

I.R. No. 2010-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-2009-340

AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee grants a second application for interim relief on an unfair practice charge alleging that Burlington County College denied the AFT access to its campus(es) for the purpose of organizing unrepresented adjunct faculty members, after denying the first application (I.R. No. 2009-29). The AFT filed an amended charge alleging that it sought permission for access at specified locations on College campuses, which was denied. The amended charge also alleges that the College prohibited an adjunct faculty member from distributing AFT materials on the Mt. Laurel campus.

The Designee ordered the College to allow access to AFT representatives and to permit adjunct faculty to distribute materials and solicit, despite a College policy prohibiting access and distribution of materials.

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Appearances:

For the Respondent, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, of counsel; John A.
Boppert, on the brief)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Merick H. Limsky, of
counsel)

INTERLOCUTORY DECISION

On June 26 and 29, 2009, the American Federation of Teachers, AFL-CIO (AFT) filed a certification, brief and amended unfair practice charge against Burlington County College (College), together with an application for interim relief. I denied the AFT's first application in the above-captioned matter on June 1, 2009 (I.R. No. 2009-29). The amended charge, like the initial charge filed on March 26, 2009, alleges that the College unlawfully denied the AFT access to campuses for the purpose of organizing unrepresented adjunct faculty. It specifically alleges that on June 3, 2009, AFT representative Shaun Richman

issued a letter to College President Robert Messina requesting access at specified times and campus locations, none of which were "work areas." It alleges that on June 5, Messina wrote to Richman, denying access, advising that the request ". . . violated the June 1, 2009 Commission [Designee's] decision as well as College policy [907]."

The amended charge also alleges that on June 6, 2009, adjunct faculty professor Robin Brownfield attended a "job fair" at the College's Mt. Laurel campus and handed out AFT "informational leaflets" to adjunct professors and "potential applicants." The amended charge alleges that Brownfield was approached by College security guard Byron Myer and told that she ". . . could not be [here] and must throw away the leaflets." It alleges that despite Brownfield's stated objection, the security guard insisted that she had no right ". . . to advertise or solicit on campus without permission . . .", citing policy 907. Brownfield was allegedly directed to place the leaflets in her car as an alternative to discarding them. Brownfield complied and ". . . posted one leaflet in the back window of her personal vehicle." Myer and another security guard, Lloyd Stribling, directed her to remove the leaflet and an AFT t-shirt from the back of her car, stating that ". . . advertising was not permitted on campus." The amended charge also alleges that Brownfield was told that she could not wear her AFT button in a

campus building. The College's conduct allegedly violates 5.4a(1), (2) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The application seeks an order restraining the College from denying employees and AFT representatives the right to ". . . engage in oral or written solicitation during non-working time in non-working public access areas such as Laurel Hall for the purpose of obtaining signatures . . ."; an order restraining the College from discouraging members and interfering with the administration of the AFT; and an order directing the College to cease ". . . unreasonably denying AFT requests for access in non-working areas."

On June 1, 2009, I issued an Order to Show Cause, specifying July 15 as the return date for argument in a telephone conference call. I also directed the College to file an answering brief, together with opposing certifications and proof of service upon the AFT. Following requests to reschedule the conference call, I set the date at July 22. On that date, the parties argued their cases in a conference call. The following facts appear.

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

I incorporate by reference the facts set forth in the interlocutory decision concerning these parties. I.R. No. 2009-29.

On June 3, 2009, Shaun Richman, AFT National Representative, issued a letter to College President Robert Messina, requesting AFT representatives' access to the campus ". . . for purposes of solicitation." Richman wrote that the AFT requests to staff "informational tabl[es]" from 9 a.m. to 10 p.m., Monday through Saturday at these locations: Mt. Laurel Hall, student reception area, 1st floor; Mt. Laurel Science Center, atrium; Mt. Laurel Technology Center, main foyer; Lewis Parker College Center, student lounge; Pemberton Academic Center, gallery; and Willingboro Center, lounge by front door.

Richman also wrote that the AFT representatives will ". . . check-in with security before entering College property and will present identification." Finally, he wrote that he should be contacted ". . . if there is a problem with any of these arrangements."

On June 5, College President Robert Messina wrote a letter to Richman. It provides:

I am in receipt of your June 3, 2009 request for entry onto campus.

