

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: CASE NO. PERA-D-23-76-E  
: :  
SCHUYLKILL VALLEY SCHOOL DISTRICT :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On April 24, 2023, the Schuylkill Valley School District (District) filed a Petition for Decertification (Petition) with the Pennsylvania Labor Relations Board (Board) alleging that the District has a good-faith doubt of majority status of the certified exclusive collective bargaining representative of a bargaining unit of nonprofessional District employes represented by AFSCME, Council 88, Local 1744 (Union or AFSCME), under Section 607(ii) of the Public Employee Relations Act (Act or PERA).

On May 24, 2023, the Secretary of the Board issued an Order and Notice of Hearing designating a hearing date of July 19, 2023, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimony, introduce documents, and cross-examine witnesses. On September 15, 2023, both parties filed post-hearing briefs in support of their respective positions.

The examiner, based upon all matters of record, makes the following:

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. Robin Brightbill has been the Director of Human Resources at the District for approximately 8 years. In that capacity, Ms. Brightbill is responsible for labor-management relations, employe salaries and benefits, and other duties related to Human Resources. (N.T. 17-19, 21, 35)
4. Harold Brennan is the Union Local President, and he is a Custodian at the District. Mr. Brennan began working for the District in July 2016, and he joined the Union in 2017. He has been Union President since 2020. Greg Hanson is the Union Local Vice President, and he is also a Custodian at the District. He agreed to become Union Vice President because no one else wanted the position. (N.T. 26-28, 52-56, 65-66, 107-108; UX-3)
5. The Union represents a bargaining unit of employes of the District certified by the Board as follows: "All full-time and regular part-time blue-collar nonprofessional employes including but not limited to cafeteria workers, lunchroom aides, custodians and couriers; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act." (N.T. 19; PERA-R-09-386-E)

6. Joint Exhibit 1 contains the "Declaration of Robin L. Brightbill." Ms. Brightbill credibly testified that all of the statements contained in her Declaration were true and correct. (N.T. 21; JX-1-A)

7. Bargaining unit employes have directly contacted Ms. Brightbill regarding employment issues and concerns. The Union was not involved in presenting those employes' issues to Ms. Brightbill. (N.T. 32-34)

8. Article 3, Section 2 of the parties' collective bargaining agreement (CBA) provides that the District is to deduct Union dues from employes' bi-weekly pay for those employes who request that the deduction be made. Ms. Brightbill reviews the payroll records and, as a result, she is aware of the number of dues paying members. (N.T. 35-36; JX-1-A)

9. The Union was certified in 2009 by a majority vote of 19 employes in favor of representation and 17 employes against representation. There are approximately 36 employes in the bargaining unit. The number of dues paying members has steadily declined from 20 dues paying members, during the 2014-2015 school year, to 7 dues paying members during the 2022-2023 school year. Only 3 of the original Union members currently remain members. The other members have resigned or retired. (N.T. 35, 57; JX-1-A; PERA-R-09-386-E)

10. Ms. Brightbill identified the dues paying members by job classification in Paragraph 7 of her Declaration as follows: Lunchroom Aids have 0 dues-paying members of 5 employes; Food Service staff have 1 dues-paying member of 16 employes; Custodial/Maintenance employes have 6 dues-paying members of 15 employes. None of the employes hired over the past 7 years have elected to join the Union, and the last 38 hires have not joined the Union. Six out of the 7 Union members are on the Executive Board for the Union. (N.T. 36, 57, 100, 109; JX-1-A; UX-4)

11. Ms. Brightbill has never denied the Union an opportunity to meet with employes after their probationary period ends. Employes have break periods throughout the day when they can meet with the Union. The District does not control whether the Union meets with employes either before or after their work day. (N.T. 37-38)

