

D.R. NO. 2017-2

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

In the Matter of

INTERNATIONAL ACADEMY OF TRENTON
CHARTER SCHOOL,

Public Employer,

-and-

Docket No. RO-2016-045

INTERNATIONAL ACADEMY OF TRENTON
CHARTER SCHOOL EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation certifies by card check a unit of non-supervisory, certificated and non-certificated employees of the International Academy of Trenton Charter School (IATCS). IATCS objected to the petition on the grounds that multiple employees contacted the Commission seeking to revoke their signed cards. The Director rejected IATCS's arguments and concluded that IATCS had submitted a sufficient number of valid authorization cards to be certified as majority representative.

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Appearances:

For the Public Employer
Capehart Scatchard, attorneys
(Joseph F. Betley, of counsel)

For the Petitioner
Selikoff and Cohen, P.A., attorneys
(Keith Waldman, of counsel)

DECISION

On May 2, 2016, the International Academy of Trenton Charter School Education Association ("Association") filed a representation petition, together with signed authorization cards seeking certification as the majority representative of a collective negotiations unit of about 55 non-supervisory certificated staff, paraprofessionals, office workers, nurses, student management personnel, social workers, information technology workers, security workers, cafeteria workers and

custodians employed by the International Academy of Trenton Charter School ("IATCS"). IATCS objects to the Association's petition and declines to sign a Stipulation of Appropriate Unit form.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2(a). The disposition of the petition is properly based on our administrative investigation. No disputed substantial material factual issues warrant an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I make the following:

FINDINGS OF FACT

The petitioned-for employees are currently unrepresented. The Association seeks to represent all regularly employed non-supervisory certificated and non-certificated staff employed by IATCS.^{1/} The Association submitted with its petition signed

^{1/} On May 5, 2016, the Association filed a certification with its petition attesting that a majority of non-supervisory certificated employees of IATCS elected to be included in a collective negotiations unit with non-certificated IATCS employees. The ballots read, "I vote to form an association that includes **both** certificated teaching staff **and** Educational Support Staff Members including: Paraprofessionals, Office Workers, IT Workers, Security Workers, Student Management Personnel, Cafeteria Workers, and Custodians." [Emphasis in original.] The Association's submission satisfied the requirements for certifying a unit of professionals and non-professionals. N.J.S.A. 34:13A-6(d).

authorization cards from a majority of petitioned-for unit employees. The cards state:

[t]his card will be used to prove majority representation for recognition, and/or bargaining unit accretion, to the New Jersey State Public Employer-Employee Relations Commission, and/or the employer and shall otherwise be held in confidence.

The cards also state:

I hereby designate and authorize said association, its agents or representatives to act for me pursuant to Chapter 123, Public Laws 1974, as my exclusive agent and representative for the purpose of collective negotiations with respect to terms and conditions of employment, the negotiation of collective agreements, and any questions arising thereunder; and I hereby revoke every other designation or authorization, if any, made by me for such purposes.

On May 6, 2016, the Director of Representation sent a letter to IATCS requesting information needed to process the Association's petition. The letter included a request for a list of employees in the petitioned-for unit.

On May 13, 2016, IATCS filed a Certification of Posting, stating that a Notice to Public Employees of the Association's petition was posted in places where IATCS employee notices are normally posted and will remain posted for ten days. The Notice was posted on May 10, 2016. No other labor organization has sought to represent these employees. N.J.A.C. 19:11-2.4.

On May 13, 2016, IATCS provided a list of employees in the proposed unit. Based upon that list, I determined that a majority of petitioned-for employees signed authorization cards designating the Association as the majority representative for the petitioned-for unit.^{2/}

On May 23, 2016, the parties participated in an investigatory conference. The parties were advised that a majority of petitioned-for employees signed authorization cards designating the Association as the majority representative for the petitioned-for unit, and in accordance with our routine practices were asked to execute a Stipulation of Appropriate Unit. IATCS declined to sign the Stipulation.

We requested written submissions from the parties by May 25, 2016, as to the basis of their refusal to sign the Stipulation and any reply by May 26, 2016, respectively. We also advised the parties that we had received a telephone call and emails from employees attempting to rescind their authorization cards, and we suggested that IATCS be cautious in dealings with potential unit members regarding authorization cards. We instructed IATCS that if unit members contacted IATCS regarding authorization cards, IATCS should not discuss the cards with unit members, but should instead refer employees to the Commission with any questions or

^{2/} The identities of employees who have or have not submitted authorization cards are not revealed to parties.

concerns that they may have regarding the cards or the process. We also advised the parties that an employee's statement of intent to rescind an authorization card, without additional detail of coercion or harassment, would not suffice to rescind an authorization card.

IATCS objects to certification by authorization cards, asserting that multiple employees contacted the Commission seeking to revoke their signed cards. IATCS maintains that substantial and material factual issues exist, necessitating that I direct an election in order to determine the representational desires of the petitioned-for employees. I disagree.

Between May 20, 2016, and May 25, 2016, the Commission received one telephone call and a total of 36 emails from petitioned-for unit members attempting to rescind their authorization cards.^{3/}

Many of the emails arrived in clusters. On May 20, 2016 the general email at PERC received eighteen emails from individuals who sought to rescind their authorization cards.^{4/} Three of the

^{3/} Among the emails received seeking to rescind authorization cards, five individuals had not submitted authorization cards, and one request to rescind an authorization card was from an individual not included on IATCS's list of eligible employees.

