

P.E.R.C. NO. 2016-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 Public Employment Relations Commission denies the request of the Paterson Charter School for Science & Technology (PCSST) for review of the Director of Representation's certification by card check of the Paterson Charter Education Association as the exclusive representative of certain PCSST employees. The Commission finds that the Director complied with the requirements of N.J.A.C. 19:11-2.6 for certification on the basis of authorization cards, and that PCSST's objections raised no doubts about the validity of the certification.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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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 June 30, 2015, the Paterson Charter School for Science & Technology (PCSST) filed a request for review of D.R. 2015-9, 42 NJPER __ (¶__ 2015). In that decision, the Director of Representation ordered that, based upon its submission of a sufficient number of authorization cards, the Paterson Charter Education Association (Association), be certified as the exclusive representative of all regularly employed, non-supervisory certificated and non-certificated employees of PCSST. We deny the PCSST's request.

Under N.J.A.C. 19:11-8.2, a request for review of a Decision of the Director of Representation will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

PCSST argues that grounds 1 and 3 are present in this case. Specifically, PCSST seeks review on the grounds that the Director should have disclosed the exact number of unit members who signed authorization cards constituting a majority of the 166 eligible employees; that the Director should have negated the cards of 22 employees who later submitted a petition asserting that they no longer wish to join the union; that the Director should have conducted an election instead of card check certification; that employees who signed cards and later left the employ of PCSST should have had their cards disregarded from the count; and that the Director should have required a majority showing of interest from non-certificated employees because the proposed unit consists of certificated and non-certificated employees.

The Association responds that the Director correctly certified the Association pursuant to N.J.A.C. 19:11-2.6(d)6 based on signatures from a majority of the employees in the proposed unit; that the Director correctly found that a majority of certificated employees exercised their statutory "professional option" under N.J.S.A. 34:13A-6(d) to be included in a negotiations unit with non-certificated employees; that PCSST supplied no substantiated allegations that any employee had been coerced, intimidated, or misled into signing an authorization card; that the Director correctly held, pursuant to N.J.A.C. 19:11-2.6(f), neither a hearing nor election was necessary because she found no substantial and material issues of fact; and that the Director correctly rejected PCSST's argument that employees who resigned or were non-renewed since signing authorization cards should not be considered eligible voters.

We conclude that PCSST has not met the standards for granting a request for review. Given this disposition, we find no need to repeat the extensive factual findings included in the Director's decision, which were ascertained as a result of an administrative investigation. N.J.A.C. 19:11-2.2; D.R. No. 2015-9, pp. 2-10. We note briefly that the Association filed its initial representation petition on April 22, 2015, with amendments on May 11 and May 15. Following the initial petition, the Director sent a letter to PCSST requesting a list of

employees in the petitioned-for unit that "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." PCSST's May 7th response included a list of eligible employees and objected to the representation petition.^{1/} By comparison of the signed authorization cards submitted against the 166 eligible employees from PCSST's list, the Director determined that the Association obtained majority support.

We agree with the Director's analysis at pages 11-20 of her decision, including her reliance on the precedent cited therein. We add or reiterate the following.

Commonly referred to as "card check", where only one representative is seeking to be a majority representative, N.J.S.A. 34:13A-5.3 authorizes the Commission to certify a majority representative:

...by a majority of the employees in the unit signing authorization cards indicating their preference for that representative...

[Emphasis added]

The following regulations set forth, in pertinent part, the Director of Representation's investigatory duties and obligations when a majority representative seeks certification by card check:

^{1/} The employer's list included 169 employees; the Association's response asserted there were 161 employees. The Director's review of the list determined that 166 employees were eligible for unit inclusion.

**19:11-2.6 Investigation of petition;
disposition**

* * *

(b) Where the petitioner is seeking to be certified as the majority representative of an appropriate unit on the basis of authorization cards and no other employee organization is seeking to be the majority representative, the Director of Representation shall determine whether a majority of employees in the unit have signed valid authorization cards.

* * *

(d) After the investigation of such petition, the Director of Representation shall either:

* * *

6. 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;...

[Emphasis added]

As is apparent from the underlined language of the relevant legal authority, the Director is not required to provide the exact number of valid signed authorization cards constituting her basis for finding that a majority threshold has been reached and certification is warranted.^{2/} Accordingly, we reject PCSST's argument that the Director should have disclosed the exact number of unit members who signed authorization cards. We decline here to unnecessarily impose a new requirement for the Director to provide more information than is legally obligated. Such

^{2/} Contrast rules for elections procedures, which explicitly allow parties to witness the tally of ballots and in no uncertain terms require that after the election, "...the Director of Representation shall furnish the parties with a tally of ballots." N.J.A.C. 19:11-10.3(g).

amendment to the representation procedures is more appropriate for the formal administrative rule-making process. We note that our review of the authorization cards against the employer's list shows that a majority of employees support certification regardless of which parties' eligible employee number is used.

