

D.R. NO. 2015-9

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

In the Matter of

PATERSON CHARTER SCHOOL  
FOR SCIENCE & TECHNOLOGY,

Public Employer,

-and-

Docket No. RO-2015-041

PATERSON CHARTER EDUCATION  
ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director of Representation certifies by card check a unit of non-supervisory, certificated and non-certificated employees of the Paterson Charter School for Science & Technology (PCSST). PCSST objected to the petition on the grounds that the authorization cards submitted by the petitioner, Paterson Charter Education Association (Association), were obtained by coercive and fraudulent measures. PCSST also contended the list of employees it submitted for purposes of determining whether majority support exists on the basis of the Association's cards should be revised since several employees on that list had either resigned or had their employment contracts non-renewed since the date the list was submitted. The Director rejected PCSST arguments and concluded PCSST had submitted a sufficient number of valid authorization cards to be certified as majority representative. In reaching this decision, the Director explained that the affidavit submitted by PCSST in support of its contention that authorization cards were obtained through coercive measures was not competent evidence since it consisted of hearsay statements from PCSST's Lead Person about communications between unit employees and the Association. The Director also declined to revise the list of employees at PCSST's request, noting that our Act and regulations do not give PCSST the authority to unilaterally revise a list of employees in a card check petition.

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Appearances:

For the Public Employer,  
Riker, Danzig, Scherer, Hyland & Perretti, attorneys  
(Brenda C. Liss, of counsel)

For the Petitioner,  
Sasha A. Wolf, NJEA UniServ Field Representative

**DECISION**

On April 22, 2015, the Paterson Charter Education Association ("Association") filed a petition for card check certification seeking to represent 166 non-supervisory, certificated and non-certificated employees of the Paterson Charter School for Science & Technology ("PCSST"). PCSST 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 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, I make the following:

**FINDINGS OF FACT**

On April 22, 2015, the Association filed a certification with its petition attesting that a majority of non-supervisory certificated employees of PCSST elected to be included in a collective negotiations unit with non-certificated PCSST employees. The Association's submission satisfied the requirements for certifying a unit of professionals and non-professionals. N.J.S.A. 34:13A-6(d).

The Association also submitted with its petition signed authorization cards from a majority of petitioned-for unit employees. The cards set forth clear language designating the Association as the exclusive majority representative of unit employees for purposes of collective negotiations over terms and conditions of employment.

On April 24, 2015, the Director of Representation sent a letter to PCSST requesting information needed to process the Association's petition. The letter included a request for a list of employees in the petitioned-for unit. In the correspondence, the Director notified PCSST that the employer's list "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."

On May 7, 2015, the PCSST filed a Certification of Posting, together with a list of 166 employees in the petitioned-for unit and a letter objecting to the petition. The Certification states that a Notice to Public Employees of the Association's petition was posted in places where PCSST employee notices are normally posted and will remain posted for ten days. The Notice was posted on April 28, 2015. No other labor organization has claimed interest in representing the petitioned-for employees.

PCSST objects, asserting that a majority of the petitioned-for employees do not support the Association as their majority representative. It also asserts that the Association obtained authorization cards through coercion, by misleading employees about the consequences of signing authorization cards, and by promising benefits to employees it could not guarantee.

Moreover, PCSST contends that a majority of non-certificated employees do not support the Association and did not choose to be in a unit with certificated employees. In lieu of dismissal, PCSST urges us to conduct a hearing to determine the validity of the Association's authorization cards.

Subsequent to the filing of the May 7 letter, PCSST counsel was advised in a telephone conversation with the assigned Commission staff agent that any employees who informed the PCSST

administration of having been coerced, harassed or misled into signing the Association's authorization cards should be instructed to contact the Commission staff agent about such misconduct. Five PCSST employees contacted the Commission and requested rescission of their authorization cards. Four of these employees expressed in writing that they no longer wish to support the union. No petitioned-for employees have advised the Commission that they were coerced or harassed by an Association representative into signing authorization cards. Moreover, no employee has come forward with information that an Association representative made misrepresentations about the authorization cards.