^{4/} Three of the eighteen were sent directly from IATCS employee email addresses, which appeared to match the name of the individual who sought to "rescind" or "opt out" from the cards they had signed. However, five emails were sent from
(continued...)

individuals who sought to rescind their cards had not signed cards. The remaining emails contained no information regarding a reason for requesting the rescission of the respective authorization cards, but merely consisted of short statements such as "I [name] would not like to be included in to (sic) the Union" or requested to "rescind my request to unionize IAT." One of the ten has a subject line reading "Subject: Tcormier@sabis.net." Traci Cormier is the Director of School Operations for SABIS Educational Systems Incorporated.

On May 23, 2016, after the close of business, and on May 24, 2016, our general email account received seven emails seeking to rescind authorization cards; one email was from an employee not on the employer's list. That individual's email was addressed to our email and to "tracicormier@sabis.net." Another stated that the individual was no longer employed at IATCS and wished to "opt out." This individual appears on the employer's list. The other emails indicated that the employees wanted to rescind their authorization cards due to reasons including the following:^{5/}

4/ (...continued)
an email which we could not identify from the record before us, "nliriano@iat.sabis.net". Three of the five from this email address were duplicates of emails we have already received. Four of the emails, sent to our general email box are also sent to "Traci Cormier tcormier@sabis.net." The fifth email consists of a request to "opt out" of the union by the individual who is not on the employer's list.

5/ We will neither confirm nor deny that the individuals who
(continued...)

* * *

If having a union means our students lose their school, it's not worth it.

* * *

The union "provided 'false information' and I did not have proper notice or time to fully review all details and information;"

* * *

I was . . . pressured . . . and was told I will be fully protected . . . and the union will fight for adequate raises.

* * *

I felt as though the school is not going to be open for a long time. I was worried about my job. When the union came in they promised that everything was going to be fine. When the cards were given out to sign it was done in a hurry. We were just told to sign then and there. First we signed them and a few days later we were told the cards were wrong n (sic) to sign a different card. I was never given a different card. I was nev [Name] er given any information about the process." (The author of this May 24, 2016 had also sent an email to us on May 20, 2016 which simply asked "to rescind my request to be unionized".

* * *

Hello this is [Name]. My first email was is [sic] reference to Docket No. 2016-045.

* * *

5/ (...continued)
submitted emails or certifications also signed authorization cards.

Hello I [Name] would like to opt of [sic] the Union I signed in month of April 2016. On the date of signing I was given inaccurate and very minimum information on the matter at hand. I felt obligated to sign the card.

On May 25, 2016 we received eleven emails from IATCS employees seeking to rescind their authorization cards. Two emails were from individuals who had not signed cards. Of the remaining nine emails, two contained no information regarding the reason for wishing to rescind their cards. The seven remaining employees asked to rescind their cards due to:

* * *

False information and pressure by the union representative.

* * *

The decision to unionize was made during times of desperation and there have been changes made within the school since I initially signed the card. The changes that have taken place have eased many of my initial concerns. I was informed by the union that we could make the decision to pull at any time, and I signed quickly to get the card in by the due date I was told.

* * *

I was pressured by the members in our school organizing the union . . . In addition, I was misled and given false information regarding the green card, the union process, and how it pertains to the school.

* * *

I would like to pull my card from the representation as I no longer agree that it is in the best interest of the school or

myself. I feel as though I was misinformed and was not given sufficient information to make an accurate and supportive decision. I did not fully understand what all of this meant when I signed the card.

* * *

I have been told information that has been founded (sic) not true. I was told this is the only way we could be heard about getting more money and having our back payments taken care of.

* * *

I feel that the changes that have been made by SABIS in the last month are significant. During the card signing process there was a lot of frustration in the building and panic. I felt like the card was pushed in front of me and I was rushed to sign and jump on board. The card was brought to me during instruction time and I was told that I had to sign right then and there . . . I was also falsely informed that I had an option to rescind my card at any time and now I am finding out that this is not true as well. I feel lied to by the union and the staff that was promoting the union process.

Although sent by a different employee, we also received another email identical in content to that of the above-quoted email.

On May 25, 2016, IATCS filed a letter, requesting that we deny the petition for certification by card check and instead direct a secret ballot election "because at least 27 employees rescinded their authorization cards via certifications and/or emails to the Commission for improper conduct by the NJEA and/or its organizers." IATCS argues that "the employees withdrew their

cards due to the NJEA and its organizers/agents misleading, harassing, intimidating, misinforming, and/or taking advantage of these unsuspecting employees." IATCS further argues that the card check process itself is "already fertile ground for abuse given its secretive, unilateral and unchecked nature" and is "fraught with serious concerns and calls into question the validity of all cards submitted to the Commission for the purposes of certifying the NJEA as the majority representative." IATCS also claims that it is "troubled by the bias exhibited by the Commission for the NJEA and against the IATCS as the public employer during this entire process." IATCS requests a secret ballot election to "expeditiously resolve doubts about the employees' intent and preferences" or, in the alternative, requests that the Director dismiss the petition.

As part of its submission, IATCS provided the Certification of Traci Schmidt Cormier, Director of School Operations for SABIS Educational Systems, Inc., ("SABIS") which operates IATCS. Cormier states that her certification concerns "the misrepresentations made to IATCS employees by representatives of [NJEA] and its agents/organizers." She certifies that "NJEA representatives have made statements to employees of IATCS with respect to SABIS's contribution to the New Jersey Pension System" and that "NJEA representatives have told employees that SABIS has illegally withheld the pension contributions of IATCS

employees."^{6/} However, Cormier states that "[t]here is no violation of the New Jersey Pension System, and SABIS has nothing to do with the pension contributions and/or deductions of employees." In support of this statement, Cormier attaches copies of email correspondence between herself and a representative of School Business Office, LLC, which, according to Cormier, "manages IATCS's participation in the New Jersey Pension System," and "[t]his documentation demonstrates that there is no mishandling of pension deductions."

