

I.R. No. 2010-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Charging Party,

-and-

Docket No. CE-2010-013

SUSSEX COUNTY COMMUNITY COLLEGE
PROFESSIONAL STAFF FEDERATION,
NJ AFT LOCAL No. 6374;
SUSSEX COUNTY COMMUNITY COLLEGE
SUPPORT STAFF FEDERATION,
NJ AFT LOCAL No. 6375;
SUSSEX COUNTY COMMUNITY COLLEGE
FACULTY FEDERATION,
NJ AFT LOCAL No. 4780,

Respondents.

SYNOPSIS

A Commission Designee denies a request to restrain the Sussex County Community College Professional Staff Federation, NJ AFT Local No. 6374; Sussex County Community College Support Staff Federation, NJ AFT Local No. 6375 and Sussex County Community College Faculty Federation, NJ AFT Local No. 4780 from allegedly taking action to cause individuals to harass the College Chair of its Board of Trustees. A dispute over material facts exists regarding who or what entity was responsible for the actions taken. Given that dispute, it was not possible to conclude that the standards for interim relief were met.

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Respondents.

Appearances:

For the Charging Party, Bauch Zucker Hatfield LLC,
attorneys (Douglas S. Zucker, of counsel)

For the Respondents, Spear Wilderman, attorneys (James
Katz, of counsel)

INTERLOCUTORY DECISION

On March 3, 2010, Sussex County Community College (College) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Sussex County Community College Professional Staff Federation, NJ AFT Local No. 6374 (Local 6374); Sussex County Community College Support Staff Federation, NJ AFT Local No. 6375 (Local 6375); Sussex County Community College Faculty Federation, NJ AFT Local No. 4780 (Local 4780) (Respondents), violated 5.4b(2), (3) and (5) of the

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act)^{1/}. The College alleged that the Respondent's violated the Act by engaging in conduct that encouraged individuals to harass Kirk Perry, the College's Chair of its Board of Trustees. The College alleges that the Respondents were responsible for individuals posting union flyers in Mr. Perry's store without permission, distributing flyers containing Mr. Perry's business and home telephone numbers and home address; hanging union signs on Mr. Perry's business sign without permission, and calling and making harassing calls to Mr. Perry's home and business, and by placing the name and picture of the College's labor counsel on flyers and calling him a "union-busting lawyer for SCCC."

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on March 5, 2010, scheduling a return date for April 1, 2010 which was changed to a telephone conference call return date for April 15, 2010. Both parties submitted briefs, certifications and exhibits

^{1/} These provisions prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

in support of their respective positions and argued orally on the return date.

The College asserts that the Charging Parties and/or its parent organization, the American Federation of Teachers (AFT), was responsible for the actions that occurred. It seeks to restrain the Respondents from engaging in such action. The Respondents opposed any restraint. They denied any responsibility for the actions that occurred regarding Mr. Perry and to the College labor counsel.

The following pertinent facts appear:

The Respondents represent employees employed by the College in three separate negotiations units. The College and the Respondent's have been engaged in collective negotiations for collective agreements. The negotiations have been difficult. Locals 6374 and 6375 are in fact-finding, and Local 4780 is in mediation.

On February 20, 2010, the AFT held a rally in Newton Town Green in support of the Respondents. Notice for the rally was contained on the AFT's website and made no reference to Perry or the Charging Party's counsel. At the rally, the Respondents sought to inform the public of the dispute between the College and the three Local unions and urged members of the public to contact Kirk Perry, the current Chair of the College Board of Trustees.

Mr. Perry lives and works in the Newton vicinity. He owns a video store/bookshop about 8.5 miles from the site of the rally. His home and business addresses and telephone numbers are publically available.

On the day of the rally, four individuals came into Mr. Perry's business and posted six flyers on the walls in his store. Those flyers contained pictures of Mr. Perry and the College Counsel and Perry's home address, telephone numbers and remarks related to the College negotiations. A larger poster was placed over Perry's outdoor business sign.

Later on February 20, harassing telephone calls were received at Perry's home. The callers were not identified, but they made derogatory remarks about Perry regarding the on-going negotiations at the College. Such calls continued through February 24, 2010.

There is no direct evidence that representatives or agents of Locals 6374, 6375 or 4780 made or directed anyone to harass Perry either by telephone or in-person or to harass his family or disrupt his business.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is

not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

ANALYSIS

The College's argument presumes the Respondents were responsible for the actions affecting Mr. Perry and the College counsel. Based upon that presumption, and relying primarily on Kulish v. Hillside PBA, 124 N.J. Super. 263 (Ch. Div. 1973), the College argued that the actions taken by the Respondents were unprotected because they had no relationship to the Respondents' labor dispute with the College. In Kulish, the Court restrained picketing in front of places of employment of various plaintiffs because the picketing was not related to the labor dispute between the parties. The College argued that the same principle applied here because the actions taken regarding Mr. Perry had no relationship to the parties' labor dispute.

The Locals began their legal response by disputing the College's presumption. They argue that a material factual dispute exists regarding who was responsible for the action taken against Perry. There was no evidence presented that identified

the individuals who entered Perry's store, hung flyers or telephoned his home. The Respondents' affidavit denied directing anyone to take the action complained of. Consequently, the Respondents argued that based upon the material factual dispute, interim relief should be denied. City of Trenton, I.R. No. 2003-7, 31 NJPER 28 (¶31 2005).

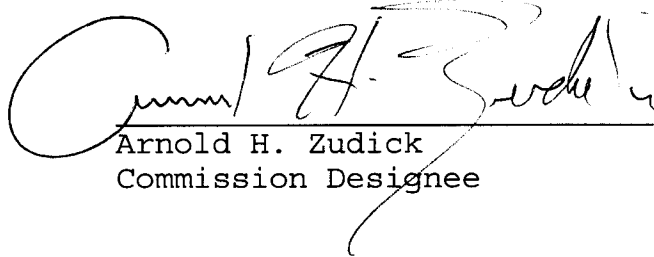
The Respondents additionally argued that the dissemination of leaflets containing lawfully obtained information, and information about a labor dispute was protected conduct. It distinguished Kurlish, and also raised several First Amendment considerations. DeBartolo v. Florida Gulf Coast Building and Construction Trades Council, 485 U.S. 568 (1988); N.A.A.C.P. v. Claiborne Hardware Co., 458 U.S. 886 (1982); Thornhill v. Alabama, 310 U.S. 88 (1940).

Having considered the parties arguments, I find that there is insufficient evidence from which to conclude in this proceeding that the Respondents were responsible for the actions taken against Perry. Consequently, I cannot find that the College has demonstrated a substantial likelihood of success on the merits of the application, the first required element for a grant of interim relief.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: April 26, 2010
Trenton, New Jersey

^{2/} This case will be returned to the Director of Unfair Practices for further processing.