P.E.R.C. NO. 2017-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 Public Employment Relations Commission denies the request of the International Academy of Trenton Charter School (Academy) for review of the Director of Representation's certification by card check of the International Academy of Trenton Charter School Education Association (Association) as the exclusive representative of certain Academy employees. The Commission agrees with the Director's determination, noting that a majority of the eligible petitioned-for employees had signed authorization cards designating the Association as the majority representative for the petitioned-for unit and that "laboratory conditions" were compromised and employee rights to freely choose their representative were chilled by the Academy's communications.

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.

P.E.R.C. NO. 2017-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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.

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 September 16, 2016, the International Academy of Trenton Charter School (Academy) filed a request for review of D.R. 2017-2, __ NJPER __ (¶__ 2016). In that decision, the Director of Representation certified the International Academy of Trenton Charter School Education Association (Association) as the exclusive representative of the Academy's non-supervisory certificated and non-certificated employees based upon the submission of a sufficient number of authorization cards. The Director also denied the Academy's request for a secret ballot election, finding that "laboratory conditions" had been irredeemably tainted and employee rights to freely choose their

representative had been chilled by the Academy's actions. On September 22, the Association filed a response opposing review. On September 29, without the consent of opposing counsel or the Commission's permission, the Academy submitted a reply brief.[1/]

The Academy advances four arguments in support of its request:

> (1) a secret ballot election must be ordered because there is reasonable cause to believe that a valid question concerning representation exists based on the preponderance of the evidence, as the authorization cards submitted by the New Jersey Education Association (NJEA) were procured by misrepresentation, undue pressure, and/or harassment, among other improper means;
>
> (2) the Academy was denied its fundamental right to due process during the course of the Director's investigation of this matter, which resulted in unfairness and prejudice to the Academy;
>
> (3) substantial and material issues of fact require, at a minimum, reversing and/or vacating the Director's decision and ordering a secret ballot election; and
>
> (4) a secret ballot election must be ordered because there is reasonable cause to believe that a valid question concerning representation exists due to a significant change in the Academy's workforce.

In response, the Association argues that the Commission should sustain the Director's certification of a majority

---

1/ The Academy's reply brief was accepted as was a sur-reply from the Association.

representative as supported by valid authorization cards from an overwhelming majority of employees. The Association asserts that the Academy's conduct in this proceeding demonstrates nothing less than willful ignorance of the rights of public sector employees and seeks to paint the 2005 legislation permitting certification by card check as something sinister or clandestine despite the fact that it was designed to promote employee free choice and reduce employer interference.

Pursuant to N.J.A.C. 19:11-8.2, "a request for review 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.

We affirm the Director's decision, supplementing her analysis given that the parties submitted additional factual information with the instant request for review. We note that despite the legislatively-sanctioned card check method for labor organization certification, the Academy has repeatedly advanced arguments seeking: (1) to de-legitimize the concept of card check

certification;[2/] (2) to impugn the neutrality of the Commission and its employees.[3/]

In 2005, the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) was amended by P.L. 2005, c. 161 to require that the Commission:

> . . . recognize a labor organization as the majority representative of public employees in a unit if a majority of the employees in the unit sign authorization cards indicating their preference for that organization and if the Commission finds that there is only one labor organization seeking to be the majority representative.
>
> [Senate Labor Committee Statement to Senate No. 194 (12/13/2004); Assembly Labor Committee Statement to Assembly No. 1820 (6/13/2005); see also, N.J.S.A. 34:13A-5.3; N.J.A.C. 19:11-2.6(b)]

2/ In its May 25, 2016 brief, among other claims, the Academy asserts that certification by authorization cards "is fraught with the seeds of abuse by overzealous union organizers and their cohorts taking advantage of unsuspecting and easily manipulated employees who are uneducated as to the card check process and the legal implications of signing a card" and that "[t]here is absolutely no transparency of the process." Academy's May 25, 2016 Br. at 9-10; accord Academy's September 16, 2016 Br. at 16-17

3/ In its May 25, 2016 brief, among other claims, the Academy asserts that "the Commission's impartiality is compromised" because "the Commission instantly prejudged [this] case," "was dismissive of the issues raised," "improperly advised at least one employee that she could not rescind her card," "admonished the representatives from [the Academy] to be careful in dealing with its employees" without directing a similar admonishment to Association representatives, and failed to respond to certain email correspondence from the Academy. Academy's May 25, 2016 Br. at 11-13; accord Academy's September 16, 2016 Br. at 3, 17-24.

