

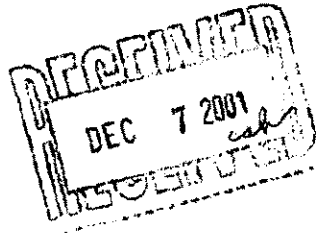


U.S. Department of Housing and Urban Development

New England Office of Public Housing
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Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222-1092

New England

DEC - 5 2001



COPY

Daniel Marvelle, Executive Director
Newport Housing Authority
One York Avenue
Newport, Rhode Island 02840-1212

Re Newport Residents Council

Dear Mr. Marvelle:

Ms. Carol Brotman, the Executive Director of the Rhode Island Public Housing Tenants Association recently wrote a letter to Secretary Martinez regarding the Authority's refusal to recognize the Newport Resident Council (NRC). We have been asked to review the NHA's position and to determine if it is in compliance with applicable HUD regulations.

As we understand it, the Newport Residents Council held an election on March 24, 2001, yet very few residents - only 47 of 1100 - chose to participate. In your letter to J. David Reeves dated August 23, 2001, you explained that the Board of Commissioners determined that a minimum voter turnout would be 110, and that the NHA is refusing to recognize the NRC as a duly elected resident council because not enough residents voted.

The NHA's position on minimum voter participation was adopted last year. On September 14, 2000, the NHA passed a motion at their monthly meeting that states in part:

That until NRC amends its bylaws to provide for recall procedures and to establish a threshold for elections, the Newport Housing Authority Commission as of this date establishes a threshold, which shall be the HUD guideline of 10% of the voting membership. For ease of determination, 10% of the voting membership means 110 valid signatures on a recall petition or 110 valid votes in a regular or special election. (See Minutes of the Regular Monthly Meeting of the Commissioners of the NHA, September 14, 2000)

The NHA is incorrect in its assertion that HUD has established a minimum participation threshold in order to validate resident council elections. HUD regulations at C.F.R. 24 964.130

set forth resident council election procedures and standards. These regulations require resident councils to adhere to the following minimum standards regarding election procedures:

- 1) All procedures must assure fair and frequent elections of resident council members at least once every three years for each member.
- 2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.
- 3) Each resident council shall adopt and issue election and recall procedures in their by-laws.
- 4) The election procedures shall include qualifications to run for office, frequency of election, procedures for recall, and term limits if desired
- 5) All voting members of the resident community must be given sufficient notice (at least 30 days) for nomination and election. The notice should include a description of election procedures, eligibility, and dates of nominations and elections.

Under HUD's rules, the resident council is responsible for establishing its own election procedures, so long as HUD's minimum standards are met. The regulations do not provide a role for HAs in the adoption and issuance of election procedures.¹ More importantly, the resident participation regulations do not require a minimum threshold number of participants for an election to be valid. While a resident council may voluntarily adopt a minimum voter requirement in its by-laws, a minimum voter requirement is not mandated by HUD and the NHA has no authority to impose such a requirement.²

HAs are obligated to monitor the resident council election process to ensure "fair and frequent elections" of resident council members and to ensure compliance with HUD's minimum election standards. 24 C.F.R. 964.130. And HAs must withdraw recognition of a resident council and withhold resident services funds only if a resident council "fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted." 24 C.F.R. 964.130(b)

In this case, the NHA did not find that the NRC election failed to satisfy HUD's minimum

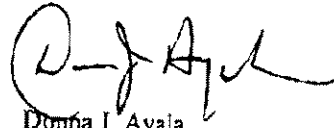
¹ The Department recognizes the importance of resident involvement in actively participating in the overall mission of public housing. 24 C.F.R. 946.1. As such, HUD promotes resident participation and the active involvement of residents in all aspects of a Housing Authority's overall operation. "Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA." 24 C.F.R. § 964.11.

² As you pointed out, the regulations require that at least ten percent (10%) of the voting membership must be in agreement in order to hold a recall election. 24 C.F.R. 964.115(b) The 10% threshold for a recall election was established to dissuade frivolous recall petitions. It was not intended as a minimum threshold standard for regular elections. If that was the intention it would have established them in the regulations as it did for recalls.

standards or that it was conducted in violation of the NRC's own election procedures as adopted. Rather, the NHA based its refusal to recognize the NRC on an erroneous interpretation of HUD requirements. Accordingly, based on the information available to us, the NHA had no basis on which to withdraw recognition of the NRC.

Since the NHA does not have an apparent basis under HUD regulations on which to withdraw recognition of the NRC, the NHA must recognize the NRC Board of Directors elected in March of 2001. Should you have any questions regarding the above, please contact Marlene D. Piekarsky at (401) 528-5366.

Very sincerely yours,



Donna J. Ayala
Director
Office of Public Housing
New England Region

Enclosure

cc:
Carol Brotman