

D.R. NO. 2015-11

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

In the Matter of

QUEEN CITY CHARTER SCHOOL,

Public Employer,

-and-

Docket No. RO-2015-040

QUEEN CITY EDUCATION ASSOCIATION,

Petitioner.

Appearances:

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

For the Petitioner,
Bergman & Barrett, attorneys
(Michael T. Barrett, of counsel)

DECISION

On April 6, 2015, the Queen City Education Association, (Association) filed a representation petition, together with signed authorization cards seeking certification as the majority representative of a collective negotiations unit of teachers and teacher aides employed by the Queen City Charter School (QCCS). On April 29, 2015, the Association amended its petition seeking to represent all regularly employed non-supervisory certificated and non-certificated employees employed by QCCS. QCCS objects to the Association's petition and declines to sign a Stipulation of Appropriate Unit form.

QCCS objects to certification by authorization cards because multiple employees wrote letters to the Commission seeking to revoke their signed cards. QCCS also maintains that two employees on the list of current employees it provided to us recently resigned and their authorization cards should not be counted among "employees in the unit."^{1/} QCCS further objects to the Association's professional option voting process. Specifically, QCCS objects that the Association held a second vote after a majority of professionals did not participate in the first vote. QCCS maintains that substantial and material factual issues exist, necessitating a hearing, pursuant to N.J.A.C. 19:11-2.6(f)1, or alternatively, that I should direct an election in order to determine the representational desires of the petitioned-for employees. I disagree.

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 upon our administrative investigation. No disputed substantial material factual issues warrant our convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, including review of the list of employees, signed authorization cards,

^{1/}

QCCS represents that it possesses photocopies of all of the signed authorization cards. We are unaware of how QCCS obtained the documents.

professional option vote certifications, and correspondence advocating the parties' respective positions, 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 employees employed by QCCS. On April 28, 2015, QCCS provided us with a list of employees in the proposed unit. Based upon that list, we have determined that a majority of petitioned-for employees signed authorization cards designating the Association as the majority representative of the petitioned-for unit. A Notice to Public Employees, supplied by the Commission, advising employees that the Association is seeking certification by a check of authorization cards was posted by QCCS. No other labor organization has sought to represent these employees N.J.A.C. 19:11-2.4.

Between April 21 and April 29, 2015, the Commission received typed letters from five (5) employees, seeking to revoke their signed authorization cards. Two of the letters set forth identical text and provide in a pertinent part; ". . . having belonged to the NJEA union in the past, a physical ballot vote is normally conducted which I expected in this situation. However, I was not under the impression that my signing a card indicated a

final vote; therefore, I would like to retract my vote." A third letter states, "I didn't really understand what the union services were all about at the time, because it was brought to me all at once, without any given time to think about it, and I felt as if I had to/was obligated to vote yes. Therefore I wish my vote changed to NO." (Emphasis in original). The fourth letter provides,

"When this paper was brought to my attention I feel that I was misinformed. I was under the assumption that [i]t was about to get more information on the union. I do not feel there was enough time to make a decision and that the voting at the school was rushed. I would like to rescind my vote to a no."

The fifth letter provides in a pertinent part:

"[w]hen I signed this card I was under the impression that this was not the final say and that it would be brought to a physical vote later on. I feel there were a lot of miscommunications, persuasion tactics that were, in my opinion, unprofessional, as well as a lack of time to, thoroughly, think this decision through."

On May 4, 2015, Association counsel filed a certification. It provides: "On April 30, 2015, Petitioner held a meeting among eligible members for inclusion in the Queen City Education Association and by a unanimous decision, professional, certificated staff all voted to include with the unit all support and non-certificated staff." We notified Association counsel that the certification did not provide the number of professionals who voted and that an amended certification was necessary. On or

about May 14, 2015, Association counsel filed an amended certification clarifying that thirteen (13) professionals participated in the vote on April 30, 2015.

By letter dated May 18, 2015, QCCS objected to the inclusion of non-professionals in the unit. QCCS correctly asserted that because there were a total of twenty eight (28) professionals eligible for inclusion in the proposed unit, the Association failed to establish that a majority of professionals voted to include non-professionals in the unit. N.J.S.A. 34:13A-6(d). On May 18, 2015, Association counsel filed a letter stating that there was a misunderstanding as to the number of professionals needed to constitute a majority, requesting an opportunity to submit an amended certification, and asserting that a new vote was scheduled for May 19, 2015.^{2/}

On May 20, 2015, Association counsel filed an amended certification providing that on May 19, 2015, sixteen (16) professionals voted (unanimously) to include non-professionals in the unit.

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

^{2/} QCCS objected to the Association's request to take another vote and submit an amended certification.

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 cards compared with the list of employees supplied by QCCC demonstrates that the Association's cards comply with this rule; the card signators authorized the Association to act as their collective negotiations representative for the terms and conditions of employment.