Cormier also certifies that "[i]t has come to my attention that NJEA representatives have made statements with respect to the owners of SABIS purchasing yachts instead of adequately funding the employees of IATCS's pensions and salaries," but "[t]his is also a misrepresentation." Cormier then writes that "[a]t least 5 employees have come to me over the last week expressing a desire to rescind their authorization card and to contact PERC, but were in fear of retaliation from the NJEA organizers and/or their agents." She states that "[t]hese employees even expressed to me fear of retaliation for even speaking to me or going into any room with me."

^{6/} Cormier's statements regarding "misrepresentations made to IATCS employees by representatives of [NJEA] and its agents/organizers," and statements made by "NJEA representatives . . . to employees of IATCS" are hearsay, not based upon personal knowledge and will not be considered.

Cormier attaches to her certification 23 certifications from IATCS employees which state they are seeking to rescind their authorization cards. Two of these 23 certifications are from employees who did not submit authorization cards;^{7/} one is from an individual whose name does not appear on the IATCS employee list, and of the remaining 20, 19 had previously emailed the Commission directly about their attempted rescissions. The content of those emails is discussed infra.

Cormier also attaches to her certification copies of 24 emails from IATCS employees addressed to the Commission's general email. With the exception of one email, which is copied to another person at SABIS, but which has a header from Cormier to counsel, all of the emails are also copied ("cc") to Cormier at "tcormier@sabis.net". The emails are identical in content to those received by the Commission at our general email account, except that none of the emails sent directly to PERC included a "cc" line to Cormier.

The 23 employee certifications^{8/} attached to Cormier's certification all have similar formatting and many employ similar

^{7/} These certifications contain detailed recitals of the circumstances under which the cards were presented and executed, but since the signators have not submitted authorization cards they will not be quoted or summarized.

^{8/} One certification is from an employee who is not on the employer's list, and two are from employees who did not sign authorization cards.

phrasing, such as, "I make this certification in support of rescinding my authorization card because I was coerced/misled/harassed/pressured and/or taken advantage of by representatives of the [NJEA];" "I was coerced, pressured and/or misled by representatives of the [NJEA];" "I am making this Certification on my own free will, free of harassment and/or coercion from anyone on behalf of the IATCS or SABIS. I have not been promised any benefit if I sign this certification nor have I been threatened if I do not sign;" and "[b]y signing this Certification, I am formally rescinding my authorization card. I do not wish to be part of the NJEA in any way and do not wish for the NJEA to be the bargaining representation [sic] at the school." The certifications are dated May 24, 25 or 26, 2016.

Since the certifications were submitted as attachments to Cormier's certification, their authenticity and reliability as competent evidence is inherently questionable. Therefore, we have read and considered each certification from employees who signed authorization cards and who appear on the employer's list, but accord each little, if any weight, due to the circumstances concerning the preparation and delivery of all the certifications.

The following is a representative sample of the certifications submitted by IATCS as attachments to Cornier's certifications:

* * *

The employee states that s/he^{9/} wishes to rescind her authorization card because s/he was "coerced/misled/harassed/pressured and/or taken advantage of by [NJEA] representatives . . . and the organizers." S/he states that "[e]vidence of this includes" that s/he was "told by a fellow IATCS staff that the union dues for the entire year would only be \$20 per year." S/he was also told "that we had to sign the cards right away" and s/he "felt rushed." S/he certifies that s/he did not "understand the process or what it meant for me to sign the Authorization Card." S/he further states that s/he "did not know that no further vote was to be taken regarding the issue of representation," that s/he was "never told that signing the card would constitute my vote," and that this "coercive conduct influenced me to sign the authorization card."

* * *

Another certification states the employee wishes to rescind an authorization card because s/he was "misled, pressure [sic], and taken advantage of by [NJEA] representatives . . . and the

^{9/} We have changed the pronouns to avoid confirming the gender of the author in order to maintain confidentiality.

organizers." S/he states that at a meeting lead by a NJEA representative, the representative "stated that . . . [SABIS] operates two (2) schools with unions," but s/he later learned that "SABIS does not operate in any union environment." S/he states that when s/he was given an authorization card, "[n]o one explained to me what it meant to sign the card," s/he was "not given time to think about it before signing the card," s/he was "not given time to read the card," s/he "did not understand what it meant to sign the card," s/he was "not provided with any written materials explaining the process," and she was "not told where she could obtain additional information." S/he also states that s/he "felt pressured to sign the card right then and there in front of the organizers and in front of my coworkers," and s/he "felt pressured to sign the card because [s/he has] to work closely with [an organizing teacher] and thought s/he would retaliate against me if I did not sign." S/he states that the union organizers "are distributing false information, such as the pension deductions from our paychecks as being illegal," but s/he has "subsequently learned that is not true." S/he states that s/he told a teacher that she had rescinded her card, and since then, that teacher's "attitude and demeanor has become negative towards me." S/he further states that s/he believes the organizing teachers "deliberately took advantage of and/or 'used' the paraprofessionals . . . in order to get us to sign the

cards." S/he states that the paraprofessionals "are just a number to the organizers, and they do not care about us." S/he also states that she "did not know that no further vote was to be taken regarding the issue of representation" and s/he was "never told that signing the card would constitute my vote."

* * *

IATCS submitted a certification from another employee stating that s/he "make[s] this certification in support of rescinding [the] authorization card because [s/he] felt that we needed to unionize to address the issues at the school," but "[n]ow that changes are being made [I] no longer feel[s] that there is a need to create a union." S/he states that s/he was "given misrepresentation [sic] by the NJEA representatives" as s/he was "told that SABIS was not paying all of our pension fees to the state, and the company was pocketing the rest of the funds" and she was "given a website to check this information that showed a misrepresentation of how much money was being paid to the state."