We next address PCSST's May 12, 2015 and May 20, 2015 submissions of a petition against union representation from 22 employees who had already signed authorization cards, as well as the individual submissions of 5 employees who contacted the Commission seeking to rescind their authorization cards. Four of the five who contacted the Commission individually were also among the 22 signers of the petition submitted by PCSST; therefore, a total of 23 employees who signed authorization cards later attempted to rescind their votes in some manner. Only one of these 23 employees made any sort of statement to suggest he was misled, harassed, or coerced into signing the authorization card. That employee's letter seeking withdrawal of authorization stated: "I was misled!" That single vote, if deemed invalid, would not have changed the outcome of the certification. Regardless of whether the other 22 signatories could have mathematically changed the outcome of the certification, they do not raise doubts about the validity of the certification because none of their attempted signature revocations indicated they were coerced, harassed, or misled by the Association into signing the

cards. Contrast North Bergen Tp., P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009), wherein the Commission affirmed the Director's decision to order an election because the validity of ten authorization cards were in doubt based on employee letters describing promises of benefits, misinformation, and harassment by union organizers to induce signing of the cards.

Furthermore, the May 20, 2015 certification of PCSST's "Lead Person" A. Riza Gurcanli does not cast doubt on the validity of the authorization cards because it merely contains hearsay statements that some employees told him they were misinformed by the Association regarding fees and benefits and thereby coerced into signing. No employees, other than the one aforementioned employee stating he was misled, produced any information or supplied any evidence to corroborate Gurcanli's hearsay statements. As the Director duly noted, hearsay statements are not an adequate basis to support a challenge to a representation position. (See D.R. 2015-9, pp. 14-17, and cases cited therein).

Next, we address PCSST's argument that the Director should have amended the employer-provided list of eligible employees throughout the investigation to reflect changes in employment status and correspondingly changed the number of signed authorization cards necessary for a majority. We concur with the Director's conclusion that there exists no legal authority for that proposition, and that such a procedure would unduly delay

the processing of a representation petition. In election cases, voter eligibility is normally determined by an employee's employment status both during the payroll period for voting eligibility and on the date of the election, and even employees who plan to retire or resign are still eligible to vote if on the payroll at the time of the election. See, e.g., Cumberland Cty. Bd. of Social Services, D.R. No. 2003-15, 29 NJPER 150 (¶43 2003); Rutgers University, D.R. No. 2001-1, 26 NJPER 348 (¶31137 2000); Rockaway Tp., D.R. No. 91-21, 17 NJPER 132 (¶22053 1991). Similarly, there is no basis for rejecting signed authorization cards from employees who were eligible at the time they signed the cards. Once a list of eligible employees has been received, the Director need not consider later-occurring fluctuations in employee ranks due to resignations, retirements, deaths, layoffs, non-renewals, or terminations in determining whether a majority of eligible employees submitted authorization cards.^{3/}

^{3/} In addition to the employee resignations or non-renewals noted by the Board to the Commission with its request for review, by letter of August 4, 2015 the Board requested permission to supplement the record to include an additional certification from Gurcanli dated July 30th which purportedly stated that ten additional resignations were accepted by the Board at its July 29th meeting. By letter of August 5th, the Commission Case Administrator denied the Board's request to supplement the record. Given our legal conclusion on this topic, even if we had supplemented the record with the new information as requested, we would find that it bears no legal significance.

Finally, we reject the Board's contention that the Director needed to provide evidence that a majority of non-certificated employees favored inclusion in the proposed mixed unit containing both certificated and non-certificated staff. The Association's petition satisfied the statutory requirements for certifying a unit of professionals and non-professionals by certifying that a majority of non-supervisory certificated employees elected to be included in a collective negotiations unit with non-certificated employees. N.J.S.A. 34:13A-6(d).^{4/} The employer's position would demand that the Director not certify a unit by card check - despite a majority of eligible employees signing authorization cards - unless an analysis of the cards of employee subgroups of certificated and non-certificated employees indicated majority support for the unit within each subgroup. There is no legal support for such a proposed method of determining "whether a majority of employees in the unit have signed valid authorization cards." Any of the eligible employees for the proposed unit, whether certificated or non-certificated, were free to express their support or rejection of the Association via the card check certification process.

^{4/} "The commission...shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes...(2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit..."

ORDER

The Paterson Charter School for Science & Technology's request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: August 13, 2015

Trenton, New Jersey