On May 12, Priscilla Rivera, an Administrative Assistant employed by the PCSST, e-mailed our office a thirty four (34) page attachment that included a cover letter and a petition signed by what are represented as seventy seven (77) PCSST employees. The letter was signed by Delia Pomales, who describes herself in the letter as a "Representative of Union Free PCSST." Accompanying the letter is a thirty three (33) page document signed by what appear to be PCSST employees. The first page of the petition contains a header at the top of the page with the language, "National Right to Work Legal Defense Foundation, Inc.

together with a logo"<sup>1/</sup> and sets forth the following introductory statement:

**Petition Against Union "Representation"**

The undersigned employees do NOT want to be represented by the Paterson Charter Education Association Union, do NOT want to join the Union, and do NOT support the Union in any manner.

To the extent that any of the undersigned employees have ever previously signed a Union "authorization card" or other indication of support for union representation, the undersigned employee hereby REVOKES that card, effective immediately. More specifically, our employer, the Union, and all third parties or arbitrators must take NOTICE that any such card signed by an undersigned employee is NULL and VOID.

Should our employer ever voluntarily recognize the Union as the bargaining representative of employees, the undersigned employees hereby petition National Labor Relations Board<sup>2/</sup> to hold a DECERTIFICATION ELECTION to determine whether the majority of employees truly wish to be represented by the aforementioned Union.

Below this statement on page one of the petition are four dated signatures by PCSST employees who did not sign authorization cards in support of the Association. Pages two through seven of the petition contain only signature lines with no language or

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1/ The logo on the petition appears to be identical to the logo on the National Right To Work Foundation's website, which is <http://nrtw.org/>.

2/ The National Labor Relations Board does not have jurisdiction over public sector employees covered by our Act.

statement indicating what the signatories were subscribing to or supporting. On pages two through seven, twenty-seven employees who did not sign authorization cards signed the petition and six employees who did sign authorization cards signed the petition. At the top of pages eight through thirty-three, there is language identical to the quoted statement above. Below the statement on each of these pages are dated signatures. Fifty-seven employees who did not sign authorization cards signed these pages of the petition while sixteen employees who signed authorization cards also signed the petition. One signatory to the petition was not identified on the employer's list of employees.

On May 13, a Commission staff agent sent a letter to the parties advising that upon our review of PCSST's submitted list of employees, it appeared that the Association had filed a sufficient number of authorization cards to be certified as the majority representative of the petitioned-for unit. The staff agent also enclosed a proposed Stipulation of Appropriate Unit (Stipulation), describing the unit as "all regularly employed, non-supervisory certificated and non-certificated employees" of PCSST. Excluded from the unit were "managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees and all other employees" of PCSST. The staff agent's letter also afforded the parties the opportunity to file written objections to the

proposed Stipulation or to the processing of the Association's petition, as well as certifications and written replies to objections. The Association signed the Stipulation; the PCSST refused and filed objections.

On May 20, Administrative Assistant Rivera emailed a two page attachment to the Commission containing a cover letter and a one page signed petition with language identical to the statement in the May 12 petition. A total of seventy-eight PCSST employees signed a petition against representation by a union, twenty-two of whom had also signed authorization cards. We have not received information from employees who signed the Association's cards that they did not understand the language on the authorization cards. No employee who signed both an authorization card and the petition advised us that he or she was coerced, harassed or misled by the Association into signing an authorization card.

In opposition to the Association's petition, PCSST counsel submitted a three page letter together with a certification from A. Riza Gurcanli, PCSST's Lead Person, on May 20, 2015. PCSST contends it is at a "distinct disadvantage" in challenging the Association's petition because it lacks knowledge of the identity and number of employees who signed authorization cards. PCSST asserts it should be afforded an opportunity to verify the number of cards signed by PCSST employees and have the ability to

challenge our determination that the Association is supported by a majority of unit employees based on its authorization cards. Further, PCSST contends there are material questions of fact as to whether a majority of PCSST employees support the Association that require an evidentiary hearing.

Gurclani certifies that six unit employees have resigned from PCSST since May 10, 2015 and an additional seven employees were given notice that their employment contracts would not be renewed for the 2015-2016 school year. Gurclani also asserts that twelve of these thirteen employees will be replaced. Based on past experience, Gurclani projects an additional thirty employees will resign before the end of the 2015-2016 school year. Gurclani asserts that the employees who resigned or whose contracts were non-renewed should not be counted towards determining majority support for the Association in this authorized card petition.