The disposition of the instant representation petition turns on whether employer conduct impaired employee free choice, thereby abrogating the laboratory conditions necessary to ascertain whether employee intent was the driving force behind authorization card rescissions. Given the Academy's request for a secret ballot election, we find the juxtaposition of certification by election with certification by card check to be of clarifying assistance – the processes are equivalent and equally valid. "[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.'" Paterson Charter School for Science & Technology, D.R. 2015-9, 42 NJPER 74 (¶19 2015), adopted at P.E.R.C. No. 2016-4, 42 NJPER 99 (¶27 2015) (citing N.J.A.C. 19:11-2.6(d)(3) and (6)); accord North Bergen Tp., H.E. No. 2010-10, 36 NJPER 199 (¶77 2010) ("Although there is no specific rule, the [eligibility] list for purposes of card check performs the same function as an excelsior/eligibility list does in an election to ensure a fair election, and the authorization cards are the equivalent of a ballot." (emphasis

added)); see also, River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013).

The Commission has "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." 42 NJPER at 78; see also, Queen City Charter School, D.R. No. 2015-11, 42 NJPER 82 (¶22 2015). The Commission has also "repeatedly held in representation cases that hearsay statements are not an adequate basis to support a challenge to a representation petition." Id. Rather, the Commission has "required information or evidence from individuals with personal knowledge of the events or circumstances giving rise to a challenge." Id.

Since the Act was amended in 2005, the Commission has only ordered a secret ballot election when addressing a challenge to the validity of authorization cards on one occasion. In North Bergen Tp., D.R. No. 2010-3, 35 NJPER 244 (¶88 2009), adopted at P.E.R.C. No. 2010-37, 35 NJPER 435 (¶143 2009), the International Brotherhood of Teamsters Local 701 (Local 701) filed a representation petition for certification by card check accompanied by an adequate number of authorization cards seeking to represent certain Township employees. Upon receipt of the Township's original eligibility list, Local 701 asserted that the Township was "packing" the list with transient part-time

employees and employees that could not be identified or who had either quit or been terminated. Upon receipt of the Township's revised eligibility list, Local 701 challenged the eligibility of 14 names on the list. The parties agreed to remove four of the challenged names and of the remaining 10, four were on leaves of absence and six were claimed to be supervisors.

After the petition was filed but before Local 701 was certified, the Township received identically-worded letters[4/] accompanied by a cover letter[5/] from 10 employees who had signed authorization cards expressing a desire to have their cards rescinded. Based upon these letters, the Director found that the

---

4/ In pertinent part, the 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.

5/ In pertinent part, the cover letter 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 [representative] had to offer we will be able to withdraw from it.

validity of the authorization cards was in doubt and ordered a secret ballot election, reasoning:

> 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. Unlike a secret ballot election, a hearing will likely require employees to openly disclose their support for - or against - [a union], a circumstance that would be inconsistent with the intent of the Act and the secret ballot process. An election, by contrast, will promptly and curatively gauge the intent of the card signers and will better preserve the "laboratory conditions" under which their intent should be gauged.
>
> [35 NJPER at 246; citations omitted]

Despite Local 701's claim that the Township's conduct during the processing of the petition would prevent a fair election,[6/] the Director found that unlike NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), the facts presented did not demonstrate that the employer engaged in unlawful or egregious conduct and Local 701 had not filed an unfair practice charge against the Township.

6/ Specifically, Local 701 asserted that "the parties' difficulty in agreeing to an employee [eligibility] list indicate[d] that the 'evidence of revocation [was] highly suspect.'"

