

D.R. NO. 2017-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

QUEEN CITY ACADEMY CHARTER SCHOOL,

Public Employer,

-and-

Docket No. RD-2017-001

QUEEN CITY EDUCATION ASSOCIATION,

Employee Organization,

-and-

KIMBERLY LA ROCHELLE,

Petitioner.

**SYNOPSIS**

The Director of Representation orders that two unfair practice charges block further processing of a decertification petition. The charges allege that the employer interfered with the Association and its relationship with its membership through actions which constitute "intimidation and humiliation." The Association maintained that the totality of the employer's conduct had a chilling effect on the rights of the employees to support the Association.

The Director determined that the Association's request to block met the standards set forth in State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) and that a free and fair election could not be conducted prior to the adjudication of the unfair practice charges.

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Appearances:

For the Public Employer  
Schwartz, Simon, Edelstein & Celso, attorneys  
(Andrew B. Brown, of counsel)

For the Employee Organization  
Bergman & Barrett, attorneys  
(Michael T. Barrett, of Counsel)

For the Petitioner  
Kimberely LaRochelle, pro se

**DECISION**

On July 5, 2016 and August 2, 2016, Kimberly LaRochelle (Petitioner) filed a representation petition and amended representation petition, seeking to decertify the Queen City Academy Education Association (Association) as the majority

representative of a collective negotiations unit of about thirty-seven (37) "regularly employed, non-supervisory certified and non-certified employees employed by the Queen City Academy Charter School" (School). The Association refuses to consent to an election, asserting that its pending unfair practice charges against the School (CO-2016-200 and CO-2017-007) should block further processing of the petition. On August 19, 2016, we advised all parties that the Association seeks to block processing of the petition until its charges can be fully litigated. The School objects to any blocking effect of the charges, urging that the petition be processed and a secret ballot election conducted. The Petitioner has not submitted a position regarding the Association's blocking request.

The petition is timely and accompanied by an adequate showing of interest among unit employees. N.J.A.C. 19:11-1.3; 2.8. The Association has intervened in this matter, based on its current status as the majority representative. N.J.A.C. 19:11-2.7. On June 26, 2015, the Association was certified as majority representative (Docket No. RO-2015-040; D.R. No. 2015-11, 42 NJPER 82 (¶22 2015)).

The unfair practice charges were filed on March 28, 2016<sup>1/</sup> and July 14, 2016. A Complaint and Notice of Hearing was issued on June 29, 2016 in CO-2016-200, and on September 21, 2016 in CO-2017-007. The charges are consolidated and assigned to Hearing Examiner Wendy Young for further processing.

The first charge (CO-2016-200) alleges that the School violated N.J.S.A. 34:13A-5.4a(1), (2), (3) and (7)<sup>2/</sup> of the Act by seeking to interfere with the Association and its relationship with its membership through actions which constitute "intimidation and humiliation." The second charge (CO-2017-007) alleges that the School violated N.J.S.A. 34:13A-5.4a(1), (2) and (7) of the Act by the following conduct:

1. On May 20, 2016, the Director of the School Danielle West (West) issued a Strategic Plan for 2015-2020 in which "unionization" is listed as a "threat" which is defined in the document as "external to the school and represent risks to the school's viability or its

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1/ This Charge was filed, and the Complaint and Notice of Hearing issued prior to the filing of the subject decertification petition.

2/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

ability to conduct itself in accordance with its mission."

2. On June 1, 2016, an Occupational Health Consultant from the NJ Department of Health visited the school to conduct an inspection. Consistent with past practice, the consultant requested that a designated union representative be present for the inspection process. In response, West told the consultant that there is "no ratified contract for a union and no paid dues." Ultimately, a non-union employee representative was provided for the inspection.
3. Since the certification of the Association, the School has systematically attempted to intimidate and harass the Association president and vice-president. As of June 8, 2016, the vice-president was denied her increment for the 2016-2017 school year and denied a merit pay increase for 2016.
4. On or around June 15, 2016, school guidance counselors were actively recruiting members to join in a decertification effort, at the behest of the Director.
5. On or around March 24, 2016, during work hours at a staff meeting, the School invited representatives from the Association of American Educators to make a presentation to a captive audience of employees in an effort to mobilize decertification efforts in violation of the Act.

The Association alleges that the totality of the School's conduct has had a chilling effect on the rights of the employees to support the Association. It requests that the Association's charges be litigated so that the violations of the Act can be remedied before conducting an election on the decertification petition. In support of its request for blocking effect of its charges, it relies on documents appended to its request, and

certifications from Association President Gary Corcoran and Association Vice-President Jennifer Cherubini.

The School opposes the blocking request and disputes that any employees were threatened with "retaliation or the promise of a benefit based on any employee's vote." The School, through its reply and certifications of Danielle West and Cecile Middleton, contest many of the allegations made by the Association, Corcoran and Cherubini. The School acknowledges that the Association's allegation that the school guidance counselors were actively recruiting members to join in a decertification effort at the behest of Director West could provide a basis to grant a blocking request. However, the School submits that this allegation is unfounded and not supported by certifications by anyone with personal knowledge.

#### **ANALYSIS**

The filing of an unfair practice charge or issuance of an unfair practice Complaint will not automatically block the processing of a representation petition. The decision on whether an unfair practice charge or charges should block a representation petition is a matter within the Commission's discretion. State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981).

