

I.R. NO. 2013-3

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VINELAND BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2013-006

STEVEN PATRICK LEWIS,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent retaliated against him when it transferred him from his teaching position at the Vineland High School South Campus to the North Campus after he had made three separate complaints/objections against his Supervisor of Instruction.

The Designee found that the material facts concerned the actual motivation for the Charging Party's transfer and that the material facts were clearly in dispute based upon the affidavits provided by the parties.

As a result, the Designee found that the Charging Party had not established a substantial likelihood of prevailing in a final Commission decision on his legal and factual allegations, a requisite element to obtain interim relief.

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Appearances:

For the Respondent,  
Gruccio, Pepper, DeSanto & Ruth, attorneys  
(Robert DeSanto, of counsel)

For the Charging Party,  
(Steven Patrick Lewis, Pro Se)

INTERLOCUTORY DECISION

On July 23, 2012, Steven Patrick Lewis ("Lewis") filed an unfair practice charge against the Vineland Board of Education ("Board").<sup>1/</sup> On August 20, Lewis filed an application for interim relief which was accompanied by an affidavit with attached documents and a video of the Board's June 13, 2012, meeting showing the remarks made by Lewis. The charge alleges that the Board retaliated against Lewis when it transferred him from his teaching position at the Vineland High School ("VHS") South Campus to the VHS North Campus after he had made three

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<sup>1/</sup> On the same date, Lewis filed a petition for contested transfer determination which is currently pending before the Commission.

separate complaints/objections against his Supervisor of Instruction. As set forth in the charge, the Board's conduct allegedly violates 5.4a(1), (3) and (4)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The application seeks an Order requiring the Board to return Lewis to his original teaching position at the VHS South Campus.

The Board asserts that Lewis was not retaliated against and that he was transferred to the VHS North Campus in the best interest of the students.

On August 23, an Order to Show Cause was issued. The parties filed briefs and affidavits and the Board filed a "Cross Motion for Order of Dismissal."<sup>3/</sup> The parties presented oral argument via telephone conference call on September 18.

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<sup>2/</sup> 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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

<sup>3/</sup> The basis for the Board's cross motion was that the Board's decision to transfer Lewis was in the exercise of managerial prerogative and, therefore, was not a recognizable cause of action before the Commission.

FINDINGS OF FACT

Lewis has been employed by the Board as a History teacher since September 2010. VHS has North and South Campuses which are approximately 300 yards apart. In 2010, all four high school grades were taught at both campuses. Lewis began teaching World History to 9<sup>th</sup> grade students and US History I to 10<sup>th</sup> grade students at the VHS South Campus. While teaching at the VHS South Campus, Lewis was the faculty advisor to a student-based club called the Student Historical Research Committee; this committee meets once a week at the VHS South Campus.

During the 2011-2012 school year, it was determined that beginning with the 2012-2013 school year, 9<sup>th</sup> and 10<sup>th</sup> grade students would be taught solely at the VHS North Campus and 11<sup>th</sup> and 12<sup>th</sup> grade students would be taught solely at the VHS South Campus. During the 2011-2012 school year, Lewis made three separate complaints/objections for alleged violations of rules and regulations regarding written observations that were required to be submitted in writing by his Supervisor of Instruction.

Lewis' Supervisor of Instruction made a recommendation to transfer Lewis to the VHS North Campus for the 2012-2013 school year; this recommendation was ultimately approved by the Board. Lewis currently teaches the same courses to the same grades that he taught during his first two years at the VHS South Campus.

CONCLUSIONS OF LAW

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<sup>4/</sup> 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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised

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<sup>4/</sup> Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

In the instant case, the crux of the matter is the "motivation" of the Board in transferring Lewis from the VHS South Campus to the North Campus. As set forth above, Lewis asserts that he was retaliated against and transferred because he made three separate complaints/objections for alleged violations of rules and regulations regarding written observations that were required to be submitted in writing by his Supervisor of Instruction. The Board asserts that Lewis was transferred in the in the best interest of the students, essentially, because the 9<sup>th</sup> and 10<sup>th</sup> grade students that Lewis taught, would no longer be present and available for classes at the VHS South Campus.

The material facts in this matter concern the actual motivation for Lewis' transfer; these material facts are clearly in dispute based upon the affidavits provided by the parties. As a result, I find that Lewis has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.<sup>5/</sup> The application for interim relief must be denied.

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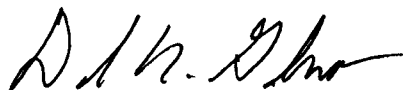
<sup>5/</sup> As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.

Additionally, the Board's Cross Motion for Order of Dismissal is denied. N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The petitioner/charging party has the burden of proving its allegations by a preponderance of the evidence. West New York Bd. Of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001); Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶29056 1998).

Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



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David N. Gambert  
Commission Designee

DATED: October 2, 2012  
Trenton, New Jersey