to PERB's request for clarification, UAW provided the following names to support this allegation:

Charles Cowan	Rebecca Mayu	Darcy Batts
Rebecca Cuomo	Billy McLaurin	Mark Johnson
Vanessa Edwards	Lydia Rosser	Ben Bird
Suzanne Godwin	Carolyn Robertson	Ed Burke
Barnard Gray	Carolyn Thompson	Marlene Jackson
Kenneth Lattis	Jessica Rodriguez	Mary Alice Crossan

⁶ The attached statement was signed by Elizabeth Rosado, Ediltrudis Medina; Elizabeth Delfi.

OPINION

Section 13(c) of the Public Employment Relations Act (19 Del.C. Chapter 13, “PERA”) requires that following the determination of an appropriate bargaining unit, “... the Board shall cause an election of all eligible voters to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented.” Election procedures are governed by Regulation 4 of the Rules and Regulations of the Public Employment Relations Board.

The procedures adopted by PERB for conducting elections are designed to ensure that voters are provided with a free and fair process. Like the NLRB, the PERB’s goal is to conduct elections “in a laboratory under conditions as nearly ideal as possible to determine the uninhibited desires of employees” and to provide an “atmosphere conducive to the sober and informed exercise of the franchise, free not only from interference, restraint, or coercion violative of the Act, but also from other elements which prevent or impede a reasonable choice.”⁷

Parties are afforded the opportunity to object to the conduct of the election which may involve departures from requisite election procedure, typically involving such issues as the opportunity to vote. Election results may be set aside where eligible voters have been deprived of the right to vote by the actual manner in which the election was conducted (i.e., departure from scheduled polling times or voters being prevented from reaching the polls).⁸

In response to the specific objections raised by the UAW, an investigation was conducted of the election process in this case. The following conclusions are reached based on the record:

⁷*Sewell Mft. Co.*, NLRB 138 NLRB 66, 70, 50 LRRM 1532 (1962).

⁸*The Developing Labor Law*, 5th ed., John E. Higgins, Jr. (editor), 2006, p. 618.

Objection #1: The UAW and the District agreed that both John Pennington and Brian Williams were eligible voters as each had recently become a full-time driver. Each received and cast a ballot, which was counted in the election.

John Tucker, Odessa Wiggins and Amber Winston were not on the Eligible Voter List and the UAW did not make timely objection to that list. All three did request ballots, were provided with ballot packets, and were advised that their ballots would be challenged because they were not on the eligible voter list. Only Mr. Tucker and Ms. Wiggins actually cast ballots, which were challenged by PERB. As set forth in the facts above, the UAW representatives stated following a caucus at the completion of the count of uncontested ballots, that it was unnecessary to individually resolve the 16 challenged ballots because the UAW did not dispute that the challenged ballots were cast by ineligible voters.

Objection #1 is dismissed because it is not supported by the evidence of record.

Objection #2: The UAW asserts the ballot cast by Crystal Pagan was objected to by its Election Count Observer during the course of the counting, but that the vote was counted anyway. Written counting procedures were provided to the Observer and Alternate Observer of both the UAW and the District in advance of the count and were reviewed prior to beginning the actual process on April 11. The procedures state, in relevant part:

1. The employer and each labor organization on the ballot may have one designated observer to observe the casting and counting of the mail ballots. PERB Reg. 4.5
2. Each observer is provided with a list of eligible voters.
3. Each envelope which has been received in a timely manner is treated as a voter approaching the ballot box. The following procedures are followed:
 - a) The outer envelope is inspected to make sure that it is signed. Any ballot returned in an unsigned envelope shall not be counted and must be discarded as a void ballot.

- b) The name of the voter is read. As each name is read, it is marked on the master list of eligible voters. Each observer may mark his/her list, but the master list is maintained by a PERB official.
- c) Observers are permitted to challenge a voter as his/her name is read as they would at a manual polling of voters. PERB Reg. 4.4. Voters may be challenged for cause; however, any voter whose name is included on the eligible voter list and who was not challenged when the Excelsior List was provided to all parties prior to the mailing of ballots shall be deemed eligible to vote.
If a voter is challenged, the ballot is removed from the envelope and placed in a challenged ballot envelope, as in a manual election.
Challenged ballots will only be resolved if they are sufficient in number to affect the outcome of the election. PERB Reg. 4.4.
- d) If the voter is not challenged, the signed outer envelope is removed and discarded.
- e) The sealed internal envelopes are accumulated in a box.

In *NLRB v. A.J. Tower Co.*, 329 US 324 (1946), the United States Supreme Court approved the requirement that challenges to the eligibility of voters be made “prior to the actual casting of ballots. Once a ballot has been cast without challenge and its identity lost, the validity can no longer be challenged.”

In this case, the UAW did not object to Ms. Guyer’s ballot until after her name was read, the external envelope had been removed and the internal envelope had been deposited in the ballot box. At that point, it was impossible to determine which ballot envelope was Ms. Guyer’s.

Objection #2 is dismissed because it was not made in a timely manner and is without basis in the record.

Objection #3: The UAW alleges “more than sixteen employees state their voting rights were violated due to improper notification of the election...” The objection letter included signed statements from 16 individuals. Notice of the Election was posted in the workplace and was individually provided to every eligible voter in a notice included in the ballot packet PERB mailed to their home addresses. The election records reveal the following:

- Eight⁹ of the sixteen individuals who provided statements were eligible voters to whom ballots were mailed to the addresses provided by the District. Ballots were not returned to PERB by the US Postal Service indicating they were undeliverable. None of these eight voters contacted PERB to indicate they had not received ballots in a timely manner (as set forth in the Notice of Election posted in the workplace). None of the eight individuals cast ballots.

