

MINUTES

Erie County Council

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3-13-25 BoE MEETING MINUTES

Call to Order

Chairman Drexel called the meeting to order at 4:03pm.

Roll Call

Members Present: Chris Drexel, Chair, Rock Copeland, Vice Chair (Zoom), Ellen Schauerman, and Terry Scutella
Others Present: Karen Chillcott, Megan Moore, Tom Talarico, Jay Stranahan, and Tonia Fernandez

Hearing of the Public

Freda Tepfer, City of Erie: Ms. Tepfer stated that she wanted to be assured that in-person training would be kept for poll workers. She stated not all poll workers were technologically advanced or had access to a computer. She reminded the public that to vote in the primary election they had to be registered with a political party by May 5, 2025. She also stated she supported postage paid mail-in ballots.

Approval of Minutes of Previous Meeting

A motion to approve the minutes was made by Mrs. Schauerman, seconded by Mr. Scutella, and carried 4-0.
Yea: 4
Nay: 0

February 11, 2025 Special Meeting

Election Report

Change of Polling Location Chair Drexel announced the change of the polling locations in Erie. Mr. Copeland asked for background on the change. Mrs. Chillcott announced the building was being rented out to a new tenant and would no longer be available for elections. Mr. Copeland motioned to approve the polling location changes, seconded by Mr. Scutella, and carried 4-0.
Yea: 4
Nay: 0

Official relocation of Erie Ward 4 – District 6 and Erie Ward 4 - District 7 from St. Andrew's Parish Chapel Building

1116 W. 7th St., Erie, PA
16502 to Strong Vincent
Middle School, 1330 W. 8th
St., Erie PA, 16502

**Possible authorization of
county funds to pay for
postage on Mail In and
Absentee ballots**

Chair Drexel opened up discussion about item B, the authorization of paid postage for mail-in ballots.

Mr. Copeland stated that he approved paid postage of mail-in ballots because any cost incurred by a voter is akin to a poll tax. He stated the EIG grant paid the outgoing postage and the county was responsible for the return postage.

Mrs. Schauerma asked Ms. Chillcott for the cost of postage in the last election. Ms. Chillcott said she would have to double-check.

Mrs. Schauerma asked how many returned ballots there were in the last election.

Ms. Chillcott and Mrs. Fernandez both stated they did not know. Mrs. Fernandez stated it cost .84 per ballot.

Mr. Copeland stated he thought it was 32K or 33K.

Ms. Chillcott stated she thought with the last municipal election it had been anticipated that there would be approximately 20K mail-in ballots and only 15K were returned, so the breakdown was lower than what was returned. She noted return postage was not paid on the total number of ballots, but just the ones that were returned without postage. She stated that people could use a stamp and save the county money.

Mr. Copeland asked if money was budgeted to pay for this, line items to accommodate the cost.

Ms. Chillcott stated yes, just as what was done in the past, and she could allocate it for that purpose because with the budget there were choices, so it was an option.

Mr. Copeland stated there were roughly 36K returned mail-in ballots.

Mrs. Schauerma offered that gas money was not given to those that voted at the polls, and postage was not paid when mail-in ballots had begun, but a large percentage were returned.

Ms. Chillcott stated it had to be decided that night because the printer had to start production of the envelopes. She gave the cost from the presidential election for mail-in ballots, \$22,185 for outgoing mail and \$15,900 for returned mail.

Mr. Copeland motioned to approve paid postage for returned mail-in ballots.

Mr. Scutella seconded the motion, and it carried 3-1.

Yea: 3 (Copeland, Drexel, Scutella)

Nay: 1 (Schauerma)

**Discussion of Learning
Management Solutions for
Online Poll Worker
Training**

Chair Drexel announced the next item and stated it was his understanding that the intention was not to replace in-person training with online training, it was another option. He stated it was more access to get it done and quicker. He noted last year they said that close to the end stragglers were trying to get through the program and this may alleviate that issue.

Mrs. Schauerma asked if the online training was paid training.

Ms. Chillcott stated they would not be paid. It was fully expected for people to

participate in the in-person training. Everyone needs to go, especially the first time to be hands-on with the machines and poll pads. She noted this software was for recurring workers or as a refresher. She also stated there were metrics to generate reports to measure when people used the software, and it had shown the night before elections had a high viewing rate. She reported that last year when there were more provisional ballots expected that poll workers could have gone online from home for a refresher course on that topic. She concluded people need to attend in person, but the purpose of this was it could be supplementary, for student poll workers, and for updates.

