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April 29, 2010

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1426 North Clayton Street
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Re: Green v. Correctional Officers Association of Delaware, Inc.
C.A. No. 4956-VCN
Date Submitted: January 16, 2010

Dear Counsel:

Petitioner Margaret L. Green was the Institutional Vice President of Respondent Correctional Officers Association of Delaware, Inc. ("COAD"), the collective bargaining unit for correctional officers and a few support personnel, at the Sussex Correctional Institute ("SCI"), a facility of the Delaware Department of Correction ("DOC"). The membership at SCI attempted to remove her from that position by circulating a petition as authorized by Article XIII(c) of COAD's

Constitution (the “Constitution”).¹ The dissidents believed that they had obtained the necessary signatures and promptly submitted the petition to COAD’s principal office in Dover. COAD accepted the petition and concluded that a sufficient number of qualified unit members had supported the recall effort. Green, thus, not only lost her position as Institutional Vice President for SCI, but also as Senior Vice President of COAD, a position she also held by virtue of her status as an Institutional Vice President.

Green contests her removal and brought this action to be reinstated to her positions. She challenges both COAD’s process for assessing the sufficiency of the petition and the number of persons validly joining in the petition.

This letter opinion sets forth the Court’s findings of fact and conclusions of law following trial.

* * *

Green was elected Institutional Vice President for SCI in January 2007 and reelected in January 2009. She also was appointed to the COAD Executive Board as

¹ COAD Ex. 5.

Senior Vice President in February 2007 and February 2009, both as the result of her election as SCI's Institutional Vice President.² In August 2009, fellow bargaining unit members at SCI decided to seek her removal by petition, a procedure authorized by the Constitution: "Any Institutional Vice President may be removed from office by submitting a petition with fifty (50) percent plus one from that specific institution."³

Two numbers are important for assessing the sufficiency of a petition drive: first, the number of members in good standing of the bargaining unit at SCI, and, second, the number of such members supporting the petition. Determining the number of members is not as easy for COAD as it sounds. First, it is dependent upon the DOC to generate the number of employees at SCI who are in the bargaining unit. Second, only members in good standing (i.e., excluding employees who do not become members of COAD but, instead, are required to pay a "fair share" fee) may be counted. Third, the bargaining unit includes employees who are not correctional officers, but who, instead, work in food service, maintenance, and the Sussex Boot

² The positions carry certain benefits such as a monthly stipend and release time from work at SCI.

³ COAD Ex. 5, Art. XIII(c).

Camp. Finally, it is not possible to circulate a petition in a single day among the few hundred unit members at SCI. With the passage of time, the number of employees invariably increases or decreases because of, for example, new hires, resignations, retirements, and reassignments. Fortunately, after trial, the parties were able to agree upon 302 as the total number of bargaining unit members for these purposes.⁴

* * *

With 302 unit members, 152 valid signatories to the removal petition were required to oust Green.⁵ The parties dispute whether the petition⁶ contains at least that many valid indications of support. For the reasons that follow, the Court finds that at least 156 qualified unit members endorsed the petition and that the removal effort satisfied the requirements of Article XIII(c) of the Constitution. The petition,

⁴ Letter of John F. Brady, Esq., dated January 15, 2010; Letter of Perry F. Goldlust, Esq., dated January 15, 2010. By COAD Ex. 7, there are 265 correctional officers assigned to SCI. Within that bargaining unit are also 10 food service workers, 12 maintenance employees, and 20 boot camp officers. Those numbers add up to 307. Five of the 307 are “fair share” members and thus not entitled to participate in the petition process. That reduces the number of unit members to 302. Although Green argues that A. Suvie should be treated as a fair share member, an Anthony Suvie is listed as a full share member and thus should be counted.

⁵ The number of 152 is reached by taking 50% of 302 (151) and adding one to that.

⁶ COAD Ex. 4.

as submitted, contained 173 names. Green challenges 26 entries.⁷ As she points out, 11 are not on the list of unit members.⁸ One employee is not assigned to SCI and should not be included.⁹ Five signatures are “fair share” members and thus not eligible to participate in the petition process.¹⁰ With these adjustments, the 173 signatures are reduced to 156 valid signatures—in excess of the minimum number required for Green’s removal.

The balance of Green’s challenges focuses on matching the names on the petition to the names on the eligible employee list. Although the information may not be precise, Green’s challenge addresses the use of first initials where there are individuals with similar names. Nevertheless, there is no reason to believe that the petition was not signed by a valid unit member. Similarly, there are two names

⁷ Green Ex. 1.

⁸ These individuals are: A. Deal, L. Muniz, K. Thomas, J. Bishop, W. Dukes, R. Deputy, L. Diaz, H. McCary, K. Dickens, B. Johnson, and R. DuPaul.

⁹ That is Charles Williams.