The Commission adopted the Director's determination, noting that:

> . . . the affidavits submitted by Local 701 in this representation proceeding allege but do not prove that the named employer representatives committed particular unfair practices or provide a basis for counting the revoked authorization cards. Those allegations may be addressed in the unfair practice hearings now underway. If Local 701 can prove in those proceedings that the employer committed unfair practices resulting in the revocation of authorization cards and thus the loss of its support by a majority of [employees], it can obtain as a remedy the certification order sought in this case. . . . Local 701 need not prove, as a prerequisite to obtaining the remedy of certification[,] that a fair election would be unlikely. . . .Given our card-check law, certification without an election is a logical remedy for an unfair practice causing the revocation of authorization cards needed to establish majority support.[7/]
>
> [35 NJPER at 438 (emphasis added)]

Unlike North Bergen Tp., we find that the Academy's conduct during the processing of the instant petition interfered with the

---

7/ Notably, ". . . a bargaining order is designed as much to remedy past election damage as it is to deter future misconduct. If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease-and-desist order by further unlawful activity. The damage will have been done, and perhaps the only fair way to effectuate employee rights is to re-establish the conditions as they existed before the employer's unlawful campaign. There is, after all, nothing permanent in a bargaining order, and if, after the effects of the employer's acts have worn off, the employees clearly desire to disavow the union, they can do so by filing a representation petition." Gissel Packing Co., 395 U.S. at 612-613 (emphasis added).

free choice of employees by compromising the laboratory conditions necessary to ascertain whether employee intent was the driving force behind authorization card rescissions and/or to ensure the likelihood of a fair secret ballot election in the future. Specifically, we find that the employer communications that occurred during an undisputed May 12, 2016 staff meeting, when placed within the chronology of the filing and processing of the Association's petition, demonstrates that the Academy failed to cultivate an environment in line with its "responsibility . . . to insure that [an] election choice is exercised under 'laboratory conditions.'" East Windsor Tp., D.R. No. 79-13, 4 NJPER 445 (¶4202 1978). While we agree with the Director's recitation of the facts (D.R. at 1-26) and analysis of the issues (D.R. at 26-43), including her conclusions regarding authorization card rescissions, we need not reiterate those aspects of this matter. We add the following.

On May 2, 2016, the Association filed a petition seeking to be certified as the majority representative of an appropriate unit on the basis of authorization cards. No other employee organization sought to be the majority representative. On May 6, the Director sent a letter to the Academy requesting a Certification of Posting and information needed to process the Association's petition, including an employee eligibility list. On May 10, the Academy posted a Notice to Public Employees

regarding the Association's petition. On May 13, based upon the employee eligibility list provided by the Academy, the Director determined that a majority of petitioned-for employees had signed authorization cards designating the Association as the majority representative for the petitioned-for unit.[8/] (D.R. at 1-4; accord Academy's September 16, 2016 Br. at 3-4) These facts are undisputed.

On May 12, 2016:

> [D]uring a staff meeting which I attended from 4:30 pm to 5:30 pm, Traci Cormier, the director of operations for SABIS,[9/] repeatedly said "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." Ms. Cormier and the other administrators who were present then tried to explain why non-union is better than union. 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.
>
> [Certification of Dana Keene, Teacher employed by the Academy, dated May 25, 2016 at ¶7(b)]

8/ We note that our review of the authorization cards against the employer's eligibility list shows that a majority of employees signed authorization cards in support of certification.

9/ SABIS Educational Systems, Inc. (SABIS), through Springfield Education Management, LLC, is the Education Provider which operates the Academy.

In a certification dated May 25, Traci Cormier, Director of School Operations for SABIS, made no mention of the May 12 staff meeting noted above. Further, despite attempting to file late submissions on May 27 and June 1 without being granted leave to do so, the Academy again made no mention of the May 12 staff meeting noted above. The Academy did not file any other submissions or request leave to supplement the record. (D.R. at 26)

On September 6, 2016, the Director issued her decision certifying the Association as majority representative. Despite the Academy's protestations to the contrary (Academy's September 16, 2016 Br. at 17-19), the Director accurately found that Ms. Keene's May 25 certification was unrebutted[10/] with respect to the May 12 staff meeting (D.R. at 37-39). It was not until September 16, the date that the Academy submitted the instant request for review enclosing Traci Cormier's certification of even date, when Ms. Keene's account of the May 12 staff meeting noted above was partially refuted as "untrue and unsupported by credible evidence." See Certification of Traci Cormier, dated September 16, 2016 at ¶14. In pertinent part, Ms. Cormier certified:

10/ As noted above, in representation cases the Commission has "required information or evidence from individuals with personal knowledge of the events or circumstances giving rise to a challenge." Paterson Charter School for Science & Technology, 42 NJPER at 78; see also, Queen City Charter School. Arguments advanced by counsel are insufficient to rebut a witness' certification based on personal knowledge.