* * *

IATCS submitted separate, yet identical certifications from two employees, stating that they are "of limited English speaking language abilities and did not understand the process or what it meant for [them] to sign the Authorization Card" and "[n]o one from the NJEA provided this explanation in my native language . .

. or provided a card to be [sic] in my native language" and that there were "no Spanish speaking interpreters to explain the process or what it meant for me to sign the Authorization Card." Both certifications are in English. Neither indicate that they required any language translation assistance in the preparation or signing of their certifications.

These identical certifications state that "in mid-March, [a union] organizer . . . first approached me in the cafeteria regarding unionization" but the organizer "did not explain the process and they did not provide me with details." The certifications further state that the union organizer "did not explain how or when it would happen," "did not provide me with written materials and did not tell me where I could get more information," and "[a]ll they said to me was that a union would be better and beneficial." Both certifications state that the [signators] were later approached by a union organizer to sign an authorization card, but "they did not explain the process and they did not provide me with details;" "[t]hey did not provide me with written materials and did not tell me where I could get more information;" "[t]hey did not explain to me that signing the card was final;" we "told the organizers that [they both] wanted to talk to my mom first before signing the card, but they said I had to sign it right then and there;" they "felt pressured to sign the card;" they "only read the card briefly;" they both "wanted

more time to think about signing the card before I did it;" they "did not understand the process or what it meant for me to sign" an authorization card; they "did not know that no further vote was to be taken regarding the issue of representation;" and they were "never told that signing the card would constitute my vote."

* * *

Two other certifications submitted by SABIS state that the employees were "told by a representative from the Public Employment Relations Commission, Lisa Ruch, that I could not revoke my signing of the authorization card since the card was an irrevocable yes vote." Although one IATCS employee spoke with Ruch about a rescission, that employee was not one of the individuals who signed these certifications.

In summary, of the 23 certifications attached to the Cormier certification, 20 are from employees who are on the employee list and submitted authorization cards. Of these 20, 11 stated that they were told that union dues would only be \$20 to \$40 per year, 14 stated that they felt rushed or were not given adequate time to read the authorization card, 13 stated that they did not understand the process or what it meant to sign an authorization card, 13 stated that they were not informed that signing an authorization card constituted their vote, and nine stated that they were told that SABIS operated two or three schools with unions, but were later informed that SABIS did not operate in a

union environment. Four stated that union representatives spread false information about pension deductions, three stated that they told union organizers that they wanted to speak to their mothers, two stated that they were told they could change their mind about participating and withdraw their card, and ten stated that they felt "coerced/misled/harassed/pressured and/or taken advantage of."

On May 26, 2016, the Association filed a reply. The Association states that it "vigorously disputes the allegations that they have engaged in any kind of misleading, harassing, intimidating or misinforming conduct, or that they in any way took advantage of unsuspecting employees." The Association urges that the authorization cards were "clear on their face" and "no misrepresentations were made." The Association argues that IATCS, however, "has engaged in a pattern of unfair practices, including threats and promises, surveillance and captive audience speech." The Association asserts that IATCS, "through its attorneys and managers, met secretly with employees on a one-on-one basis, and itself coerced 27 employees to request that PERC allow them to 'rescind' their authorizations within weeks of when they signed" their authorization cards. The Association argues that after the Association successfully secured "an overwhelming majority of signed authorization cards," IATCS, "having failed to convince employees not to sign cards, shifted gears and engaged

in a campaign of intimidation and coercion to press employees to 'rescind' their cards."

The Association also argues that hearsay is not admissible to support an employee's claim that they had been coerced or misled into signing authorization cards, (citing Paterson Charter School for Science and Technology, D.R. No. 2015-9, 42 NJPER 74 (¶19 2015)), and therefore the emails submitted by IATCS rescinding authorization cards that are attached to Cormier's Certification should not be considered.

The Association attaches three certifications to its submission. Dana Keene, a teacher at IATCS who "volunteered on an unpaid basis to organize the [Association]", states that IATCS "has made a number of false claims to the effect that the Association has made misrepresentations in connection with the solicitation and collection of" authorization cards. She states that "NJEA did not pressure us nor did we, in turn, pressure other employees to join the union." She states that "[i]n all of the meetings with and communications from the NJEA, the NJEA did not make any representations to the other members or me as to the specific amount of dues." She states that IATCS employees "voluntarily completed his or her" authorization cards, "completing each of the data fields . . . by hand," and the "overwhelming majority of employees completed and submitted" authorization cards. She states that she "personally gathered

those cards and [she] told her colleagues that the reason [she] was collecting the cards was to unionize [IATCS] so that we can negotiate terms and conditions of employment." She states that "[a]s an employee (as opposed to a manager), [she] is not in the position to make threats or promises to other employees, nor [has she] made threats or promises."

However, Keene states that after the petition was filed in this matter, IATCS and SABIS "have engaged in an ongoing pattern of anti-union conduct, including the making of threats and promises, captive audience speech and surveillance." She states that after the petition was filed, IATCS "announced additional bonuses to be paid and merit pay eligibility if employees remained non-union" and that Cormier repeatedly stated at a mandatory staff meeting on May 12, 2016, that "SABIS will not operate with unionized schools, no other SABIS schools are unionized, and this school won't be either, it goes against everything SABIS stands for." Keene states that at the same meeting, Cormier and other administrators "tried to explain why non-union is better than union," and "Ms. Cormier then cried (I believe to make us feel bad for unionizing), claimed that SABIS corporate had no idea how bad working conditions were at the school, and promised that if we did not unionize they would correct these working conditions."

