

D.R. NO. 2017-1

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

In the Matter of

GREAT FUTURES CHARTER HIGH SCHOOL
FOR THE HEALTH SCIENCES,

Public Employer,

-and-

Docket No. RO-2016-051

GREAT FUTURES EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation certifies by card check a unit of non-supervisory, certificated and non-certificated employees of the Great Futures Charter High School (GFCHS). The Director rejected GFCHS's assertions that the Association obtained authorization cards through misrepresentation and coercion; that full time GFCHS employees who signed cards were on leaves of absences from other public school districts that already have collective negotiations units, and therefore their authorization cards should not have been counted; and employees who signed cards that are no longer employed by GFCHS should not have their authorization cards be counted. In reaching this decision, the Director explained that since GFCHS had not presented any evidence in support of its challenge to the Association's petition, their mere assertions that Association representatives coerced, harassed or misled unit employees into signing authorization cards were unsubstantiated. The Director also declined to revise the list of employees and remove the employees who were no longer employed by GFCHS, noting that our Act and regulations do not give GFCHS the authority to unilaterally revise a list of employees in a card check petition.

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Petitioner.

Appearances:

For the Public Employer,
Law Offices of Elise DiNardo, attorneys
(Elise DiNardo, of counsel)

For the Petitioner,
Oxfeld Cohen, attorneys
(Randi Doner April, of counsel)

DECISION

On June 20, 2016, the Great Futures Education Association ("Association") filed a representation petition, together with signed and dated authorization cards, seeking to represent a collective negotiations unit of twenty-five (25) non-supervisory, certificated and non-certificated employees of the Great Futures Charter High School for the Health Sciences ("GFCHS"). GFCHS objects to the Association's petition and declines to sign a Stipulation of Appropriate Unit.

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, professional option vote certification, and submissions of the parties, I find the following facts:

The petitioned-for employees are currently unrepresented. The Association seeks to represent all regularly employed non-supervisory certificated and non-certificated employees employed by GFCHS. On June 20, 2016, the Association filed a certification with its petition attesting that a majority of non-supervisory certificated employees of GFCHS elected to be included in a collective negotiations unit with non-certificated GFCHS 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 June 23, 2016, the Director of Representation sent a letter to GFCHS 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 GFCHS 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 July 1, 2016, GFCHS filed a Certification of Posting dated June 29, 2016, together with a list of twenty-six (26) employees in the petitioned-for unit. No other labor organization has claimed interest in representing the petitioned-for employees.

On August 15, 2016, an investigatory conference was held seeking an agreement by the parties for a Stipulation of Appropriate Unit. GFCHS declined to execute the Stipulation at the conference, asserting that 1) the Association obtained authorization cards through misrepresentation and coercion; 2) full time GFCHS employees who signed cards are on leaves of absences from other public school districts that already have collective negotiations units, and therefore their authorization cards should not be counted; and 3) employees who signed cards that are no longer employed by GFCHS and their authorization cards should not be counted. GFCHS was given the opportunity to

submit documents and certifications supporting its position by the close of business on August 18, 2016. GFCHS submitted a letter without any supporting certification(s), which reiterated its assertions made during the conference, as well as included a new assertion that four (4) employees may be ineligible for inclusion in the unit because they are managerial executives, supervisors or confidential within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. GFCHS requested additional time to explore the allegations of misrepresentation and undue influence. No petitioned-for employee has advised the Commission that they were coerced or harassed by an Association representative into signing an authorization card. Moreover, no employee has come forward with information that an Association representative made misrepresentations or exercised undue influence to entice an employee into signing an authorization card.

On August 19, 2016, the Association filed a reply to GFCHS objections. The Association contends that issuance of a certification of representative based on its authorization cards is appropriate because GFCHS did not provide competent evidence that employees were coerced or misled. It objects to GFCHS's request for additional time to investigate their assertions of misrepresentation and undue influence. It also asserts that following certification, the potential issue regarding an

employee's unit ineligibility due to their status as a managerial executive, supervisor or confidential within the meaning of the Act can be determined through a petition for clarification of unit.

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 majority representative status. Our review of the Association's authorization cards compared with the employer's list of employees shows 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 meets the intent of the statute and our rules.