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., P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009), 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 accompanying the letters provided:

We were falsely misled and harassed by the organizer into signing an 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 will 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 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. Cf. Mt. Ephraim Bd. of Ed., D.R. No. 2007-003, 32 NJPER 293 (¶121 2006) (Director found no basis to question the

validity of authorization cards because no employee objected). 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).

In this case, QCCS objects to authorization card certification, based in part on the letters seeking to rescind signed authorization cards. Unlike the letters in North Bergen Tp., none of the letters provided in this case allege that the Association made promises of benefits, coerced, or harassed employees to sign authorization cards. Cf. N. Bergen Tp. Nothing in any of the letters casts doubt on the validity of the

authorization cards (which alone would warrant an election in lieu of certification by authorization cards). Even in an on-site election, once a ballot is cast, it cannot be rescinded. In the context of certification by signed authorization cards, a similar rule must apply, except in the circumstances delineated in N. Bergen Tp.

We also reject QCCS's contention that employees who resigned after the submission of the employer list should not be counted towards determining majority support for the Association. The Director notified QCCS in writing on April 14 that the list of employees submitted by QCCS "will be used to check the authorization cards accompanying the petition to determine whether the Petitioner has support from a majority of the unit employees." When QCCS submitted the list of employees on April 28, we determined that the Association obtained majority support. N.J.S.A. 34:13A-5.3; N.J.A.C. 19:11-2.6(b). QCCS cites no legal authority to support its position that the list of employees provided by an employer after we have determined majority support for a card check petition can unilaterally be revised by the employer. Our Act and regulations on representation matters do not contemplate such a procedure^{3/} and, absent the express

^{3/} We note that even if the two employees who resigned were excluded from consideration, the Association would still have submitted enough authorization cards to establish majority support. See North Bergen Parking Authority, D.R. (continued...)

authority to do so, we decline to create such a procedure.

N.J.S.A. 34:13A-1 et seq.; N.J.A.C. 19:11-1.1 et seq..^{4/}

I also disagree that the professional option voting process in this case is fatally flawed. No regulation or statute specifically limits the number of times that a professional option vote may be conducted in the context of an representation petition supported by authorization cards. No facts suggest that our process was unduly delayed by the petitioner's second professional option vote. The Association has certified a that a majority of the professionals participated in the voting process; that on May 19, 2015, sixteen (16) professionals voted (unanimously) in favor of including nonprofessionals in the petitioned-for unit. No facts raise a dispute regarding the validity of that vote.

Finally, certification by authorization cards requires that, ". . . the cards [be] printed in a language understood by the

^{3/} (...continued)
No. 2013-9, 39 NJPER 294 (¶98 2012).

^{4/} Any procedure involving revisiting or revising the list of eligible employees each time an employee resigns, is non-renewed, or is otherwise discharged would unduly delay the processing of a representation petition. This consequence runs contrary to the Commission's established policy in favor of the expedited processing of representation cases. Monmouth Cty. Prosecutor, D.R. No. 2010-13, 41 NJPER 117 (¶42 2010) (Noting that the "Commission's policy is to expedite the processing of representation petitions so that employees' statutory rights to select a representative may be addressed promptly); River Vale Bd. of Ed., 40 NJPER at 135.

employee who signs it." N.J.S.A.34:13A-5.3. No facts indicate that employees did not understand what they were signing. I infer that the employees who signed authorization cards understood the unambiguous language printed on the cards and 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.

I deny QCCS's request for an election or hearing. I find that the following unit is appropriate for collective negotiations:


Included: All regularly employed, non-supervisory certificated and non-certificated employees employed by Queen City Charter School.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, police, casual employees and all other employees of the Queen City 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 Queen City Education Association based upon its authorization cards, as the exclusive representative of the negotiations unit described above^{5/}.



Gayl R. Mazuco
Director of Representation

DATED: June 26, 2015
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 July 10, 2015.

^{5/} The formal certification is attached.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of

QUEEN CITY CHARTER SCHOOL,
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-and-

QUEEN CITY EDUCATION ASSOCIATION,
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> DOCKET NO. RO-2015-040
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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

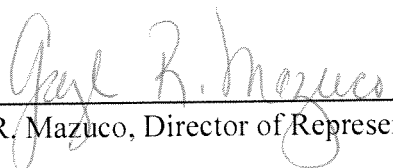
QUEEN CITY EDUCATION ASSOCIATION

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 certificated and non-certificated employees employed by Queen City Charter School.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, police, casual employees and all other employees of the Queen City Charter School.

DATED: June 26, 2015
Trenton, New Jersey



Gayl R. Mazuco, Director of Representation

Attachment:

Certification of Representative dated: June 26, 2015

In the Matter of

QUEEN CITY CHARTER SCHOOL

-and-

QUEEN CITY EDUCATION ASSOCIATION

Docket No. RO-2015-040

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