Mrs. Schauerman stated she liked the option, but people should train in-person as well and not be paid for the on-line training.

Ms. Chillcott stated she saw this as strictly supplemental and best suited for recurrent training.

Mrs. Schauerman questioned if it was interactive.

Ms. Chillcott stated there were quizzes, polls, and videos all based on the election manual.

Mrs. Schauerman asked for the cost.

Ms. Chillcott stated the current quote was for \$30K for unlimited users; if the Board was interested, an RFP was prepared for bidding. She noted there were three known companies for election training as well as others for learning software.

Mrs. Schauerman asked if the cost included the rights to the training.

Ms. Chillcott stated that it would be owned by Elections and included the cost of building the training system.

Mr. Copeland asked if EIG funds could be used and if approval for an RFP was the request.

Ms. Chillcott affirmed the funds could be used and wanted approval to put out an RFP for the software.

Mr. Copeland questioned when implementation was anticipated.

Mrs. Chillcott stated for the Municipal Election in the fall.

Mr. Copeland motioned to approve an RFP be put out for bid, seconded by Mrs. Schauerman, and carried 4-0.

Yea: 4

Nay: 0

Questions and Comments from the Board

Mr. Scutella reported on a call he received about the Elections Office, and stated the caller praised them for job well done helping with petitions.

Mrs. Fernandez stated that the staff was almost all new, and they did a great job being thorough and helpful.

Deputy Solicitor Stranahan reported on the Previte v. Erie County Board of Elections case pertaining to contempt of court and bad faith claim for preserving video footage. He stated the decision was just handed down by Judge Ridge and found there was no contempt or bad faith on the part of the Clerks (Slomski and Chillcott), the office, or the Board of Elections. (Order attached.)

IN THE MATTER OF MICHELLE : IN THE COURT OF COMMON PLEAS
PREVITE, : OF ERIE COUNTY, PENNSYLVANIA
Appellee/Requestor, :
v. : CIVIL ACTION - LAW
ERIE COUNTY BOARD OF :
ELECTIONS, : Case No.: 10797 - 2023
Appellant/Respondent :

OPINION AND ORDER OF COURT

AND NOW, this 13th day of March 2025, the matter before the Court is the "Motion for Contempt for Failure to Comply with Court Order Dated August 8, 2023" filed on behalf of Appellee/Requestor, Michelle Previte (hereinafter referred to as "Previte"). Mrs. Previte filed a Motion seeking to have this Court find the Appellant/Respondent, Erie County Board of Elections (hereinafter referred to as the "Board"), in contempt of court based on the claim that the Board acted in willful and intentional defiance of this Court's Order dated August 8, 2023. Specifically, Mrs. Previte alleged that the Board failed to obtain, preserve, and provide her with video surveillance from cameras which had been under the Board's control during the time period approximately one-month to a month and a half period during the 2022 General Election.

Subsequent to the filing of the Motion for Contempt, this Court conducted several evidentiary hearings. This Court then issued an Order on August 27, 2024 which required each party to file Briefs in Support of their respective positions. Both parties complied with the deadlines set forth in the Order. The Board's Brief was docketed on

Rule 236 notice
provided on: 3/13/25

August 8, 2024, and Mrs. Previte's Brief was timely filed on October 25, 2024.

After reviewing those Briefs, the Court's own notes taken during the previous evidentiary hearings, and the relevant pleadings, this Court determined that one final oral argument was necessary, primarily because Mrs. Previte stated in her Brief that she "concedes that the evidence presented in court does not meet a high bar for finding the Board in contempt of court." However, she also argued that this Court should still make a determination "of bad faith" and indicated that she had made a Motion for Finding in Bad Faith in her opening statement during the first evidentiary hearing.

This Court's Order of December 27, 2024 scheduled that oral argument on January 17, 2025, and indicated that the specific issues to be finalized before the Court were limited to:

1. Is the Appellee/Petitioner withdrawing her request for an Order finding the Erie County Board of Elections in contempt of Court?
See Petitioner's/Requester's Brief, October 25, 2024 at 1.
2. Is the issue of whether the Board acted in "Bad Faith" separate from the Contempt of Court Petition/Request?
3. If that issue remains before the Court, what is the exact standard of review?
4. If a finding of bad faith is made by this Court, what are the minimum and maximum levels of sanctions?

Both parties appeared at the oral argument on January 17, 2025, and provided responses to the specific questions itemized above.

