

**STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

In re:

**TIERRA ENCANTADA CHARTER SCHOOL-NEA
Petitioner**

and

PELRB No. 314-21

**TIERRA ENCANTADA CHARTER SCHOOL,
Respondent.**

ORDER

THIS MATTER comes before the New Mexico Public Employee Labor Relations Board (the “Board”) on Tierra Encantada Charter School’s (“TECS”) Objections to the Card Check conducted on February 7, 2022 pursuant to NMSA 1978, Section 10-7E-14(C) (2020), in connection with Tierra Encantada Charter School-NEA (“TECS-NEA”) Representation Petition for “Counselors, Office Manager, Teachers, Health Assistants, Custodians, Cafeteria Personnel. EXCLUDING: Managerial, Confidential, or Supervisory employees, specifically, the School Director, Principal, Business Manager/HR, Student Achievement Coordinator, Student Wellness and Success Coordinator, Special Education Coordinator, Assistant Business Manager, Business Office staff, Digital Learning Coach, Maintenance personnel, Nurse, Monitors and Nurse Assistant” (“Petition”).

After review of the Director’s Report on Objections to Card Check dated February 24, 2022, as well as the Results of the Card Check, hearing oral arguments from the parties and being otherwise sufficiently advised, the Board, by a vote of 3-0, enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 7, 2022, the Executive Director and Board staff conducted the card check at the Board offices located at 2929 Coors Blvd. NW, Suite #303, Albuquerque, NM 87120.
2. Betty Patterson, Observer for TECS-NEA, and Daniel Peña, Director and Observer for TECS, were present during the card check and able to observe the proceedings and to lodge objections while the card check was conducted.
3. The results of the card check are memorialized on the Board form titled “Results of the Card Check in Lieu of Election” signed and dated by the Board’s Executive Director and the Observers for TECS-NEA and TECS on February 9, 2022.

4. The results of the card check were reported as follows:

1. Total Number of Employees in Bargaining Unit	21
2. Total Number of Employees to be accreted	N/A
3. 50% of Employees in Bargaining Unit Equate	10.5
4. Total Interest Cards Indicating Support	11
5. Number of Challenged Cards	5
6. Challenged Cards Rejected by Parties	5
7. Challenged Cards Agreed To By Parties	0
8. Percent of Employees in Bargaining Unit indicating support	52.4%

5. TECS filed its Objections to the Card Check on February 16, 2022, on the grounds that “an employee made an unsolicited statement that she signed an interest card before she understood the impact of doing so and that she signed the card based on misleading or incomplete information. The employee states that she wished to cancel or revoke her

authorization card and does not want to be considered part of the card count.” See

February 16, 2022 letter from TECS Director Daniel Peña to Board Executive Director Thomas Griego.

6. On February 24, 2022, the Executive Director provided his Report on the Objections to the Card Check, recommending that TECS’ objections to the results of the card check be dismissed and the Board proceed with a fact-finding hearing, as contemplated by NMSA 1978, Section 10-7E-14(C), during its March 1, 2022 regular meeting and make appropriate findings thereafter.
7. At its March 1, 2022 regular meeting, under Agenda Item 9a, Director Daniel Peña appeared on behalf of TECS and Jerry Todd Wertheim, Esq., appeared on behalf of TECS-NEA.
8. During his opening statement, Director Daniel Peña briefly explained the reasons he felt compelled to file objections to the results of the February 7, 2022 card check, but made clear that he did not intend to call any witnesses during the fact-finding hearing.
9. Director Daniel Peña did not call any witnesses regarding TECS February 16, 2022 letter challenging the result of the February 7, 2022 card check.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject in these proceedings.
2. Section 10-7E-14 provides:
 - C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board,

9-PELRB-2022

which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

3. The February 7, 2022 Card Check was conducted pursuant to and in accordance with PEBA Sec. 10-7E-14(C).
4. No testimony was presented to the Board during its fact-finding hearing under Agenda Item 9a of its March 1, 2022 regular meeting, substantiating TECS' objections to the results of the February 7, 2022 Card Check.
5. A majority of the employees in the appropriate bargaining unit have signed valid authorizations cards, as evidenced by the Results of the Card Check in Lieu of Election dated February 9, 2022.

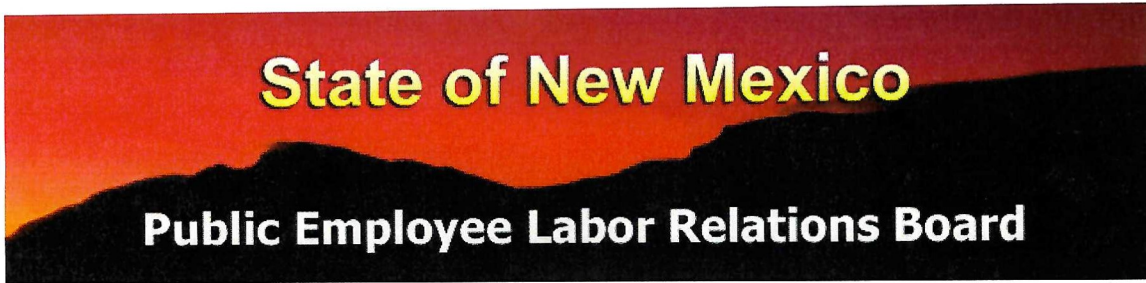
IT IS THEREFORE ORDERED:

- a. Tierra Encantada Charter Schools objection to the results of the February 7, 2022 card check are hereby DISMISSED; and
- b. Board staff are hereby directed to issue an Certification of Exclusive Representation and thereafter close the file.

11 March 22
DATE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MARK MYERS, BOARD CHAIR



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Certification of Representation

The undersigned hereby certifies that the **Tierra Encantada Charter School - NEA (Union)** has demonstrated a sufficient basis to be recognized as the exclusive bargaining representative for **Tierra Encantada Charter School** employees in the following bargaining unit:

Counselors, Office Manager, Teachers, Health Assistants, Custodians, Cafeteria Personnel. EXCLUDING: Managerial, Confidential, or Supervisory employees, specifically, the School Director, Principal, Business Manager/HR, Student Achievement Coordinator, Student Wellness and Success Coordinator, Special Education Coordinator, Assistant Business Manager, Business Office staff, Digital Learning Coach, Maintenance personnel, Nurse, Monitors and Nurse Assistant.

The undersigned makes this certification based on the following:

1. By a Third Amended Petition filed **December 10, 2021**, the Union informed the Employer that it was prepared to demonstrate sufficient support among employees in the unit for its recognition as the exclusive collective bargaining representative for those employees.
2. On **December 10, 2021** I found the Petition to be facially valid and that a preliminary review demonstrated a sufficient showing of interest to proceed toward a card check.
3. On **January 7, 2022**, the Employer provided a copy of a unit employee list showing 18 employees in the unit thereby confirming the preliminary finding of sufficiency.
4. On **January 27, 2022**, the parties scheduled a card check to take place on **February 7, 2022**. The card check took place as scheduled with the result that 11 cards were deemed to be legitimate. Therefore, more than 50% of the employees eligible to be in the bargaining unit submitted valid interest cards. There were five challenged cards. Accordingly, the undersigned hereby certifies that the Union is certified as the exclusive bargaining representative for the unit described above.

ISSUED in Albuquerque, New Mexico on this 7th day of February 2022 by:

PUBLIC EMPLOYEE LABOR RELATIONS BOARD


Thomas J. Griego, Executive Director