Keene also states in her certification that on May 19 and 20, 2016, "a number of my colleagues reported to me that they and others were being pressured by members of management to contact the New Jersey Public Employment Relations Commission and try to withdraw their cards."^{10/} She also states that those employees "were told that unless they rescind their request to be unionized, a chain of events would occur, SABIS would withdraw as the school's Education Management Organization and that [IATCS] would close." She also states that "during the evening of May 24, 2016, secret meetings occurred between some of [IATCS'] employees who had asked to pull their cards, [IATCS] administration/SABIS corporate and the Board's lawyer," that "during those meetings, the employees were told that they (management) knew it was me who had started the unionization efforts" and that the employees were told "that if I talk to the employees in any way they will fire me for harassment." She states that "[t]hese threats interfere with my right to organize my coworkers and with those employees' ability to engage in free choice."

The Association also attaches the Certification of Jaime Valente, who is an NJEA consultant who assisted in organizing the

^{10/} Keene's certification does not identify the colleagues to whom she refers by name. The portions of Keene's certification which are not based on her personal knowledge or observations are hearsay and are not relied upon.

Association at IATCS. Valente states that IATCS has falsely claimed that "the Association has misrepresented the status of [IATCS'] pension contributions." Valente states that "the salaries that are being reported to the Public Employees Retirement System and the Teachers Pension and Annuity Fund do not correspond to the actual salaries employees are earning."

The Association also submitted the Certification of Marguerite Schroeder, an NJEA employee who also assisted in organizing the Association at IATCS. Schroeder states that although IATCS "claims that employees were pressured to join the Association," "[t]his is not the case." She states that on or about March 15, 2016, "a handful of people from the Association came to [her] seeking to organize as an NJEA affiliate," and on or about March 30, 2016, "a larger group of people from the Association came to the NJEA, requesting that the NJEA organize the Association as an NJEA affiliate." She states that on or about April 7, 2016, "representatives of the Association came to the NJEA and told [her] that they had an overwhelming majority of employees who had indicated that they were willing to sign" authorization cards. She then "gave blank [authorization] cards to representatives of the Association."

Schroeder states that on or about April 11, 2016, she received a "first set of completed [authorization] cards from an overwhelming majority of the employees at" IATCS. However, upon

review of the cards, "it became apparent to [her] that a number of employees had completed the [authorization] cards to list 'Trenton' as the school district." Thus, she "requested that a new set of [authorization] cards be completed." Then, on or about April 13, 2016, she "received a second set of completed [authorization] cards from an overwhelming majority of the employees at" IATCS.

Schroeder further states that IATCS "claims that the purpose for which the [authorization] cards were being gathered was unclear," but "[g]iven the plain language on the face of the [authorization] cards, there can be no question that the [authorization] cards sought authorization and designation of the Association as employee representative." Also, she states that "[t]he fact that employees completed and signed the first set of [authorization] cards and then completed and re-signed a second set of [authorization] cards undercuts any claim by the IATCS that the employees did not understand what they were signing or that the employees were in any way coerced in the completion and signature of the [authorization] cards."

Schroeder also states that "[a]s for any claimed language barrier, the fact that each employee personally completed [authorization] cards with responsive information in the appropriate fields undercuts any claim that language was a barrier." She also states that IATCS claims that the Association

"misrepresented that SABIS has a total of three schools in New Jersey and that the other two were already unionized," but "[n]o such representation was made and, even if such a representation were made, it would not be as to a material fact affecting employee free choice at the Academy."

Schroeder further states that IATCS claims that the Association "misrepresented its dues structure and said that there is a \$20 per pay period dues rate," but "[n]o such representations were made," as "[p]er policy from the National Education Association (NEA), there are no dues to be collected until much further down the line." Also, Schroeder states that IATCS claims that "employees were wooed with luxurious meals," but that "is not the case," as Association members who attended meetings at NJEA "were provided meals from the NJEA cafeteria as part of the NJEA's regular food service," and "[t]hese were not luxurious meals but a common NJEA amenity, available at lunchtime and dinnertime to all people who attend meetings."

Finally, Schroeder states that she has "received information from the Association that these employee requests [to rescind authorization cards] came following captive audience speech by members of management during work hours, threats that if [IATCS] unionizes [IATCS] will close, and promises by management of additional compensation."

After the May 25 and 26, 2016 deadlines, we received an additional submissions from IATCS on May 27, 2016 and June 1, 2016, and an objection to those submissions by the Association on June 2, 2016. Neither the late submissions nor the objections to them are considered.

ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, authorizing the Commission to certify a majority representative where (a) a majority of employees in an appropriate unit have signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. N.J.A.C. 19:11-2.6(b).

A petition seeking certification by card check must be accompanied by authorization cards as defined by N.J.A.C. 19:11-2.6(d)(6), which permits the Director to "certify the petitioner as the majority representative based on its submission of valid authorization cards signed by a majority of the employees in the appropriate unit." Our review of the Association's authorization cards compared with the list of employees supplied by IATCS demonstrates that the Association has submitted cards from a majority of the petitioned-for employees. The cards set forth clear language designating the Association as their exclusive

majority representative for purposes of collective negotiations. The employees' signatures on the cards meet the intent of the statute and our rules.

IATCS argues that we cannot certify the Association based on the authorization cards that were submitted. It contends that the Association's cards are not a reliable indicator of whether the Association enjoys majority support from unit employees because the Association misled employees about the consequences of signing authorization cards. Accordingly, IATCS, urges that we are required to conduct a mail-ballot election to determine whether the Association is supported by a majority of the petitioned-for employees. For the reasons explained below, I reject IATCS' contentions and certify the Association as majority representative based on the authorization cards it submitted.