Analysis

I. Contempt of Court

Initially, this Court acknowledges and respects Mrs. Previte's candor that the record developed over the course of the last year would not support the finding of contempt against the Board. The Court is aware of the time and effort that Mrs. Previte has put into this litigation, and that this matter remains very important to her. The Court is also aware that if a finding of contempt would have been entered against the Board, Mrs. Previte could have been awarded financial compensation pursuant to the applicable statutes.

The Court agrees that Mrs. Previte is correct in her analysis, and even if she did not take the position referred to above, that this Court would have specifically determined that the record does not support a finding of contempt.

The Court believes that it is fair to summarize all the testimony, exhibits, and pleadings as leading to this conclusion: that after this Court issued its Order concerning the custody, control, and preservation of the video surveillance camera recordings referred to previously; and that the Board did not act in willful and intentional defiance of the Court Order. Further, both Julie Slomski, who previously served as County Counsel's clerk, and therefore had the responsibility to attempt to obtain and preserve the recordings, and Karen Chilcott, her successor, who assumed the same responsibilities, did everything that they could have reasonably done to obtain all of the surveillance recordings and provide them to Mrs. Previte. This Court will not categorize the "institutional" road blocks, which cannot be attributed to the Board, and will only

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comment generally about the lack of cooperation/communication from county personnel who were not under the Board's control that contributed to the inability, not the failure, of the Board to obtain and preserve the tapes in question. Moreover, as the Respondent's Brief points out, much of the evidence involving the events and acts occurred *before* the Order was entered. The Court accepts the representation by the Board that "as a result of this experience, the Board has implemented remedial measures that are in place for future, and similar, Right to Know Requests." See Respondent's Brief, October 8, 2024 at 2.

II. Bad Faith

As indicated in the Order of December 27, 2024, which scheduled the final oral argument, one of the issues this Court required the parties to address was whether Mrs. Previte was still pursuing a "bad faith" claim, and/or whether she was prohibited from doing so by statute or procedure. In said Order the Court posited the following inquiries:

"#2. Is that issue of whether the Board acted in "Bad Faith" separate from the Contempt of Court Petition/Request?

#3. Is that issue remains before the Court, what is the exact standard of review?

#4. If a finding of bad faith is made by this Court, what are the maximum and minimum levels of sanctions?"

Both parties properly addressed those issues at the January 17, 2025 oral argument.

To summarize, Mrs. Previte believes that she could still proceed with a bad faith claim against the Board, and contends that she raised the issue orally at the first evidentiary hearing. Her Brief also cites certain evidence, including documents and

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testimony, in support of her argument that the Board acted in bad faith. The Board contends that she is not able to proceed with a bad faith claim, and specifically argued on January 17, 2025 that this Court does not have the jurisdiction to make a determination of bad faith, and that bad faith is clearly separate from the issue of Contempt of Court. The Board cites Section 1303 in relation to Section 1302 (local agencies) of RTKL, and both parties made reference to the case of *Uniontown Newspapers, Inc. v. Pa. Department of Corrections*, in support of their respective arguments. In her Brief, Mrs. Previte, citing *Uniontown*, 243 A.3d 19 (Pa. 2020), claims that “[a] good faith response—either to produce records or assert an exemption—cannot occur absent a good faith search, followed by collection and review of responsive records, so an agency has actual knowledge about the contents of the relevant documents.”¹ In its Brief, the Board notes that in *Uniontown*, 185 A.3d 1161 (Pa. Commonwealth, 2018), while “the Commonwealth Court found that the Department of Corrections breached its duty of good faith when it failed to obtain records that it specifically possessed, within its own Health Care Bureau for example, or from third party, Pharmacy Contractor, that it specifically contracted with,” the case is different with the Board because “[t]he County Operations Department and IT Department are departments that are clearly different from the Board of Elections, not under its control and are by no means third-party contractors.”²

This Court notes that both parties correctly cited the same case law as the bad faith

¹ See Petitioner's/Requester's Brief, *supra* at 5.

² See Respondent's Brief, *supra* at 17.

finding of the Commonwealth Court in *Uniontown*, *supra* (Pa. Commonwealth, 2018) was affirmed by the Pennsylvania Supreme Court in *Uniontown*, *supra* (Pa. 2020). As explained in both cases, the RTKL is “designed to facilitate transparency of government information and to promote accountability.” As stated by the Supreme Court:

“[U]nder the RTKL, proof of bad faith does not require establishing corruption. Rather, an abnegation of mandatory duties by an agency, including performance of a detailed search and review of records to ascertain if the requested material exists, or if any exclusion may apply, prior to denial of access will support a finding of bad faith.”