12. Ms. Brightbill does not have regular meetings with Union representatives. She does have regular meetings with representatives from the District's teachers' union to discuss bargaining issues such as policy changes that may affect the teachers. The Union has not met with Ms. Brightbill to discuss CBA violations, clarifications of the CBA, employe performance evaluations, or the impact of policy changes on the unit members. In recent years, the Union has not met with Ms. Brightbill to discuss employe investigations. The Union did not notify Ms. Brightbill of Union leadership changes, while the teachers' union has. The Union has not filed any grievances in the past 8 years, and Mr. Brennan acknowledged that he personally has not filed any grievances since he has been Union President for the past 3 years. (N.T. 20-21, 26-32, 123-124)

13. All bargaining unit employes have a District email address and have access to all other District employes' email addresses. The District allows the Union to use the District's email to contact employes. Cafeteria and Custodial/Maintenance employes have access to computers. (N.T. 38-39)

14. The CBA expired on June 30, 2023. As of the date of the hearing, the parties had held 4 negotiation sessions for the new contract. The Union

has held 5 membership meetings during the past year. The Union members who attended those meetings were Union Executive Board members. Lori Brenner, who is an Executive Board member and works in the kitchen at the High School, did not attend those meetings. No cafeteria workers participated in any of the Union meetings. The remaining attendees were Custodial/Maintenance workers. (N.T. 45, 109-116, 133, 135; UXs-5 & 6)

15. The District provides a seniority list to the Union every 6 months, which provides a list of all current bargaining unit employes. The list identifies employes' dates of hire and their positions. (N.T. 59-62)

16. Cafeteria employes are part-time employes. They are free to meet with the Union leadership either before or after their shift. Article 18, Section 9 of the CBA provides that the Union leadership shall be afforded an opportunity to meet with new employes at the end of their probationary period, which is 90 days. The District has 3 school buildings on the same campus. (N.T. 59-64, 67; UX-2)

17. Union President Brennan has access to bargaining unit employes throughout the day. President Brennan has met with cafeteria workers before his shift. The District has not prevented the Union from discussing Union membership with employes. President Brennan has invoked the CBA provision allowing leave for Union business to connect with employes to increase Union membership. Mr. Brennan uses the seniority lists the District provides to contact new employes to join the Union at the High School. Mr. Brennan believes that Vice President Hanson contacts new employes at the Middle School. The record does not indicate whether the Union leadership contacts new employes at the Elementary School. (N.T. 65-66, 130-132, 135)

18. Paul Bendigo is 1 of 9 elected school board directors. He has been a school board director for approximately 10 years. Mr. Bendigo is a member of the school board's Building and Grounds Committee, the Policy and Personnel Committee, and Chairman of the Budget Finance Committee. He also currently serves on the District's negotiation committee for bargaining with the Union. (N.T. 31-31, 73)

19. There are no Cafeteria employes on the Union bargaining team. Only custodians are on the team, i.e., President Brennan and Vice President Hanson. Mr. Bendigo has participated in 4 collective bargaining sessions with the Union for the new contract. During those sessions, he expressed concern that the Cafeteria workers were not represented at negotiations. Mr. Bendigo asked Union leaders numerous times about food service representation at the bargaining table. (N.T. 73-75; JX-1-B)

20. Custodians in the bargaining unit are 12-month employes who work 40 hours per week plus overtime. They work both day and evening shifts. Food Service employes in the bargaining unit work 9-10 months per year. Some Cafeteria employes work 4 hours per day, and others work 5 hours per day. The CBA for the bargaining unit applies to both types of employes, and they have different hours, schedules, and work environments. (N.T. 74-75, 126-127)

21. During negotiations, Mr. Bendigo inquired of Union representatives about out-of-class pay for Cafeteria employes who are temporarily assigned supervisory duties when their supervisor is absent. Union leaders did not know how these temporary reassignments and concomitant out-of-class pay were accomplished. The Union also did not contact Cafeteria employes to learn how the temporary reassignments and out-of-class pay were

accomplished. The CBA provides that management has the right to select the most experienced person to fill a position, but the Union did not report back to Mr. Bendigo how the process operated for temporary reassignments. (N.T. 78-81; JX-1-B)