¹⁰ These individuals include: K. Rogers, W. Fort, D. Collison, D. Hutson, and J. Rivard. COAD President Stephen Martelli testified that, the dues list notwithstanding, Kirk Rogers is a full share member. As noted above, Anthony Suvie is shown as a full share member on the dues list and, thus, entitled to participate. Even if, for some reason, he is not properly counted, given the final tally, the effect would be immaterial.

which appear on the petition as simply last names; there are employees eligible to participate by those last names at SCI.¹¹

In sum, the petition contained a sufficient number of qualified entries. The terms of the petition process authorized by the Constitution were satisfied. It follows that Green's removal from the office of Institutional Vice President has sufficient support among the unit members at SCI. It also follows that her removal as a member of the COAD Executive Board as a Senior Vice President was also appropriate because her right to participate in that role was directly attributable to her status as Institutional Vice President. With the loss of status of Institutional Vice President, it also follows that she is no longer entitled to serve as Senior Vice President.

¹¹ For example, Green challenges a "J. Rogers" because there are both a Jeffrey Wayne Rogers and a John W. Rogers at SCI. A similar challenge relates to members by the name of Steele, Hastings, and Coverdale. Adams and Buckle are the names for which no first initial is provided, even though individuals by each of those last names is entitled to participate. She challenges the fact that two R. Wests appear on the petition, but there are a Ronald West, Jr. and a Richard West, Jr., both of whom are eligible full share unit members.

Green also opposes the use of email as a means of supporting the petition, instead of handwritten signatures. She offers no reason why an organization such as COAD, necessarily a somewhat informal organization, should be required to rely only upon handwritten signatures. Because it is not unreasonable to use email submittals, and because there is no express requirement in the Constitution that petitions be hand-signed, it seems there is no reason why email participation in the removal process should be precluded.

* * *

Green also challenges the process used by COAD to assess the sufficiency of the petition drive. After concluding that they had mastered enough support, the dissidents sent the petition in early September to COAD's office. There they were reviewed by Martelli who obtained the SCI membership count from DOC's human resources department and then compared the names on the petition with the list of dues paying members and thereby rendered the conclusion that Green had been removed from office in accordance with the Constitution. She was advised accordingly.¹² No allegation of bias has been made against Martelli in undertaking this effort. No allegation of fraud in the obtaining of the signatures has been presented. Although it arguably would have been better if the Constitution had pointed the way to count up and assess the validity of the signatures on the petition, the process employed was fair, if possibly imperfect. Perhaps more importantly, the accuracy of that effort has been confirmed through the judicial process.

Green, nevertheless, contends that the Constitution does establish a specific process that must be followed when an officer contests the sufficiency of a petition

¹² See COAD Ex. 8.

drive to remove her from office.¹³ She argues that she was entitled to the convening of COAD's Judicial Panel under Article IX of the Constitution, Section 6 which provides that: "The Judicial Panel shall have authority to hear any matter and impose any penalty provided for in the Constitution, or in the Judicial Panel Rules of Procedure."¹⁴ Moreover, by Article XIII, Section (h), of the Constitution, "[p]rocedures on charges, trials, disciplinary action, penalties, removal from office and appeals shall be in accordance with this Constitution and the COAD Judicial Panel Rules of Procedure."

Under the Constitution, a COAD officer may be removed from office by two means: first, by petition or recall, and, second, as the result of charges—a for-cause mode of dismissal. According to Green, the provisions quoted above entitle her to a

¹³ The Court employs general principles of contract interpretation, such as giving words their plain meaning, in interpreting the Constitution. However, adherence to federal precedent that "courts typically defer to a union's interpretation of its own Constitution unless it is 'patently unreasonable'" would render the Court's ultimate determination here even more secure. *Executive Bd. of Transp. Workers Union of Philadelphia, Local 234 v. Transp. Workers Union of Am., AFL-CIO*, 338 F.3d 166, 170 (3d Cir. 2003). See also *Local 100 Transp. Workers Union of Greater New York v. Transp. Workers Union of Am.*, 2005 WL 2230456, at *5 (S.D.N.Y. Sept. 13, 2005) ("[A] union's interpretation of its own constitution and other governing documents is entitled to great deference. In its limited review the Court will uphold a union's interpretation unless it is patently unreasonable or made in bad faith.").

¹⁴ The Judicial Panel Rules of Procedure appear as COAD Ex. 6 in the trial record.

hearing before the Judicial Panel. The Panel Rules, however, deal expressly with “charges.” That focus would suggest for-cause dismissal. Green does not point to anything else in the Constitution or the Panel Rules addressing or suggesting any specific procedure for removal by petition. Article XIII, Section (h), of the Constitution does not independently establish any right to a hearing before the Judicial Panel on removal from office by recall petition. It simply says that the procedures for removal from office will be “in accordance with” the Constitution or the Panel Rules. Because Green has found no specific reference in the Constitution or the Panel Rules that would confer a right to a hearing before her to removal by petition, her claim fails.¹⁵

* * *

For the foregoing reasons, as the result of the petition process, Green was validly removed from the two offices which she held, and her rights were not

¹⁵ The Constitution does, in other instances, provide that specific matters not involving charges are governed by the Panel Rules. For example, by Article XII, Section 4, the Election Committee’s decisions regarding election protests and challenges may be reviewed under the Panel Rules.

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otherwise frustrated.¹⁶ Accordingly, judgment will be entered in favor of COAD.

Each party will bear her or its own costs.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

¹⁶ Even if the Court were to determine that COAD's procedures entitled Green to a hearing before the Judicial Panel, the relief which she would have earned would not have been reinstatement; it simply would have been a direction that the Judicial Panel hear her complaint.