See *Uniontown*, *supra* (Pa. 2020) at 25.

Significantly, the “requester bears the burden of proving an agency committed bad faith.”

See *Uniontown*, *supra* (Pa. Commonwealth 2018) at 1170.

Although the above recitation provides the appropriate summary for a review of a bad faith claim under the RTKL, this Court must address the procedural aspect of the matter. Under Sections 1302, and 1303 of the RTKL:

“Section 1302. Local agencies.

(a) General rule.—Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay.—A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

Section 1303. Notice and records.

(a) Notice.--An agency, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with section 1301 or 1302 and shall have an opportunity to respond in accordance with applicable court rules.

(b) Record on appeal.--The record before a court shall consist of the request, the agency's response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer." (emphasis added)

During the oral argument on January 17, 2025, the Board was adamant in its position that this Court does not have jurisdiction regarding the bad faith claim. As argued by the Board, since no formal notice of a bad faith allegation was made by Mrs. Previte, she could not now attempt to litigate or perhaps re-litigate a bad faith claim. Counsel for the Board referenced a statement that this Court had made that the Court believed that the proceedings were past that point of litigation involving a bad faith claim.³

While this Court acknowledges that Mrs. Previte attempted to raise a bad faith claim against the Board during the evidentiary hearing on February 5, 2024, the Court finds that the attempt is insufficient under the RTKL. It must be stressed that Mrs. Previte never alleged nor claimed bad faith on the part of the Board when she filed her Brief in Opposition to Appellant's Appeal filed on May 4, 2023 to give the Board notice and "an opportunity to respond in accordance with applicable rules," pursuant to the

³ "The Court: Aren't we past that point though?... So, again, we're here for contempt of court." See Transcript, Day 1, February 5, 2024 at 10-11.

requirements of Section 1303 of RTKL. Her failure to advance such argument results in waiver and estoppel. In *Posey v. Department of Corrections*, 339 A.3d 864, (Pa. Commonwealth, 2025), the court, while ruling in favor of the requester's petition under the RTKL, denied the requester's claim for civil penalty based on bad faith because of failure "to advance any argument" in support of the same. This Court agrees with the Board that it does not have subject matter jurisdiction over Mrs. Previte's bad faith claim.

Regardless, the Court notes it would find, if necessary, that Mrs. Previte failed to present evidence of bad faith to support her claim, and that the Board conducted a good faith search, with the appropriate representatives of the Board (Miss Slomski and Miss Chilcott) being diligent in their attempts to have other agencies, businesses, and representatives from County Government obtain and preserve the footage that Mrs. Previte requested. The Court also agrees with the summary of the entire situation set forth in the last paragraph of the Respondent's Brief which states that:

"Ms. Previte inspected the video surveillance footage, twice. She was given the USB drive containing the footage but refused to take it with her. She was offered, in court after hearing three plus days of testimony, to take the USB drive with her, but did not. (Day 4 Transcript, pg. 37). She had the USB in her own laptop, but did not make a copy of it. None of the Board's employees who interacted with Ms. Previte on these two days -- Jill Pennsy, Megan Morre, and Karen Chilcott, told her she was not permitted to copy the footage onto her own laptop. (Day 3 Transcript, pg. 9, and 64). Indeed, referencing the first day she was there 'They were all great, and they were all very nice and professional. I signed the receipt that Ms. Pennsy gave me, you know, to verify that I had picked it up.' (Day 4 Transcript, pg. 11)."

See Respondent's Brief, *supra* at 36

In conclusion, this Court finds that Mrs. Previte failed to meet her burden of proving the Board acted in contempt of Court. The Court also denies her attempts to proceed with the bad faith claim for the reasons set forth above.

An appropriate Order follows.

BY THE COURT:

David Ridge, Judge

Case# 2023-1079-0005 Received at Erie County Prothonotary on 3/13/2025 2:45 PM

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Chairman Drexel stated that was great news. He asked Ms. Chillcott if she wanted to talk about smart ballot boxes. She responded they would discuss them at a later time.

Solicitor Talarico stated he needed to address the Board in an executive session. The meeting recessed into an executive session at 4:26pm. The meeting was called back to order at 5:05pm and immediately adjourned.

Adjournment