22. Joint Exhibit 1 contains the "Declaration of Paul Bendigo." Mr. Bendigo credibly testified that the statements contained in his Declaration were true and correct. At negotiations, Mr. Bendigo asked the Union leadership if surveys and proposed contract changes were distributed to the members, and he asked how many employees were Union members. The Union leadership responded that between 6 & 7 employees were Union members. A Union member is an employe who pays Union dues. (N.T. 81-82, 88; JX-1-B)

23. During negotiations, the Union leadership could not identify any discussions with cafeteria workers, who were not Union members, seeking their input on changes to terms for the new collective bargaining agreement. President Brennan communicated with the 1 cafeteria worker who is a Union member. The Union distributed anonymous surveys to the 7 Union members only, i.e., the Executive Board members plus 1, during negotiations. Only 1 Union member returned a survey. (N.T. 82-83, 118-123, 126-127; JX-1-B; UX-8)

24. Christine Bendigo is the wife of Paul Bendigo. She works in the Food Service Department at the Middle School. There are 3 cafeterias in total, one in each of the 3 District school buildings, i.e., 1 Elementary school, 1 Middle School, and 1 High School. Mrs. Bendigo prepares and cooks food for breakfast and lunch, and she performs the duties of her supervisor when her supervisor is absent. (N.T. 95-96)

25. Mrs. Bendigo has worked for the District for 20 years. She joined the Union in 2009 or 2010, and she was on the Union negotiating committee for 2 contract negotiations to represent Cafeteria employes. During her time as a Union member, Mrs. Bendigo encouraged employes to join the Union, she attended Union meetings, and she was on the Executive Board. Mrs. Bendigo resigned her Union membership in 2016 after contract negotiations, and she is not currently a Union member. Before Mr. Bendigo began the latest round of negotiations with the Union, Mrs. Bendigo did not know the identities of the Union President and Vice President. (N.T. 89-90, 97-98, 103-104)

26. During the 2016 contract negotiations, Mrs. Bendigo talked with the Union leadership about a floating holiday for all bargaining unit members. After the Union finalized the contract, Mrs. Bendigo learned that only the Custodial/Maintenance employes received the floating holiday. As a result, Mrs. Bendigo met with District management, but neither the Union President nor Vice President attended the meeting. After the meeting, Cafeteria employes did not receive the floating holiday.<sup>1</sup> (N.T. 98-100)

27. After leaving the Union, the Union leadership never contacted Mrs. Bendigo for her input regarding working concerns or bargaining priorities. The Union has not met with Cafeteria employes where she works, and has not requested that Mrs. Bendigo rejoin the Union or attend membership meetings. (N.T. 98-99, 103-104)

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<sup>1</sup> The record is unclear whether Mrs. Bendigo was on the Union negotiating team during 2016. If she was not on the Union bargaining team, the District possibly did not wish to engage a bargaining unit employe in direct dealing.

28. A sign posted on the Union bulletin board at the District instructs bargaining unit employees who have any questions to contact Chuck or Steve. Chuck retired in 2017, and Steve left the District many years ago. (N.T. 83-84; JX-1-B)

#### DISCUSSION

Pursuant to Section 607(ii) of PERA, the District has the burden of proving that, under the totality of the circumstances, it has a good-faith doubt that a majority of the employees support the Union. Annville-Cleona School District, 13 PPER 13054 (Final Order, 1982) (opining that a determination of good-faith doubt must be determined by examining the totality of the circumstances and that a combination of factors may evidence a good-faith doubt where the same evidence taken separately may not). The combination of factors supporting a finding of good-faith doubt may include the union's inactivity in failing to monitor contract provisions and pursue grievances, In the Matter of the Employees of Bradford County, 30 PPER 30034 (Final Order, 1999), and trends in the decline of dues deductions. Donegal School District, 12 PPER 12288 (PDO, 1981). The Board, in Bradford, stated that the mere passage of time without in-person bargaining could be the result of the relative positions of the parties in negotiations and concluded that the union in that case was actively involved in representation by filing unfair practice charges against the employer, which affected a decertification drive, and by actively opposing decertification. The Bradford County Board, therefore, affirmed the Board Secretary's dismissal of the employer's decertification petition. In Donegal School District, the examiner relied on NLRB caselaw and noted that relying solely on declines in dues deductions alone will not support a finding of good-faith doubt of majority status, but also noted that such declines coupled with other factors could support an employer's good-faith doubt. Donegal School District, *supra*.