> The meeting held on May 12, 2016 was not a mandatory meeting for staff members and it was scheduled prior to [when] the Notice to the Public Employees was posted. On May 12, 2016 I led the scheduled staff meeting at the Academy. . . . The meeting had been previously scheduled in response to the staff's concern that communication needed to improve. The administration decided to schedule bi-weekly staff meetings instead of monthly and this was communicated to staff in advance. The purpose of the meeting was to discuss updates, answer questions from staff and provide pertinent information.
>
> I stated the following during the meeting. "Clearly there is a large elephant in the room and that is of the certification that IAT[CS] received regarding the union." I communicated at this time that I wanted to clarify a misconception that SABIS operates schools that are unionized. I clarified that "SABIS does not currently operate any schools that are unionized." In response, a teacher . . . asked the following question, "So, does this mean that SABIS will close the school if we are part of the union?" My response to said teacher . . . was as follows, "Currently SABIS does not have any schools that are unionized in our network." I did not make any threats.
>
> Furthermore, I did not mention to staff that there would be additional compensation as it related to the union or otherwise, at this meeting on May 12, 2016 or any meeting led by me or that I was in attendance.
>
> [Certification of Traci Cormier dated September 16, 2016 at ¶14 (emphasis added)]

In Gissel Packing Co., the Supreme Court of the United States directly addressed employer communications during the pendency of employee organization efforts:

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court below that conveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof. As stated elsewhere, an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition."
>
> . . . In carrying out its duty to focus on the question: "What did the speaker intend and the listener understand?", the [NLRB] could reasonably conclude that the intended and understood import of that message was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities. In this connection, we need go no further than point out (1) that

> [Gissel Packing Co.] had no support for its basic assumption that the union, which had not yet even presented any demands, would have to strike to be heard, and that it admitted at the hearing that it had no basis for attributing other plant closings in the area to unionism; and (2) that the [NLRB] has often found that employees, who are particularly sensitive to rumors of plant closings, take such hints as coercive threats rather than honest forecasts.
>
> . . . [A]n employer, who has control over [the employer-employee] relationship and therefore knows it best, cannot be heard to complain that he is without an adequate guide for his behavior. He can easily make his views known without engaging in "brinkmanship" when it becomes all too easy to "overstep and tumble over the brink." At the least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.
>
> [Gissel Packing Co., 395 U.S. at 618-620, (emphasis added); citations omitted]

We find that the Academy's communications at the May 12 staff meeting irreparably tainted laboratory conditions and employee rights to freely choose - or rescind a choice for[11/] - a representative by way of authorization cards or secret ballot election. See Gissel Packing Co.; see also, East Windsor Tp. ("While the conduct constituting interference may have been unintended, the Commission's ultimate concern is with the ability of employees to exercise their choice in an atmosphere that is

---

11/ Notably, all of the attempted rescissions were received by the Commission on/after May 20, at least eight days after the May 12 staff meeting. (D.R. at 5-9)

free of interference" and "[t]he protection of employee free choice requires that specific conduct constituting interference with free choice be remedied even in those instances where the specific objectionable conduct has not been put to an adjudicatory test in earlier Commission decisions."). Given that the Association's petition was specifically discussed at the May 12 staff meeting, we can only look askance at the Academy's failure to specifically acknowledge/deny/dispute that it occurred prior to the issuance of the Director's decision.