The legal standard for determining whether an unfair practice charge will block a representation election is set forth in State of New Jersey. Procedurally, the charging party must first request that the charge block the representation proceedings. It must then submit documentary evidence establishing the basis for its claim that the conduct underlying the unfair practice prevents a free and fair election. Where the charging party proffers such evidence, the Director of Representation will exercise her discretion to block if, under all of the circumstances presented, the employees could not exercise their free choice in an election. Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988); Village of Ridgewood, D.R. No. 81- 17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted the following factors in evaluating whether a fair election can be conducted during the pendency of the unfair practice charge:

The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5].  
[7 NJPER 109]

The Commission's long-standing policy is to expedite the processing of certain representation petitions so that the issue of whether employees will be represented for purposes of collective negotiations by an employee organization, majority representative or by no majority representative, can be brought to a prompt resolution through a secret ballot election. Additionally, timely representation petitions filed when no current contract is in place, effectively prevents the employer from lawfully continuing negotiations with the incumbent organization until the representation dispute is resolved.<sup>3/</sup> Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006); County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983). Therefore, we are cautious about permitting an unfair practice charge to block a representation petition. Ridgefield Board of Education, D.R. No. 2012-6, 38 NJPER 246 (¶82 2012). However, for the reasons stated below, I find that the totality of the conduct alleged by the Association's unfair practice charges, if proven, so taints the election process that a free and fair election cannot be held until the charges are remedied.

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<sup>3/</sup> Prior to the filing of the subject decertification petition, the Association and the School had filed for impasse and were attempting to negotiate a voluntary resolution of the impasse through mediation.



N.J.A.C. 19:11-2.8(b) provides:

Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit . . .

On June 26, 2015, the Association was certified as the majority representative of the petitioned-for unit.

All of the conduct set forth in the charges have allegedly occurred during the "certification year," a period of time intended to permit a "new" majority representative and public employer to negotiate collectively without diversion from that goal. See, e.g., NLRB v. Lexington Cartage Co., 113 LRRM 3778 (6th Cir. 1983).

The Association alleges that the School violated 5.4 a(3) of the Act by retaliating against union president Corcoran and vice-president Cherubini. Examples set forth in their certifications include: 1) On October 13, 2015, West sent a mass e-mail to all unit and non-unit employees, and to the Board of Trustees, stating, among other things, that Corcoran was "combative", "hostile", divisive and that his "behavior will not be tolerated"; 2) Cherubini, who had a history of excellent performance for fourteen years, was told by West in November, 2015 that she was a "cancer" in the building, and at the conclusion of the 2015-2016 year was given a letter of reprimand, had her increment withheld and lost a

merit pay bonus. Corcoran and Cherubini's activities as representatives of the Association, as detailed in the charge and supported by affidavits from Corcoran and Cherubini, are activities protected by the Act.

Cherubini certifies that during the initial week of the school year, West directed the staff to watch a recent documentary feature film, which Cherubini characterized as "anti-union."

Corcoran and Cherubini both certify that in March 2016, during a mandatory staff meeting, West invited a presentation from the Association of American Educators. They also certify that attendees at that presentation were provided with an "Abridged Guide for Charter School Employees About Unionization."<sup>4/</sup> The Guide includes a section entitled "Why Many Charter School Leaders Do Not Want to Have a Union". That section includes a six (6) bullet point statement expressing union stereotypes. Examples include: "An 'us versus them' atmosphere can develop"; "Union relationships require much time, energy, and extra costs—all better spent educating children."; "An over-emphasis on seniority may hurt a merit-based system and limit motivation opportunities..." It

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<sup>4/</sup> Cecile Middleton certifies that she did not distribute the "Abridged Guide," but states that she did distribute a document published by the AAE which is appended to her certification.

also includes a section entitled "Why Employees Might Want to Support a Union." The last sentence of that section states "[f]ortunately, charter schools can avoid such a negative atmosphere with management skills that produce highly productive and successful workplaces and create positive employee relationships, which diminish union attractiveness."

Corcoran certifies that in May 2016, the Board of Trustees, through West, published a five (5) year Strategic Plan. Within this Plan, "Unionization" was listed under the heading "Threats" with the explanation that "[t]hreats are external to the school and represent risks to the school's viability."

The Association also alleges that in June 2016, guidance counselors were actively recruiting members to join in a decertification effort at the behest of West. The School submits that this allegation is "completely unfounded." The Association has not presented certifications or other documentary evidence from unit members or other individuals with personal knowledge of this allegation. Therefore, this allegation does not support the issuance of a block. River Vale Board of Education, D.R. No. 2014-003, 40 NJPER 133 (¶50 2013).

For purposes of deciding blocking effect of the charge, we assume the veracity of the statements within the certifications

submitted by both parties. Ridgefield Board of Education, D.R. No. 2012-6, 38 NJPER 246 (¶82 2012). I determine that the alleged conduct by the School, if proven in hearing, has a chilling affect on employees' rights to support an organization of their choice, and therefore, creates an atmosphere in which a free and fair election cannot be conducted. Specifically, I find that the Association has submitted facts supported by personal knowledge of their president and vice-president claiming that the School, through West, engaged in a pattern of conduct which disparaged the Association, and interfered with the Association's relationship with its members. The Association specifies that during the one (1) year that the Association has been certified as the majority representative, the School engaged in various improper activities in an attempt to intimidate employees from supporting the Association, demonstrating a pattern of anti-union behavior by the School that would affect voter free choice.

Based upon the totality of the conduct alleged in the charge, together with the Association's supporting certifications and documents as outlined herein, I find that a free and fair election cannot be conducted at this time. Accordingly, I am pending further processing of the decertification petition until the unfair practice charges can be adjudicated.

ORDER

Further processing of the Representation Petition (RD-2017-001), is blocked pending litigation of the Complaints issued in CO-2016-200 and CO-2017-007.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

/s/Gayl R. Mazuco  
Gayl R. Mazuco, Esq.  
Director of Representation

DATED: September 27, 2016  
Trenton, New Jersey

**A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.**

**Any request for review is due by October 7, 2016.**