In Bradford County, the Board noted that it had previously adopted the NLRB's standard for evaluating employer-filed petitions seeking a decertification election as follows:

By its very nature, the issue of whether an employer has questioned a union's majority in good faith cannot be resolved by resort to any simple formula. It can only be answered in light of the totality of all the circumstances involved in the case. But among such circumstances, two factors would seem to be essential prerequisites to any finding that the employer raised the majority issue in good faith in cases in which a union has been certified. There must, first of all, have been some reasonable grounds for believing that the union had lost its majority status since its certification. And, secondly, the majority issue must *not* have been raised by the employer in the context of illegal anti-union activities or other conduct by the employer aimed at causing disaffection from the union or indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union.

Bradford County, *supra* (quoting Celanese Corporation of America, 28 LRRM 1363, 1366 (1951) (emphasis original)).

The Annville-Cleona Board examined several factors offered by the employer to support its position that a good-faith doubt existed. The Board concluded that a reduction in the number of employees in the bargaining unit, from 75 to 40 employees, 3 years prior to the filing of the petition is not

evidence of good-faith doubt of a loss of majority status. The Board also concluded that statements from 6 of 40 employees in the bargaining unit that they were dissatisfied with the Union is not evidence supporting the conclusion that the employer has a good-faith doubt of majority support. The Board further concluded that the employer could not rely on the number of union members, which did not constitute a majority, to support a decertification petition, where union membership consistently hovered between 30% and 34% since certification, even after a reduction in bargaining unit employees. The Board, in Annville-Cleona, stated: "Many employees while approving of a union may not choose to give it their financial support. . . . especially in view of the fact that the percentage of employees who are members has remained." Id. Also, employee turnover alone was not sufficient to support a good-faith doubt, where 3 employees left the school district. Id.

The objective facts of record in this case show that, in 2009, the Union won an election by a slim majority of votes with 19 employees voting in favor of Union representation and 17 employees voting for no representative. Since then, the number of dues paying members has steadily declined to a total of 7 dues paying members out of 36 bargaining unit employees, 6 of whom are on the Union's Executive Board. Although a decline in dues paying members was not alone sufficient to support a finding of good-faith doubt in Annville-Cleona, where 30%-34% of employees in the bargaining unit were still union members, here only 7 out of 36 employees are Union members. Additionally, only 3 of the original Union members remain members, and none of the last 38 hired employees in a bargaining unit of 36 joined the Union. These facts are quite distinguishable from Annville-Cleona.

Although employee turnover itself is not indicative of good-faith doubt, Annville-Cleona, the fact that almost every employee since the narrow-margin election has changed in combination with the fact that only 7 of 36 employees are Union members supports the good-faith doubt of the District. Unlike Annville-Cleona, where the percentage of union members remained almost the same, the percentage of Union members in this bargaining unit has steadily declined from 20 out of 36 employees to 7 out of 36, i.e., from 55% to 19%. There is only 1 non-Executive Board employee who is a Union member. In this regard, less than 3% of non-Executive Board employees are Union members. And 0% of non-Executive Board employees, who are Cafeteria workers, are Union members. In other words, other than Executive Board Member Lori Benner, there are no Cafeteria employees who are Union members. These significant and precipitous declines in Union membership serve as one indicator of a lack of Union support. Donegal, supra.