GFCHS 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. GFCHS also asserts we cannot rely on the list of employees it produced on July 1, 2016 in determining majority support because eight (8) employees have since left their positions at GFCHS and other employees were formerly members of labor organizations at different public school districts. It further claims that four (4) employees should not have been included in the Association's petition because they are either confidential, managerial executives or supervisory pursuant to the Act. These factors, according to GFCHS, require us to either dismiss the Association's petition or to conduct a secret ballot election in lieu of certification by card check. For the reasons explained below, I reject GFCHS'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, 41 NJPER 501 (¶156 2015). See, Paterson Charter School for Science and Technology, D.R. No. 2015-9, 42 NJPER 74 (¶19 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).

Here, GFCHS has not presented any evidence in support of its challenge to the Association's petition. GFCHS's mere assertions that Association representatives coerced, harassed or misled unit employees into signing authorization cards are unsubstantiated. Unlike the objecting employees in North Bergen Tp., no GFCHS unit employees have come forward with information or evidence that calls into question the validity of the Association's authorization cards. GFCHS had ample time to provide evidence to support its claims, including an additional three (3) days after

the investigatory conference on August 18, 2016. The Commission's policy is to expedite the processing of representation petitions so that employee's statutory rights to select a representative may be addressed promptly. Monmouth County Prosecutor's Office, D.R. No. 2010-13, 41 NJPER 117 (¶42 2010). GFCHS has offered no evidence to support their assertions of misrepresentation and undue influence. To delay resolution of this representation petition would thwart the legitimate representation rights of employees who have petitioned the Commission for certification of representative, based on the submission of authorization cards. 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).

I reject GFCHS's contention that employees who were no longer employed at GFCHS after June 15, 2016 should not be counted towards determining majority support for the Association. The Director notified GFCHS in writing on June 23, 2016 that the list of employees submitted by GFCHS "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 July 1, 2016, in accordance with that directive

and the requirements of the Act, GFCHS filed its list of employees. We compared the Association's authorization cards against the list of employees submitted by GFCHS 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). GFCHS cites no legal authority to support the proposition that the list of employees provided by an employer can be unilaterally revised after we have determined majority support exists in a card check petition. Our Act and regulations on representation matters do not contemplate such a procedure 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.^{1/} Paterson Charter School for Science and Technology, 42 NJPER 74. Likewise, GFCHS has provided no legal authority to support its contention that employees cannot sign authorization cards if they had previously been a member of a different labor organization in another school district.

Lastly, I find that while GFCHS asserts that four (4) employees may be deemed confidential, managerial or supervisory, we need not resolve that question as a prerequisite to certification. The Association's demonstration of its majority

^{1/} We also note that GFCHS'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 established policy in favor of the expedited processing of representation cases.

status is not dependent upon a resolution of that issue. Following certification, either party may file a petition for clarification of unit requesting us to determine those individuals' unit status. N.J.A.C. 19:11-1.5. Passaic County Prosecutor's Office, D.R. No. 2006-15, 32 NJPER 107 (¶ 51 2006).

Accordingly, I find that the Association has submitted valid authorization cards from a majority of the petitioned for employees to grant certification based upon card check. N.J.S.A. 34:13A-5.3.

I find the following unit is appropriate for collective negotiations:

Included: All regularly employed, non-supervisory certificated and non-certificated employees employed by Great Futures Charter High School for the Health Sciences.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, and all other employees employed by Great Futures Charter High School for the Health Sciences.

ORDER

I certify the Great Futures Education Association as the exclusive representative of the unit described above, based upon its authorization cards.^{2/}

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

DATED: August 24, 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 6, 2016.

^{2/} A Certification of Representative is attached.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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GREATER FUTURES CHARTER HIGH SCHOOL FOR THE HEALTH SCIENCES,	>	
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-and-	>	DOCKET NO. RO-2016-051
	>	
GREAT FUTURES EDUCATION ASSOCIATION,	>	
Petitioner.	>	

**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

GREAT FUTURES EDUCATION ASSOCIATION/NJEA

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

UNIT: Included: All regularly employed, non-supervisory certificated and non-certificated employees employed by Great Futures Charter High School for the Health Sciences.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, and all other employees employed by Great Futures Charter High School for the Health Sciences.

DATED: August 24, 2016

Trenton, New Jersey

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

Attachment:

Certification of Representative dated: [August 24, 2016](#)

In the Matter of

GREAT FUTURES CHARTER HIGH SCHOOL FOR THE HEALTH SCIENCES

-and-

GREAT FUTURES EDUCATION ASSOCIATION

Docket No. RO-2016-051

Service on the following:

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