Please be advised that your request is violative of both the June 1, 2009 Public Employment Relations Commission decision as well as Burlington County College Board Policy [907].

Please be guided accordingly.

On June 6, 2009, adjunct professor Robin Brownfield attended a job fair at the College's Mt. Laurel campus and distributed AFT informational leaflets to adjunct professors and to prospective applicants for adjunct professorships. College security guard Byron Myer approached and told her that she was not permitted to be in the area and that she must discard the leaflets. Over Brownfield's stated objection, the security guard insisted that she had no right to advertise or solicit on the campus without permission, citing policy 907. Brownfield was directed to place the leaflets in her car in the parking lot, in lieu of discarding them. Myer and another security guard, Lloyd Stribling, accompanied Brownfield to her car in which she deposited all but one of the leaflets, which she placed or posted on the rear window of the vehicle. The security guards advised her that advertising was not permitted on the campus. Brownfield was also advised that she was prohibited from wearing an AFT button while she was on the campus.^{2/}

^{2/} I find these facts about Brownfield and the College security guard(s), based upon the amended charge, the certification of AFT counsel and the certification of Ronald Brand, College vice president for financial and administrative services. Brand certified that, "the alleged conduct of adjunct professor Brownfield on June 6, 2009 also violated [College] policy 907. . . . The alleged solicitation conduct of Brownfield was not authorized by the College . . . [T]he alleged facts do not establish whether Brownfield even confirmed herself to soliciting in the areas
(continued...)

Alternate means of access to adjunct professors are available to the AFT, as they are to the general public. Specifically, the College maintains an alphabetical telephone directory of all 372 adjunct faculty members on its website. The website also features a general directory which includes the telephone extension numbers and email addresses ". . . of virtually all other College employees. . . . Some but not all of the adjunct faculty names also appear on this list, including their College email addresses." A review of posted email addresses reveals "the naming conventions." The convention is usually ". . . the first initial and last name, followed by, '@bcc.edu.' By following this convention, '. . . a majority of the adjunct faculty's email addresses could be derived by the AFT.'"

Student reception areas and student lounges, ". . . self-evidently exist to accommodate students. Similarly, transitional areas such as foyers and galleries exist mainly to accommodate students and faculty en route to and from their classes."

2/ (...continued)
specified by the AFT in its unreasonable request dated June 3, 2009."

I consider this certification as an acknowledgment or admission of facts set forth in the amended unfair practice charge.

ANALYSIS

The legal standard for granting or denying an application for interim relief is set forth in the previous interlocutory decision issued in this case. So too is the section of the Act implicated by the College's alleged denial of access and the legal standard by which its conduct is assessed. I incorporate by reference those sections of my earlier decision. I.R. No. 2009-29, slip. op at 6-9.

I assume for purposes of this decision that all of the requested access areas on the campus(es) continue to fall within the third category of public property - a non-public forum - described in Perry Education Ass'n. v. Perry Local Educators' Ass'n., 460 U.S. 37, 112 LRRM 2766, 2769-70 (1983). The AFT's June 5 letter and the College president's June 6 reply denying access again show that this case in part concerns ". . . the rights of . . . non-employees to solicit for organizational purposes before the open period . . ." Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

The AFT seeks to staff "information tables" at each of the requested locations, almost all of which are student lounges or capacious thoroughfares. AFT representatives will distribute literature to and solicit signatures from adjunct faculty members, conduct that approximates AFT representative Berman's efforts at issue in the previous application. No facts suggest

that the AFT's presence in any or all of the requested locations will disrupt student activities or classes, or interfere with the orderly ingress and egress of students and personnel.

The College has shown that the AFT has computer access to its directory providing the names and telephone extension numbers of all 372 adjunct faculty members; the email addresses of "some" of them; and an apparent methodology for accessing the email addresses of a "majority" of them. Assuming that the AFT possesses the email addresses of a majority of the College's adjunct faculty, I find that telephone and email access, while helpful, is not equivalent to in-person leafleting and solicitation for organizational purposes.

A "showing of interest" which may be submitted to obtain a secret ballot election or a card check certification requires the original signatures of the petitioning employees. N.J.A.C. 19:10-1.1, 2.3; 19:11-1.2(a)9, 10. Securing such signatures is the intended result of an in-person solicitation. That objective is made more difficult if a union representative must initially send email or use the telephone in order to likely arrange for a second contact with the employee to obtain his or her original signature.