Food Service staff and Lunchroom Aids comprise a majority constituency of the bargaining unit at 21 out of 36 employees. Only 1 Food Service employee is a Union member, and she is on the Union Executive Board. None of the Food Service employees, including the 1 Union member, Lori Brenner, attend negotiation sessions or Union meetings. The District provides a seniority list to the Union every six months. The Union uses the list to contact new employees whose probationary period has expired. Union President Brennan contacts new employees at the High School, and Vice President Hanson is supposed to contact new employees at the Middle School. However, even after allegedly making such contact, no new employees have joined the Union in the past 7 years, overall Union membership is lower than 20%, and non-Executive Board membership is below 3%.

The District has 3 school buildings close to one another on the same plot of land. Access to employees in these 3 buildings is not burdensome.

Although the Cafeteria employees work a shorter shift and leave earlier than the Custodial/Maintenance employees, who make up the majority of the Union Executive Board, the CBA provides that the Union leadership shall have an opportunity to meet with employees after their probationary period and provides leave for Union business. The Union leadership has in fact had access to bargaining unit members throughout the day, has met with Cafeteria employees before the start of the work day, and has access to employee emails for Union business. Yet Union membership remains limited mostly to the employees on the Union Executive Board.

Mr. Bendigo has repeatedly expressed concern over Food Service representation at negotiation sessions and sought Union input regarding how certain contract provisions, regarding personnel reassignment and out-of-class pay, applied to Food Service workers. However, the Union negotiators could not explain to Mr. Bendigo and the District negotiators how those contract provisions operated in Food Service because they did not communicate with Food Service employees during bargaining to learn how reassignments and out-of-class pay operated.

Recently, the Union distributed anonymous surveys to Union members only to seek input about concerns they wanted addressed in bargaining a new CBA. The Union received only one survey in return. During negotiations, Union leaders could not identify any discussions they had with non-member Food Service employees and Lunch Room Aids regarding contract negotiations.

Mrs. Bendigo has been a Food Service employee at the District for 20 years. She is a former Union member and former Union negotiation team member. While she was a Union member, she encouraged employees to join the Union, until 2016, when she resigned her membership. The Union has not contacted Mrs. Bendigo seeking her input regarding working conditions and concerns or bargaining priorities. Although Mr. Brennan has been Union President for 3 years, Mrs. Bendigo was unaware that he was the President. The Union has not met with Cafeteria employees in the Middle School where she works, even though Mr. Brennan believes that Mr. Hanson has met with those employees. I have resolved the conflict in testimony between Mrs. Bendigo and Mr. Brennan in favor of Mrs. Bendigo on this point of fact because of her actual presence at the Middle School. Also, there is no evidence that the Union leadership meets at all with the Cafeteria workers at the Elementary School. The Union has not asked Mrs. Bendigo to rejoin the Union or attend membership meetings.

Also, during negotiations for the 2016 contract, Mrs. Bendigo talked with the Union leadership about a floating holiday for all bargaining unit members. After the leadership finalized the contract, Mrs. Bendigo learned that only the Custodial and Maintenance employees received the floating holiday. This demonstrates that the Union leadership was advocating for Custodial/Maintenance employees and not the majority of their bargaining unit employees who worked in the Cafeterias, at that time. The Union additionally failed to attend a meeting with management, arranged by Mrs. Bendigo, to change the holiday disparity among bargaining unit employees, further demonstrating the Union's disinterest in representing Cafeteria employees. Although the Union argues that it had a different Executive Board in 2016, the present lack of contact with Cafeteria employees also shows a lack of interest in advocating for or representing the interests of the majority of bargaining unit employees for bargaining the current contract. Also, the Union's behavior in 2016 seemingly contributed to the disaffection of Cafeteria employees lasting until the present.