Gurclani further certifies that "numerous" PCSST employees have informed him that "they signed authorization cards based on misinformation given to them by fellow employees and/or representatives of the proposed unit and/or the New Jersey Education Association." According to Gurclani, this "misinformation" concerned topics such as the cost of membership dues and representation fees in lieu of dues, "overstating" the issues the Association could negotiate over on behalf of members,

"overstating" the benefits resulting from union membership (such as guaranteed pay increases) and "overstating" the benefits that would result from union membership. Gurclani also asserts employees have told him that they were coerced into signing authorization cards based on "misinformation." No employees have come forward with information or evidence to corroborate Gurclani's hearsay statements.

On May 27, 2015, the Association filed a three page reply to PCSST's objections, along with certifications from three PCSST employees. The Association contends it has submitted a sufficient number of valid authorization cards to be certified as the unit's majority representative. The Association also asserts and certifies that seven employees on the employer's list are either supervisors or confidential employees who should not be included in the unit. Moreover, the Association contends and certifies that one employee on the employer's list (the school physician) is not a employee of PCSST within the meaning of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq., hereinafter "Act"). Thus, according to the Association, the appropriate number of employees in the unit is 161.<sup>3/</sup>

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<sup>3/</sup> The Association states that there are 169 employees on the employer's list. We have carefully reviewed that list and determined that 166 employees are included. We note that even if there were 169 employees in the proposed unit, the Association would still have submitted enough authorization cards to establish majority support.

The Association also contends that issuance of a certification of representative based on its authorization cards is appropriate since the PCSST's claims that employees were coerced or misled are not supported by competent evidence. It contends PCSST's accusations of coercion and fraud are false and unsubstantiated. In the absence of reliable evidence to support these claims, the Association asserts it should be certified as the majority representative. Moreover, the Association rejects the arguments by PCSST that employee resignations or terminations occurring after the list of employees is produced by the employer should be factored into determining whether the Association has obtained majority support. The Association notes that there is no legal precedent or authority to support this contention by PCSST and that adoption of the PCSST's position would "eviscerate" the purpose of the Act's authorization card procedures.

On June 3, 2015, PCSST counsel filed a two page letter in response to the Association's May 27 letter. PCSST rejects the claim by the Association that seven employees included in its list are either supervisors or confidential within the meaning of the Act. It also reiterates its request for a hearing to determine whether the Association has submitted a sufficient number of valid authorization cards to be certified as majority representative.

**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 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 Director of Representation "shall determine whether a majority of employees in the unit have signed valid authorization cards" in support of certification. N.J.A.C. 19:11-2.6(b).

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 against the employer's list of employees shows that it 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 meets the intent of the statute and our rules.

PCSST argues we cannot certify the Association based on the authorization cards that were submitted. It contends the Association's cards are not a reliable indicator of whether the Association enjoys majority support from unit employees because the Association obtained the signatures through coercive measures and misled employees about the consequences of signing authorization cards. PCSST also asserts we cannot rely on the list of employees it produced on May 7 in determining majority support because several dozen employees have resigned or may resign and six employees' contracts will not be renewed for the 2015-2016 school year. These factors, according to PCSST, require us to either dismiss the Association's petition or conduct a hearing to determine whether the Association is supported by a majority of the petitioned-for employees. For the reasons explained below, I reject PCSST's contentions and certify the Association as majority representative based on the authorization cards it has submitted.

Since the Legislature authorized petitions for card check certification as the majority representative in 2005, 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 upheld a decision by the Director to order an election since the

validity of a significant number of authorization cards were called into question by numerous letters from employees to the Director describing threats, promises of benefits, and misleading statements causing them to sign cards. Specifically, ten (10) employees of a unit of forty (40) employees expressed in writing their desire to revoke their authorization cards. The letters provide in a pertinent part:

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.

[35 NJPER at 245]

The cover letter which accompanied the ten letters provides in a pertinent part:

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 [representative] had to offer we will be able to withdraw from it.