Since 2005, when the Legislature first authorized petitions for card check certification as the majority representative, we have only once ordered an election in addressing a challenge to the validity of authorization cards. North Bergen Tp., D.R. No. 2010-3, 35 NJPER 244 (¶88 2009); aff'd at P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009). In North Bergen Tp., the Commission sustained the Director's decision to order a secret ballot election in a representation case in which the petitioner sought certification by authorization cards. The Director could not conclude that the submitted authorization cards were valid. Ten

employees wrote to the Director, expressing a desire to rescind their cards. Their letters provided:

I was wrongly informed and promised a full-time position as well as benefits and a pension by the organizer. I was told that we will meet and discuss the pros and cons before any further action would be taken. I was pressured into [signing the authorization card] and told that we will be able to cast a vote. None of these actions were taken by the organizer and therefore, I wish to revoke my authorization card.

A cover letter written by a petitioned-for employee accompanying the letters provided:

We were falsely misled and harassed by the organizer into signing the authorization card. We were told that we were signing the cards to have a union rep come and speak to us. We were never told that these cards would count as our vote. The organizer also told us that if we signed the cards we were guaranteed a full-time position with benefits and a pension. We were also told that if we disagree with anything that the union rep had to offer we will be able to withdraw from it.

Based upon the employees' letters sent directly to him describing threats, promised benefits and misleading statements causing them to sign the cards, the Director found that the authorization cards were not "valid" for card check purposes and ordered a secret ballot election to determine the representational intent of the employees. In so doing, the Director also held that a hearing was not the appropriate procedure for addressing objections to authorization cards. 35 NJPER at 438. The Director reasoned:

Our goal is not to determine whether the cards were obtained by fraud or inappropriate conduct; it is to ascertain the intent of the employees who signed authorization cards. When a legitimate and substantial doubt has been raised about the validity of authorization cards submitted for a card check certification, an election - not a hearing on the validity of the cards - is the appropriate administrative response. A hearing will unduly delay the employees' opportunity to resolve the question concerning representation. [35 NJPER at 246]

We have also repeatedly denied requests for an election based on challenges to authorization cards that are not supported by substantial, reliable evidence that calls into question the validity of the cards. Mt. Ephraim Bd. of Ed., D.R. No. 2007-3, 32 NJPER 293 (¶121 2006); Roxbury Tp., D.R. No. 2013-13, 40 NJPER 85 (¶32 2013); Berlin Tp., D.R. No. 2011-3, 36 NJPER 379 (¶148 2010). Moreover, we have repeatedly held in representation cases that hearsay statements do not adequately support a challenge to a representation petition. County of Monmouth, D.R. No. 92-11, 19 NJPER 79 (¶23034 1992); River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013); Mercer Cty. Sheriff, D.R. No. 2015-4, 41 NJPER 501 (¶156 2015). In these cases, we have required information or evidence from individuals with personal knowledge of the events or circumstances giving rise to a challenge. Id., Cf. Berlin Tp., D.R. No. 2011-3, 36 NJPER 379 (¶148 2010) (Director refused to consider evidence from individuals who

lacked personal knowledge of events that formed the basis of an objection to a card check petition).

In River Vale Bd. of Ed., the Director rejected a challenge by an incumbent union to a representation petition since the challenge was not substantiated by competent evidence. 40 NJPER at 135. The incumbent union's business agent filed an affidavit asserting that the employer's business administrator communicated with unnamed unit members and engaged in intimidation tactics in an effort to circumvent negotiations with the incumbent and undermine the incumbent's status as majority representative. The business agent's affidavit consisted of hearsay statements from unit employees who complained to the agent about the business administrator's conduct. The Director determined the agent's allegations were unsubstantiated, concluding that the business agent's affidavit "does not reflect personal knowledge" of the business administrator's communications with unit employees but is rather "comprised of hearsay and double hearsay statements of unnamed unit members." Id.

In Paterson Charter School for Science and Technology, D.R. No. 2015-9, 42 NJPER 74, 78 (¶19 2015), aff'd. P.E.R.C. No. 2016-4, 42 NJPER 99 (¶27 2015), the Director drew this analogy:

Although River Vale Bd. of Ed. was an 'election' case, the need for competent evidence in an election case applies equally to an authorization card case; a party

seeking to delay or stop an election for which the Director has already determined that a 'question concerning representation exists in an appropriate unit' stands in the same position as a party seeking to stop '. . . the certification of a petitioner as the majority representative based on its submission of valid authorization cards signed by a majority of the employees in the appropriate unit.' N.J.A.C. 19:11-2.6(d)3 and 6.

Cf., Middlesex Cty. (Roosevelt Hosp.), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981). (During the pendency of election proceedings, an employer must remain neutral in order to protect the rights of the employees to choose their representative, if any). During representation elections, employers are free to communicate their general views about labor relations to their employees, as well as to conduct a campaign urging employees to vote against unionization, provided that no threats or promises are made by the employer. See, Rutgers and C.W.A. Local 1031, H.E. No. 2003-2, 28 NJPER 466 (¶33171 2002). (Rutgers "Vote No" campaign did not violate the Act when there was no evidence of threats or promises of benefits.) However, in the case of a card check, the submittal of an authorization card is the vote, and an employer's neutrality during the processing of the representation petition is essential.