Ms. Brightbill has not received any grievances from the Union in the past 8 years that she has been the Director of Human Resources, and Mr. Brennan agreed that he has not filed any grievances during his 3 years as Union president. Mr. Hanson only accepted the position of Union Vice President because no one else wanted the position. In addition, Ms. Brightbill credibly testified that she does not regularly speak with the Union leadership, as she does with the teacher's union at the District. She further testified that she has not met with AFSCME leadership in recent years to discuss employe investigations, CBA violations, clarifications of CBA language, employe performance evaluations, District policy changes and their impact on bargaining unit members, or changes in the Union leadership. The Union has never requested regular labor management meetings or to utilize District spaces for Union activities. In addition, AFSCME officials have not contacted bargaining unit employes to inform them of their rights or of changes to the contract. The failure to monitor contract provisions, pursue grievances, and advocate for employes evidences the Union's disinterest in representing the bargaining unit members resulting in a lack of support for the Union. Bradford County, supra.

Accordingly, the record, as a whole, supports the conclusion that the District has a good-faith doubt that the majority constituency of bargaining unit members, i.e., the Cafeteria workers, support the Union based on a combination of factors that satisfies the standards set forth in Bradford County, supra, and Anncville-Cleona, supra. These factors include the following: the Union officials' lack of interaction or communication with Cafeteria workers, even though the Union has plenty of physical and email access to those workers; the overall lack of enthusiasm of Union leaders to represent and advocate for Cafeteria workers, file grievances on their behalf, challenge their evaluations, or challenge District policy changes; the employes' direct contact with Human Resources for employment issues without utilizing the Union; Mrs. Bendigo's unawareness of the identity of Union leaders for almost 3 years, until her husband began the latest round of in-person negotiations; the Union's failure to change outdated Union contact information on its Cafeteria posting board;<sup>2</sup> only 1 out of 21 Cafeteria workers (i.e., less than .05%) is a Union member, and she is on the Executive Board; overall membership has declined from 55% to 19%; non-member Cafeteria employes are not consulted or represented for bargaining purposes; no Cafeteria workers attend Union meetings; in 2016, the Union negotiated a floating holiday for Custodial/Maintenance workers only, not Cafeteria workers, and the Union refused to address the matter on behalf of Cafeteria workers with management upon request, contributing to the current decline in Union support from Cafeteria employes; and no new hires have joined the Union in the past 7 years.

Moreover, the records lacks any facts from which to infer that the District raised the issue of majority support for the Union "in the context of illegal anti-union activities or other conduct by the employer [District] aimed at causing disaffection from the [U]nion or indicating that in raising the majority issue the [District] was merely seeking to gain time in which to

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<sup>2</sup> The Union argues that its Cafeteria bulletin boards are in the women's bathrooms, which are not visible to Union leaders. This argument, however, does not rebut the inference that none of the many bargaining unit members using those bathrooms communicate with the leaders enough either to know themselves that the contact information was outdated and/or to inform the Union that the information was outdated.



undermine the [U]nion." Bradford County, supra. Also, the District has not placed any obstacles in the Union's way compromising the Union's ability to contact or interact with employees. Indeed, the District has facilitated and encouraged such interaction through its email system and by way of the Union-business provision in the CBA. Therefore, the examiner recommends an election to determine majority status. If in agreement with this recommendation, the Board Representative may issue an order and notice of election upon receiving a voter eligibility list from the District pursuant to this Order.

#### **CONCLUSIONS**

The Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The District is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The District has a good-faith doubt that a majority of employes in the certified bargaining unit of nonprofessional, blue-collar employes support the Union, under Section 607(ii) of the Act.

5. The unit certified by the Board for collective bargaining is a subdivision of the employer unit comprised of: "All full-time and regular part-time blue-collar nonprofessional employes including but not limited to cafeteria workers, lunchroom aides, custodians and couriers; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act."

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

#### **HEREBY ORDERS AND DIRECTS**

that the District shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes included in the bargaining unit description set forth above.

#### **IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this twenty-first day of September, 2023.

PENNSYLVANIA LABOR RELATION BOARD

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Jack E. Marino, Hearing Examiner