STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Flora Community Unit School District No. 35,	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. 2007-RM-0001-S
	)	
Unit No. 35 Teaching Assistants Education Association, IEA/NEA,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On April 19, 2007, Flora Community Unit School District No. 35 ("District") filed a petition pursuant to Section 7(c)(2) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act") alleging that it doubted the majority status of an exclusive bargaining representative, Unit No. 35 Teaching Assistants Education Association, IEA/NEA ("Association"). The parties filed a stipulated record, and the case was removed to the Illinois Educational Labor Relations Board ("Board") for a decision. The parties filed briefs and reply briefs, and incorporated in the stipulated record the position statements that they submitted during the investigation.

We have considered the stipulated record, applicable precedents, and, except as otherwise noted, the parties' briefs.[1] For the reasons in this Opinion and Order, we have granted the District's request that we direct an election.

I.

The Association represents the following unit of District employees:

> All regularly employed full time and part time teaching assistants ("teacher aides") but excluding substitute, temporary and short term employees.

At the time the District filed its petition, there were 15 employees in the bargaining unit.

Since the Association was certified as the exclusive representative in 1999, there has been a steady decline in the number of teaching assistants who have requested a payroll deduction for Association dues.

[1] The parties' initial briefs were due August 9, 2007. The District's initial brief was received by the IELRB on August 13, 2007, and was recorded by IELRB staff as having been sent by regular mail. Therefore, under Section 1100.20(a) of the IELRB's Rules, 80 Ill. Admin. Code 1100.20(a), it is considered to have been filed on August 13, 2007. Accordingly, we have not considered that brief.

Since the 2004-2005 school year, there has been only one teaching assistant who has requested a payroll deduction of Association dues.

The Association has negotiated a series of collective bargaining agreements on behalf of the bargaining unit. The District and the Association are currently negotiating a successor collective bargaining agreement. During a telephone conversation with the District's attorney preceding the negotiation of the collective bargaining agreement that was effective from July 1, 2006 through June 30, 2007, IEA-NEA UniServ Director Allen Majors confirmed that the Association had only one dues paying member and that that individual would be the only employee representative on the Association's bargaining committee.

In January 2007, the Association raised with the District the issue of an employee's entitlement to be paid at the longevity step of the wage schedule. Majors and District attorney Karl Meurlot engaged in several conversations and exchanged correspondence regarding the issue.

On June 18, 2007, Majors called Meurlot and informed him that the Association now had three dues paying members who would represent the Association in the negotiation of a new contract.

II.

The District contends that it had a reasonable good faith uncertainty as to whether the Association had the support of a majority of the members of the bargaining unit. The District states that its doubt was based on the facts that the Association had only one dues paying member and that the Association was only able to get one member of the bargaining unit to participate in the negotiation of the 2006-2007 collective bargaining agreement.

The Association argues that none of the actions identified by the District indicate bargaining unit member dissatisfaction with the Association. The Association contends that the District has presented no evidence that members of the bargaining unit expressed dissatisfaction with the Association or that the Association had failed to actively represent the bargaining unit.

III.

Section 7(c)(2) of the Act provides that an employer may file a petition claiming "that it doubts the majority status of an exclusive bargaining representative." If such a petition is allowed, the result is an election conducted by the Board.

In *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U.S. 359, 367 (1998), the United States Supreme Court determined that "doubt" means "an uncertainty rather than a belief in the opposite."[2] In *Levitz Furniture Co.*, 333 NLRB 717 (2001), the National Labor Relations Board ("NLRB") stated that it would require an employer to show a "good-faith reasonable *uncertainty*" in order to obtain an election. (Emphasis in original). We adopt the standard set forth in *Allentown Mack* and *Levitz*, and shall require an employer to demonstrate a good-faith reasonable uncertainty of the exclusive representative's majority status in order to obtain an election.

On the basis of the facts presented in this case, we conclude that the District had a good-faith reasonable uncertainty concerning the Association's majority status. Accordingly, we have directed an election.

IV.

This Opinion and Order is not a final order of the Illinois Educational Labor Relations Board subject to appeal. Under Section 7(d) of the Act, "[a]n order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order." Pursuant to Section 7(d) of the Act, aggrieved parties may seek judicial review of this order in accordance with the provisions of the Administrative Review Law upon the issuance of the Board's certification order through the Executive Director. Section 7(d) also provides that such review must be taken directly to the Appellate Court of a judicial district in which the Board maintains an office (Chicago or Springfield), and that "[a]ny direct

[2] While *Allentown Mack* concerned an employer poll rather than an employer's petition for an election, the same standard was applied at the time to employer polls, employer petitions for an election, and withdrawals of recognition.

appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision."

Decided: October 9, 2007
Issued: October 11, 2007
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
Telephone: (312) 793-3170

Michael H. Prueter, Member, dissenting

I would find that Flora Community Unit School District No. 35 ("District") did not have a good-faith reasonable uncertainty concerning the majority status of the Unit No. 35 Teaching Assistants Education Association, IEA/NEA when it filed its petition. There is a clear distinction between the level of union membership and the level of support for the union as exclusive representative. *Annville-Cleona School District*, 13 PPER ¶13054 (Pa. Lab. Rel. Bd. 1982); *see NLRB v. Wallkill Valley General Hospital*, 866 F.2d 632 (3d Cir. 1989). As the Pennsylvania Labor Relations Board explained in *Lincoln Borough*, 26 PPER ¶26080 at 191 (Pa. Lab. Rel..Bd. 1995), "mere nonmembership in the union does not equate with the desire for the decertification of the union." "Many employees while approving of a union may not choose to give it their financial support," *Annville-Cleona*, 13 PPER ¶13054 at 86. The District here had no evidence that the employees who did not pay dues were not simply "free riders" who wished to enjoy the benefits of union representation without paying for it. *See Hospital Metropolitano*, 334 NLRB 555 (2001). The Act does not require that employees be dues-paying union members in order to be represented by a union. For these reasons, I would dismiss the petition, and I respectfully dissent.

/s/ Michael H. Prueter
Michael H. Prueter, Member