Applying the standards for assessing the validity of authorization cards set forth in North Bergen Tp., together with the competent evidence standard reiterated in River Vale Bd. of Ed., I find that the employee emails sent directly to us before the May 23, 2016 in-person conference do not raise a "substantial doubt" about the validity of the authorization cards those employees signed. None of the emails (and one telephone call we received) sent to us directly from employees before the May 23 conference express facts indicating anything more substantive than the sender's change of mind or opinion about signing an authorization card. None assert Association harassment, threats, promised benefits or materially misleading statements that cast doubt on the validity of their signed and submitted authorization cards. See, e.g., Berlin Tp.

The seven emails^{11/} received on May 23 and May 24, 2016 in our general email account include two emails from individuals who had previously sent employees emails on May 20, 2016, which consisted of one sentence requests to "rescind" or "opt out" of the union. Their subsequent emails on May 24, 2016 added that they were "pressured," "worried about my job" at the time that the employee had signed the authorization card, and that no

^{11/} The sixth email received that day was, as previously noted, from an employee who was not on the employer's list. The email was addressed to "tracicornier@sabis.net" as well as to PERC.

information had been provided about how the process would work. The three additional emails cited lack of information, school closure, and short time to review the cards as reasons for the request to "rescind" these cards or "opt out" of the union. No specificity is included with respect to what information was "inaccurate."

Of the eleven emails^{12/} received on May 25, 2016, two request to rescind their cards with no elaboration, two seek rescission due to unspecified "false information," and the remaining emails cite positive changes at the school, and representations that the cards could be rescinded as reasons for the requested rescission. As we have noted elsewhere, two of the emails, while sent from separate email addresses, are identical.

I also find that the employee certifications provided to us by IATCS after the May 23rd conference do not raise a "legitimate doubt" about the validity of the authorization cards those employees signed.

On May 23, 2016, the parties participated in an investigatory conference, where they were advised that a majority of petitioned-for employees signed authorization cards designating the Association as the majority representative for the petitioned-for unit, based upon the list of employees

^{12/} We note that two emails were received from individuals who did not submit authorization cards.

provided by IATCS. During the May 23rd conference, we advised the parties that we had received a telephone call and emails from petitioned-for unit members attempting to rescind their authorization cards, and we cautioned IATCS against contact with unit members regarding authorization cards. We instructed IATCS that if unit members were to contact IATCS regarding authorization cards, IATCS should not discuss or otherwise involve itself with unit members on the subject, rather to refer them to the Commission with any questions or concerns that they may have regarding the authorization cards or the process. These instructions are standard at representation investigatory conferences, and merely reflect statements of applicable law. We also stated that only employee statements which provide details depicting coercion or harassment could "rescind" an authorization card.

Despite our May 23rd cautionary advisement to IATCS against direct communication with petitioned for unit members regarding authorization cards, IATCS representative Cormier's certification, dated May 25, 2016, specifically identifies and attaches IATCS employee certifications, which are dated May 24, 25 and 26, 2016. Two attached certifications include statements that Cormier "explained" the certification to the employee. Thus, not only were all of the employee certifications collected

by IATCS after the May 23, 2016 conference, but at least two contain explicit statements that they were prepared with the assistance of employer representative Cormier. Neither Cormier's typed certification nor any of the attached, typed employee certifications specify who participated in or assisted in preparing the typed certifications or under what auspices or conditions the certifications themselves were prepared.

The certifications of employees collected and submitted by IATCS as attachments to Director (and SABIS employee) Cormier's certification raise numerous issues regarding the competence of these certifications as evidence. Cormier attaches to her certification 23 certifications from IATCS employees who are seeking to rescind their authorization cards; of these 23 certifications, two are from employees who did not submit authorization cards, one is from an individual whose name does not appear on the IATCS employee list submitted to us by IATCS, and of the remaining 20, 19 of the individuals had previously emailed the Commission their (attempted) rescissions, all of which failed to raise a substantial doubt about validity of the cards.

Commonalities among the employee certifications imply a single or unifying intelligence in design and content. All are similarly formatted and many employ similar phrasing, such as "I

make this certification in support of rescinding my authorization card because I was coerced/misled/harassed/pressured and/or taken advantage of by representatives of the [NJEA];" "I was coerced, pressured and/or misled by representatives of the [NJEA];" "I am making this Certification on my own free will, free of harassment and/or coercion from anyone on behalf of the IATCS or SABIS. I have not been promised any benefit if I sign this certification nor have I been threatened if I do not sign;" and "[b]y signing this Certification, I am formally rescinding my authorization card. I do not wish to be part of the NJEA in any way and do not wish for the NJEA to be the bargaining representation at the school."

Two certifications from petitioned-for employees who claim to have limited English language skills are identical. Both employees include statements regarding their limited English skills and their need for information in their native language in identical certifications submitted by IATCS, which are in English. Furthermore, neither of these certifications indicate that the signators required any language translation assistance in the preparation or signing of the certification in English.

Two unit members submitted certifications that state that they were "told by a representative from the Public Employment Relations Commission, Lisa Ruch, that I could not revoke my signing of the authorization card since the card was an

irrevocable yes vote."^{13/} Although one IATCS employee called the Commission about a rescission, it was neither of the employees who certified that they called, and thus it is unclear how this statement was included in each of their certifications.

Numerous employee certifications include statements regarding alleged promises of benefits made by the Association and the NJEA in exchange for the employees signing authorization cards. These alleged promises of benefits include promises of higher salaries, enhanced healthcare and pension benefits, and improved work conditions such as improved hours. However, unlike the promised benefits described in North Bergen, supra, the concept of employees working together to achieve improvements in the terms and conditions of their work is not so much an exchange to gain an authorization card as much as the essential tenets and goals underlying unionization, generally. Burson Plant of The Kendall Co., 115 NLRB 1401 (1956).