Notwithstanding this peculiar oversight and accepting Ms. Cormier's September 16 certification as true, arguendo, her ambiguous statement that "SABIS does not currently operate any schools that are unionized" and similar unresponsive answer to a teacher's direct question about school closure call into question both the intent of the employer communications and employees' understanding of what they heard. There can be no doubt, however, that there was a rational implication that the Academy/SABIS may or may not take action on its own initiative for reasons known only to the Academy/SABIS (i.e., while left to the imagination of staff members, closure of the Academy and/or lesser measures were conclusions that reasonably could have been drawn) should employees go forward with their organization efforts. Accordingly, while we acknowledge the Academy's position that some employees may have attempted to rescind their

authorization cards after the May 12 staff meeting, we find that the employer communications at issue compromised the laboratory conditions necessary to ascertain whether employee intent was the driving force behind authorization card rescissions. Under these circumstances, we agree with the Director and find that the appropriate way to effectuate employee rights is to re-establish the conditions as they existed before the May 12 staff meeting (i.e., to certify the Association as majority representative based upon its submission of a sufficient number of authorization cards from eligible employees). See Gissel Packing Co., 395 U.S. at 612-613; see also, North Bergen Tp., 35 NJPER at 438 ("certification without election is a logical remedy for an unfair practice causing the revocation of authorization cards needed to establish majority support.").

With respect to the Academy's request for a secret ballot election, we note that "the critical period to be examined in determining whether an employer's conduct has improperly interfered with the election process begins with the date of the filing of a representation petition rather than the date of the execution of the consent election agreement." Passaic Valley Sewerage Commission, D.R. No. 81-2, 6 NJPER 410 (¶11208 1980), adopted at P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980); see also, N.J.A.C. 19:11-2.6(d). The Commission "presumes that an election conducted under its supervision is a valid expression of

employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice" and "[c]onduct, seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election." Jersey City Dep't of Public Works, P.E.R.C. No. 43, NJPER Supp. 43 (1970), aff'd sub nom AFSCME Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971). However, the Commission has held that "the need for evidence of actual interference with employees' free choice will vary significantly given the nature of the conduct and its reasonable tendency to affect the results of the election." Passaic Valley Sewerage Commission; see also, East Windsor Tp.

Accordingly, even assuming that the Academy was unaware of the Association's representation petition until May 10, the May 12 staff meeting falls within the "critical period" to be examined in determining whether an employer's conduct has improperly interfered with the election process. As noted above, the parties' have submitted certifications that "precisely and specifically show that conduct has occurred which would warrant setting aside [an] election as a matter of law." N.J.A.C. 19:11-10.3(h). Again, while we acknowledge the Academy's position that some employees may have attempted to rescind their authorization cards after the May 12 staff meeting, we find that the employer

communications at issue interfered with the free choice of employees by compromising the laboratory conditions necessary to ensure the likelihood of a fair secret ballot election. As above, we agree with the Director's decision and find that the appropriate way to effectuate employee rights is to re-establish the conditions as they existed before the May 12 staff meeting (i.e., certify the Association as majority representative based upon its submission of a sufficient number of authorization cards from eligible employees). See Gissel Packing Co., 395 U.S. at 612-613; see also, North Bergen Tp., 35 NJPER at 438 ("certification without election is a logical remedy for an unfair practice causing the revocation of authorization cards needed to establish majority support.").

Turning to the Academy's claim that a secret ballot election must be ordered due to significant changes in the Academy's workforce, the Commission directly addressed the same issue when raised by a different charter school. As in that case, we reiterate here that "there is no basis for rejecting signed authorization cards from employees who were eligible at the time they signed the cards." Paterson Charter School for Science & Technology. "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." Id. Similarly, there is no basis for ordering a secret ballot election simply because the composition of the Academy's workforce changed since the Association's representation petition was filed.

Our findings here address the remaining bases for the Academy's request for review.[12/] Specifically, the Academy's arguments that it was denied due process and/or that there are substantial and material issues of fact focus on claims that:

> (1) occurred after May 12, 2016 (i.e., May 16 improper advisement that employees could not rescind authorization cards; May 23 exploratory conference; May 23 confidentiality concerns);
>
> (2) do not form the basis for our findings (i.e., bonuses to be paid if employees remained non-union); or
>
> (3) were adequately addressed by the Director (i.e., reference to Middlesex Cty. (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981) (D.R. at 31); employees who signed authorization cards in a non-native language (D.R. at 41-42).

12/ Our decision also makes it unnecessary to address the Academy's motion for a stay pending review of the Director's decision.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioners Boudreau and Eskilson were not present.

ISSUED: October 20, 2016

Trenton, New Jersey