There is no basis in the record or in the objection raised by the UAW to support the conclusion that the Notices were not posted or that these eligible voters did not receive ballots at their addresses of record. Consequently, this objection is dismissed as it relates to these eight voters.

- One of the listed individuals, John Pennington, did cast a ballot which was counted; consequently, he was fully afforded his right to vote and this objection is without basis in the record.
- One of the listed individuals, Darcy Batts, never requested a ballot. Further, she was not on the Eligible Voter List and a timely objection was not made to her exclusion.
- Four¹⁰ of the listed individuals were eligible voters, received ballots and returned those ballots to PERB, but failed to sign the return envelopes as required. PERB sent notification (both by email and US Mail) to Mr. Kilson, Mr. Smith and Ms. Webb that their ballots were void unless they arranged to sign them in the PERB office or requested duplicate ballots. No response was received from any of these voters. The ballot cast by Ms. Wade was received just before noon on April 11, 2012, so there was insufficient time

⁹ Curtis Brown, Shaun Davis, Crystle Lee Guyer, Brenda Hernandez, Errol Lee, Leonard Moody, Barbara Scott, Markita Thomas.

¹⁰Sean Kilson, William E. Smith, Jr., Ikiya Wade and Judith Webb.

to contact her to notify her that her ballot was void.

- The remaining two voters were not on the Eligible Voter List and timely objection was not made to the exclusion of Carl Batts or Amber Winston. Mr. Batts requested and was mailed a ballot at his request, and was advised that his ballot would be challenged because he was not on the Eligible Voter List. He did return his ballot and it was challenged by PERB. The challenge was not resolved at the conclusion of the count because the UAW agreed the challenged ballots were not cast by eligible voters. Ms. Winston requested and was provided with a ballot at her request, and was advised her ballot would be challenged because she was not on the Eligible Voter List. She did not return a ballot.

Objection #3 is dismissed because it is not supported by the evidence of record.

Objection #4: The UAW alleges that some, but not all, substitute drivers were permitted to vote, specifically asserting ten substitutes were permitted and did vote, but six other substitute drivers who “receive full benefits” were not permitted to vote. This concern again goes back to the opportunity provided to the UAW to file timely objections to the eligible voter list. The UAW did not file a timely objection to the exclusion of any drivers. Nineteen individuals who did not receive ballots called and requested ballots from PERB. None of the eight individuals which the UAW asserts were “not permitted to vote” under this objection requested ballots. There is no evidence that the eight individuals named in this objection were discriminatorily denied ballots while nineteen similarly situated employees (who were also not on the eligible voter list) were provided with ballots.

The UAW was notified each time a ballot was provided to an employee who was not on the eligible voter list and reminded that ballot would be challenged by PERB, in accordance with

its rules. The UAW was provided the opportunity before the results of the election were certified to pursue resolution of the challenged ballots, but chose not to do so.

Objection #5: The UAW asserts because notice of the election was not provided in a second language, Spanish-speaking employees “did not comprehend the process” and felt “their voting rights were violated. A statement (in Spanish) in support of this objection was signed by three individuals: Elizabeth Delfi, Ediltrudis Medina, and Elizabeth Rosado. All three of these individuals properly returned their ballots which were counted. At no time during this election procedure did either the District or the UAW indicate that bi-lingual ballots were necessary, and no employee called to request a Spanish ballot (which have been provided upon request in prior elections).

Consequently, Objection #5 is dismissed because the three individuals fully engaged in the election process.

Objection #6: The UAW alleges the seven void ballots were not observed by all present. Copies of all seven¹¹ voided ballot envelopes are attached to this decision for review.¹² At least twice during the count procedure, the designated observer of each party was offered the opportunity to examine the ballots (including the void and challenged ballots); neither the UAW nor the District observer indicated a desire to do so.

For these reasons, Objection #6 is also dismissed because it is unsupported by the record.

Finally, of the thirty-six (36) individuals identified in the UAW’s objections, twelve (12) cast valid ballots which were counted; nine (9) were on the eligible voter list, received voting

¹¹ Unsigned ballots were received from Linda Wyre (voter #851-01); Judith Webb (voter #851-16); Gregory Warren (voter #851-19); Ikia Wade (voter #851-22D); William E. Smith, Jr. (voter #851-55); Kenneth Lattis (voter #851-140); and Sean Kilson (voter #851-148).

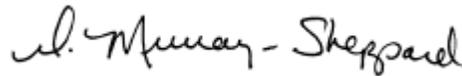
¹² Copies of all public balloting records, including the list of ballots received and letters sent to voters who returned unsigned ballots, are available for inspection in the PERB offices.

packets at their home addresses of record but chose not to cast their ballots; five (5) returned unsigned ballots which were void under PERB election rules; and the UAW did not contest the PERB challenge to two of the named individuals during the counting procedure. The eight (8) remaining individuals were not on the eligible voter list and never requested ballots. Even if those eight individuals were determined to be eligible voters, their votes would be insufficient to change the results of the election. The fact that they never requested ballots in an effort to have their eligibility determined renders any further consideration only speculative.

DETERMINATION

For the reasons set forth above, the objections raised by UAW Local 1183 are determined to be unsupported by the record and without legal foundation. The results of the election in this matter are hereby affirmed.

DATE: May 25, 2012



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.