Numerous employees certified that unnamed Association representatives "misled" them into signing authorization cards by stating that SABIS managed other schools that had unions, but they later learned that SABIS "doesn't operate in a union environment." On the record of this case, the only source of the

^{13/} The certified statements do not accurately reflect the information provided to the one IATCS employee by Commission representative Ruch.

"corrected" information concerning whether IATCS's parent corporation, SABIS, operated any schools which had a union workforce was Cormier herself, as set forth in Keene's un rebutted certification.

On May 12, 2016, two days after our Notice to Public Employees was posted, Cormier "repeatedly" stated to the petitioned-for employees in a mandatory staff meeting attended by Keene, who certified to these statements: "SABIS will not operate with any unionized schools, no other SABIS schools are unionized and this school won't be, either; it goes against everything SABIS stands for."

"An employer's freedom to make a prediction as to the precise effects it expects unionization to have on its business and its employees is limited to predictions based on 'objective facts' about events beyond the employer's control or a management decision already arrived at before the unionization effort." NLRB v. Gissel Packing Co., 395 U.S. 575, 618, 71 LRRM 2481 (1969); See also, Care One, Madison Ave. v. NLRB, 2016 U.S. App. Lexis 14824. Cormier's May 12 statement to assembled IATCS employees is nothing less than a threat of closure, a forewarning of the direct consequence of unionization. In the harsh light of such a threat we must look askance at all employee emails and certifications purportedly rescinding signed authorization cards

that minimally, were compiled by Cormier and sent to us by her on May 26th, despite our contrary instructions on May 23rd.

Keene also certified that in the May 12 mandatory staff meeting, Cormier, ". . . claimed that SABIS corporate had no idea how bad working conditions were at the school and promised that if we did not unionize they would correct these working conditions." She also certified that after the petition and cards were filed, "IATCS announced additional bonuses to be paid and merit pay eligibility if employees remained non-union." In NLRB v. Exchange Parts Co., 375 U.S. 405, 409, 55 LRRM 2098, 2100 (1964), the Court wrote:

The danger inherent in well-timed increases in benefits is the suggestion of the fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

See also, Hampton Inn NY-JFK Airport, 348 NLRB 16 (2006).

Keene's certification depicts a quid-pro-quo relationship of salary increases and employees remaining unorganized. Under all the circumstances, including the chronology of events, we are constrained to infer a coerced motive among employees for their submission of emails and "certifications" seeking to rescind

authorization cards. We do not accept their rescissions as "legitimate."^{14/}

We also believe (in response to IATCS's specific request) that a secret ballot election conducted under our auspices at this time would likely not result in an accurate gauge of employee representational desires. Keene's certification shows that "laboratory conditions" have been irredeemably tainted and employee rights to freely choose their representative have been chilled by the actions of IATCS, including threats of school closure and promises of benefits delivered at a mandatory staff meeting on May 12, 2016 (that followed the filing of the petition and posting of our Notice to Employees). In an election context, we regard the May 12 mandatory gathering of petitioned-for employees as a "captive audience" speech delivered by IATCS, the content of which could not have been effectively negated by the Association. See Passaic Valley Sewerage Comm'n, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980); Wildwood Crest Bor., H.E. No. 88-20, 13 NJPER 828 (¶18319 1987). Threats of business closure standing alone have consistently been found to substantially interfere with employee free choice, and to destroy the

^{14/} Because we find that the employee emails and the employee certifications are not enough to evince that the employees were coerced, harassed or misled by the Association into signing authorization cards, we need not address whether the exclusion of any authorization card(s) would or would not alter the Association's establishment of a majority support.

laboratory conditions that are required in order to guarantee a free and fair election. Gissel, supra. See, General Shoe Corp., 77 NLRB 124, 21 LRRM 1337 (1948). In this environment, it is apparent that there would be no way to ascertain the intent of the employees through an election.

Finally, certification by authorization cards requires that, " . . . the cards [be] printed in a language understood by the employee who signs it." N.J.S.A. 34: 13A-5.3. Two virtually identical certifications typed in English, each signed by a IATCS non-professional employee were submitted by Cormier. Each certification states the employee is "of limited English speaking language abilities and did not understand the process or what it meant for me to sign the [authorization card]" and "[n]o one from the NJEA provided this explanation in my native language . . . or provided a card to be [sic] in my native language" and that there were "no Spanish speaking interpreters to explain the process or what it meant for me to sign the [authorization card]." However, as detailed above, both affidavits include these statements regarding their limited English skills and their need for information in their native language in identical certifications which are in English. Furthermore, neither of these certifications indicate that the employees required any language translation assistance in the preparation or signing of the certification written in English. Thus, there are no credible

facts that indicate that these employees did not understand what they were signing when they signed authorization cards. I infer that the employees who signed authorization cards understood the unambiguous language printed on the cards. I further find that a majority of petitioning employees have so expressed their desire to be represented by the Association. N.J.S.A. 34:13A-5.3.

In the absence of competent evidence calling into question the validity of the Association's cards, I am compelled by the Act to rely on those cards for purposes of determining the Association's majority representative status. N.J.S.A. 34:13A-5.3; N.J.A.C. 19:11-2.6(b).

Accordingly, I deny IATCS's request for an election. I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed, non-supervisory certificated and non-certificated employees employed by International Academy of Trenton Charter School.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, police, casual employees and all other employees employed by the International Academy of Trenton Charter School.

I find that the Association has met the requirements of the Act and is entitled to certification based upon its authorization cards from a majority of the unit employees. N.J.S.A. 34:13A-5.3.

ORDER

I certify the International Academy of Trenton Charter School Education Association based upon its authorization cards, as the exclusive representative of the negotiations unit described above.^{15/}

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

DATED: September 6, 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 September 16, 2016.

^{15/} The formal certification is attached.