

D.R. No. 2009-10

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

In the Matter of

SCHOMBURG CHARTER SCHOOL,

Public Employer,

-and-

Docket No. RO-2009-064

SCHOMBURG CHARTER SCHOOL  
EDUCATION ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation certifies by Order the Schomburg Charter School Education Association/NJEA as the exclusive representative of a broad-based unit of professional and non-professional employees of Schomburg Charter School. The Director found that the Association's request for a card check certification was supported by signed authorization cards from a majority of the petitioned-for employees, which met the intent of the Statute providing for certification by card check. Regardless of the School's failure to respond and to submit a signed Stipulation of Appropriate Unit, the Director determined that the Association was entitled to certification based upon the card check.

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Petitioner.

Appearances:

For the Respondent,  
Kendal Coleman, PC, attorneys  
(Kendal Coleman, of counsel)

For the Petitioner,  
Oxford Cohen, attorneys  
(Sanford R. Oxford, of counsel)

DECISION

On January 15, 2009, the Schomburg Charter School Education Association/NJEA (Association) filed a timely representation petition for card check certification seeking a unit of "all non-supervisory employees of the Schomburg Charter School (School) including teachers, nurses, social workers, teacher aides, teacher assistants, cafeteria workers, secretaries, instructors, security guards and the data base administrator/information technology employees." These employees have not previously been represented. The Association's petition excludes the "lead education administrator, assistant lead education administrator

and the business administrator." The petition was accompanied by authorization cards from a majority of the unit employees. No other labor organization claimed interest in organizing these employees. Representatives of the School have not raised objections to the Association's petition, however, they have failed to execute a Stipulation of Appropriate Unit to allow its further processing.

We have conducted an administrative investigation into this matter to determine the facts. The disposition of the petition is properly based upon our administrative investigation. There are no substantial material facts in dispute which would require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation into this matter I find the following:

On January 20, 2009, we provided Notices to Employees, advising that the Association had submitted a petition for certification by card check. The School has certified that it posted these notices for the affected employees for the required ten-day period. On January 30, 2009, at our request, the School submitted a list of the employees sought by the Association. We have checked the submitted authorization cards against the names provided on the School's list and determined that a majority of unit employees have signed authorization cards for the Association, and that professional employees have agreed to be in a unit with non-professional employees.

After telephone conversations with the School's lead administrative representative and the Association representative, the Commission staff agent assigned to this matter forwarded to each representative a proposed Stipulation of Appropriate Unit reflecting the petitioned-for unit. The Stipulation was forwarded on February 2, 2009. The cover letter accompanying the Stipulation requested that each representative review the language describing the proposed unit. If it was acceptable and accurate, the representatives were to sign and date the Stipulation and return it to the staff agent as soon as possible.

Having received no response from either party by February 11, 2009, the Commission staff agent again contacted the parties' respective representatives. On February 18, 2009, as a result of these conversations, the Stipulation was again forwarded to each representative. The Association returned their copy of the signed, dated Stipulation on February 19, 2009.

Thereafter, the Commission staff agent attempted to contact the School's administrator on February 20 and 24, 2009. The staff agent left messages requesting that the Stipulation be signed and returned. No calls were returned, nor was the Stipulation. By letter dated February 25, 2009, the Commission staff agent again requested either the School's submission of the signed Stipulation or a substantive written statement setting forth the reasons for its failure to sign the Stipulation. In a follow-up call to the School's administrator concerning the

February 25, 2009 letter, the Commission staff agent was informed that the School had engaged counsel who was reviewing the Stipulation and the February 25, 2009 letter. Immediately thereafter, the Commission staff agent contacted the School's attorney by telephone and was informed that he would review the Stipulation and discuss it with the client and if satisfactory, it would be signed and returned forthwith.

On March 3, 2009, the Commission staff agent again spoke with the School's counsel and was informed that he had sent the Stipulation to the School's administrator and that the administrator would sign and return the form. Absent the administrator's return of the signed Stipulation to the Commission staff agent by March 4, 2009, the agent was authorized by the School's counsel to contact the School's administrator directly.

The Commission staff agent attempted to contact the School's administrator by telephone on March 5 and 9, 2009. No response was received. Neither the School administrator nor its counsel contested the Association's card check petition.

#### ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 to authorize the Commission to certify a majority representative where: (a) a majority of employees in an appropriate unit who have signed authorization cards designating that organization as their

negotiations representative; and (b) no other employee representative seeks to represent those employees. See N.J.A.C. 19:11-2.6(b).

The Employer in this case has failed to respond to the Association's petition for card check certification but has raised no contest to the petition or the Stipulation of Appropriate Unit.

The Legislature has determined that a check of an organization's authorization cards signed by a majority of employees in an appropriate unit is a lawful method to determine a majority representative. Our review of the Association's authorization cards shows that it has submitted cards from a majority of the petitioned-for employees. The employees' signatures on the cards meets the intent of the statute and the rules. Therefore, the Association is entitled to a certification based upon a card check (N.J.S.A. 34:3A-5.3) regardless of the School's failure to submit a signed Stipulation of Appropriate Unit.<sup>1/</sup>

Based upon the foregoing facts and analysis, I find the following unit is appropriate:

Included: All regularly employed non-supervisory employees of the Schomburg Charter School including teachers, nurses, social workers, teacher aides, teacher

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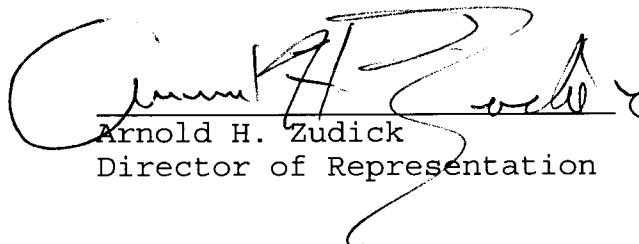
<sup>1/</sup> See Passaic County Prosecutor's Office, D.R. No. 2006-15, 32 NJPER 107 (¶51 2006); Atlantic County Prosecutor's Office, D.R. No. 2007-2, 32 NJPER 264 (¶108 2006).

assistants, cafeteria workers, lunch room aides, secretaries, instructors, security guards, maintenance workers, and the data base administrator/information technology employees.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police employees, casual employees; lead education administrator, assistant lead education administrator, business administrator and all other employees.

ORDER

I certify the Schomburg Charter School Education Association/NJEA as the exclusive representative of the unit described above, based upon its authorization cards<sup>2/</sup>.



Arnold H. Zudick  
Director of Representation

DATED: March 19, 2009  
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 March 30, 2009.

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<sup>2/</sup> The formal certification is attached.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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-and-

SCHOMBURG CHARTER SCHOOL EDUCATION  
ASSOCIATION/NJEA,  
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**CERTIFICATION OF REPRESENTATIVE  
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

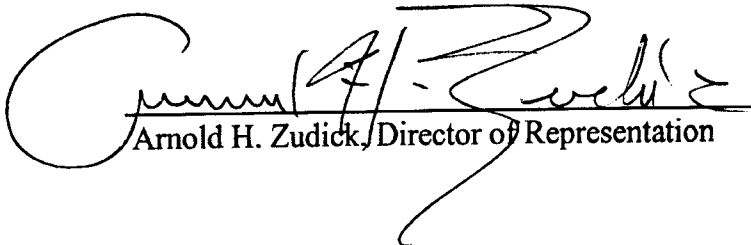
**SCHOMBURG CHARTER SCHOOL EDUCATION ASSOCIATION/NJEA**

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

**UNIT: Included:** All regularly employed non-supervisory employees of the Schomburg Charter School including teachers, nurses, social workers, teacher aides, teacher assistants, cafeteria workers, lunch room aides, secretaries, instructors, security guards, maintenance workers, and the data base administrator/information technology employees.

**Excluded:** Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police employees, casual employees; lead education administrator, assistant lead education administrator, business administrator and all other employees.

**DATED:** March 19, 2009  
Trenton, New Jersey

  
Arnold H. Zudick, Director of Representation



**Attachment:**

**Certification of Representative dated: March 19, 2009**

**In the Matter of**

**SCHOMBURG CHARTER SCHOOL**

**-and-**

**SCHOMBURG CHARTER SCHOOL EDUCATION ASSOCIATION/NJEA**

**Docket No. RO-2009-064**

**Service on the following:**

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