This point was made in a slightly different way by our Supreme Court in Green Party of N.J. v. Hartz Mountain Ind., 164 N.J. 127 (2000). The Green Party sought access to a shopping

mall in order to gather signatures on behalf of a candidate for Governor. The company imposed regulations on the exercise of the Green Party's "free speech activities", leafleting among them. One regulation required non-profit organizations seeking to hand out leaflets at the mall to provide a \$1,000,000 insurance policy. In invalidating all of the imposed conditions, our Supreme Court emphasized the "paramount importance" of handing out fliers and soliciting signatures in support of a candidate's nomination to public office. The Court quoted from a decision of the Supreme Judicial Court of Massachusetts:

Ideas and views can be transmitted through the press, by door-to door distributions or through the mail without personal contact. On the other hand, a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way. [164 N.J. 151, citing Batchelder v. Allied Stores International, Inc., 388 Mass. 83, 92, 445 N.E. 2d 590 (1983)].

Our Court added this observation about shopping centers and malls: "Throughout much of New Jersey today, there [are] no [other] places to go . . . if one is to have an opportunity to meet face-to-face with large groups of people in order to interest them in an issue by handing them a leaflet or asking them to sign a petition." Green Party 164 N.J. at 151. In my view, such meetings and in-person solicitations on the campuses where adjunct faculty members traverse in order to teach classes

and meet with students each working day are qualitatively different than receiving email or telephone messages.

The facts also show that on June 6, the College prohibited one of its employees, adjunct faculty member Brownfield, from distributing AFT materials at a "job fair" on the Mt. Laurel campus. Policy 907 prohibits such distribution by employees "during working time in work areas of the College." Solicitation is prohibited "in work areas during working time, unless specifically authorized by the College." I infer that neither Brownfield nor the AFT sought the College's "authorization" in advance of her organizing effort.

The facts do not show whether a "job fair" is a "work area" for purposes of policy 907. I have found in the previous application (contrary to the College's view) that the sitting area surrounded by vending machines in Laurel Hall is not a "work area." The College has not demonstrated in this application how any of the requested access areas are work areas or that Brownfield solicited and/or distributed materials in a work area during work time. Nor has the College presented any facts delineating work areas and work hours from non-work areas and non-work hours.

The right of employees to self-organize and bargain collectively necessarily encompasses the right to effectively communicate with one another regarding self-organization at the

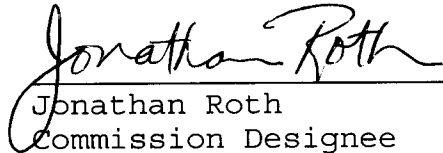
job site. Beth Israel Hospital v. NLRB, 437 U.S. 483, 491 (1978). See also, Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945). Self-organization is a right set forth in the Act. N.J.S.A. 34:13a-5.3. The College has not demonstrated how Brownfield's efforts to organize adjunct faculty interfered with its ability to perform its public function or manage the institution.

Considering the circumstances set forth in this application, I find that the AFT has now demonstrated a substantial likelihood of prevailing in a final Commission decision and that irreparable harm - the loss of or impediment to its current opportunity to organize unrepresented employees - will occur if it is not permitted access to the College campus(es). The College has not shown any harm to the public interest or how it will suffer hardship by an order requiring it to provide access to the AFT and to its employees seeking to organize adjunct faculty members.

ORDER

The College shall grant AFT representatives access to its campuses at the locations and times requested for the purpose of distributing materials and soliciting membership or interest among adjunct faculty. Access shall not include "informational tables" or other furniture not currently present at each location. Access will be limited to one non-employee representative at each location who will not cause disturbances

or interfere with normal ingress and egress of personnel and students. Access within the requested times shall not exceed any time in which any requested building is normally open for regular business. Access shall not include distribution of materials or solicitation in classrooms and offices. Adjunct faculty members shall be permitted to distribute materials and solicit membership or interest among other adjunct faculty in non-work areas during their non-work time.


Jonathan Roth
Commission Designee

Dated: July 31, 2009
Trenton, New Jersey