[35 NJPER at 245]

The Director could not conclude based on this information whether the cards were valid. 35 NJPER at 246. However, the

Commission and Director in North Bergen Tp. denied a request that a hearing be conducted to determine the validity of the petitioner's authorization cards. Rather, the Commission and Director held that a hearing was not the appropriate procedure for addressing objections to the authorization cards. 35 NJPER at 438. In reaching this determination, the Director explained:

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 are not an adequate basis to support a challenge to a representation petition. County of Monmouth, D.R. No. 92-11, 18 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, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 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. (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 a 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. The Director also held that "hearsay and double hearsay statements cannot form a basis to block a representation election" and rejected the incumbent union's

challenge to the representation petition. Id.; cf. Mercer Cty. Sheriff, (Director rejects challenge by incumbent union to representation petition since challenge was based largely on hearsay statements of the incumbent union president concerning allegedly improper communications between the petitioning union, employer and unit employees).

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 had 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.

Like the incumbent union in River Vale Bd. of Ed., PCSST has not presented competent evidence to support its challenge to the Association's petition. PCSST's accusations that Association representatives coerced, harassed or misled unit employees into signing authorization cards are unsubstantiated and based exclusively on hearsay statements of Gurclani about communications between unnamed unit employees and the Association. Unlike the objecting employees in North Bergen Tp.,

no PCSST unit employees have come forward with information or evidence that calls into question the validity of the Association's authorization cards.<sup>4/</sup> While we have received communications directly from five PCSST employees requesting rescission of their authorization cards, these employees have not indicated they were coerced, harassed or misled by the Association into signing authorization cards, nor do they claim to have misunderstood the language in the Association's card.<sup>5/</sup> 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).

We also reject PCSST's contention that employees who resigned or whose employment contracts were non-renewed after May 10 should not be counted towards determining majority support for

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<sup>4/</sup> We note that even if we had received evidence calling into doubt the validity of the authorization cards, the appropriate administrative response would be to order an election, not a hearing. North Bergen Tp. Thus, we reject PCSST's request for an evidentiary hearing both because there is no competent evidence to support its challenge and because, if there were, the appropriate response would be to order an election.

<sup>5/</sup> Even were we to exclude from consideration the five PCSST employees who stated they wished to revoke their authorization cards, the Association would still have submitted enough authorization cards to establish majority support.

the Association. The Director notified PCSST in writing on April 24 that the list of employees submitted by PCSST "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." In accordance with that directive and the requirements of the Act, we compared the Association's authorization cards against the list of employees submitted by PCSST on May 7, 2015 and determined that the Association obtained majority support. N.J.S.A. 34:13A-5.3; N.J.A.C. 19:11-2.6(b). PCSST cites no legal authority to support the proposition that the list of employees provided by an employer after we have determined majority support exists in a card check petition can unilaterally be revised by the employer. Our Act and regulations on representation matters do not contemplate such a procedure<sup>6/</sup> and, absent the express 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.<sup>7/</sup>

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<sup>6/</sup> We note that even if the thirteen employees who resigned or whose contracts were non-renewed for the 2015-2016 school year were excluded from consideration, the Association would still have submitted enough authorization cards to establish majority support. See North Bergen Parking Authority, D.R. No. 2013-9, 39 NJPER 294 (¶98 2012).

<sup>7/</sup> We also note that PCSST's proposed procedure of revisiting and revising the list of employees each time an employee resigns, is non-renewed, or is otherwise discharged would unduly delay the processing of the Association's petition. This consequence runs contrary to the Commission's

(continued...)

Accordingly, I find that a sufficient number of valid authorization cards have been submitted to warrant certification of the Association as a majority representative.

I find that the following unit is appropriate for collective negotiations:

**Included:** All regularly employed, non-supervisory certificated and non-certificated employees of the Paterson Charter School for Science & Technology.

**Excluded:** Managerial Executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees; and all other employees of the Paterson Charter School for Science & Technology.

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7/ (...continued)  
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.

ORDER

I certify the Paterson Charter Education Association as the exclusive representative of the unit described above, based upon its authorization cards.<sup>8/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

/s/ Gayl R. Mazuco

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Gayl R. Mazuco

DATED: June 18, 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 June 29, 2015.

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<sup>8/</sup> A Certification of Representative is attached.