

D.U.P. NO. 2014-4

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

SOMERSET HILLS BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2012-348

SOMERSET HILLS EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Somerset Hills Education Association (Association). The charge alleges the Somerset Hills Board of Education (Board) violated sections 5.4(a)(1) and (2) of the New Jersey Employer-Employee Relations Act when the Board's high school principal admonished staff at a faculty meeting for not volunteering to march at a graduation ceremony and admonished another Association member for not volunteering at an art show. The Director found that the principal's comments did not violate section (a)(1) because they fell under the category of protected employer free speech concerning employee performance and no facts were alleged connecting the principal's comments to Association activities. In addition, the Director determined that the principal's conduct did not violate section (a)(2) since there were no allegations the comments interfered with the Association's administration or its ability to function independently.

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Appearances:

For the Respondent  
Adams, Gutierrez & Lattiboudere, LLC  
(Adam S. Herman, of counsel)

For the Charging Party  
Oxford Cohen, P.C.  
(William Hannan, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On June 22, 2012, the Somerset Hills Education Association (Association or Charging Party) filed an unfair practice charge against the Somerset Hills Board of Education (Board or Respondent). The charge alleges that on March 12, 2012, the Respondent, by and through the high school principal, violated sections 5.4(a)(1) and (2)<sup>1/</sup> of the New Jersey Employer-Employee

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<sup>1/</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 and (2) Dominating or interfering with the formation, existence or administration of any employee organization."

Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when the principal admonished staff at a faculty meeting for not volunteering to march at the high school's graduation ceremony, ". . . for what she believed to be unified activity." The charge also alleges that the principal admonished an Association member on March 13, 2012 for not volunteering to march at the graduation ceremony. Finally, the charge alleges that Cooley "reprimanded" another Association member on April 12, 2012 for not volunteering at an art show.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011). On September 19, 2013, I issued a letter to the parties, advising them of my tentative findings and conclusions and inviting responses. Neither party filed a reply. Our review of the submissions reveals the following facts.

The Association is the exclusive majority representative of certificated, non-supervisory employees of the Board. The Board is a public employer within the meaning of the Act. The Board

and Association are parties to a collective negotiations agreement extending from July 1, 2011 through June 30, 2014.

On March 12, 2012, Bernards High School Principal Suzanne Cooley addressed Board staff at an afternoon faculty meeting. During the meeting, Cooley admonished staff for what she believed to be unified activity among staff members in not volunteering to march at the high school's graduation ceremony. On March 13, 2012, Cooley admonished Association member and Board employee Janice O'Brien for not volunteering to march at the high school's graduation ceremony.

On April 12, 2012, Cooley chastised Association member Carolyn Coppola in a conference for not volunteering to run an art show.

In New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978) the Commission articulated this standard for finding a violation of section 5.4a(1) of the Act:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification.

In Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the

Commission explained that the tendency of an employer's conduct to interfere with employee rights is the critical element of an (a)(1) charge, holding that ". . . proof of actual interference, restraint, or coercion is not necessary." Commercial Tp. Bd. of Ed., 8 NJPER at 552.

In deciding whether or not an employer statement violates section 5.4a(1), the Commission balances two important interests: the employer's right of free speech and the employees' right to be free from coercion, restraint or interference in the exercise of protected rights. State of N.J. (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720, 721 (¶18269 1987). An employer is free to express its opinion about labor relations to a union representative. State of N.J. (Trenton State College). However, in commenting about labor relations, an employer must be careful to differentiate between the employee's status as an employee representative and the individual's coincidental status as an employee of that employer. Sussex-Wantage Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711, 712 (¶16247 1985).

In other words, when an employee's conduct as a union representative is unrelated to his or her job performance, the employer cannot express disapproval of the employee's conduct as a union representative by disciplining or otherwise exercising its power over the employee's individual employment.

Sussex-Wantage Bd. of Ed., 11 NJPER at 712. However, a public employer is within its rights to comment upon those activities or attitudes of an employee representative that impact the effective delivery of governmental services. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502, 503 (¶12223 1981).

I find that Principal Cooley's comments at the March 12 faculty meeting and conduct towards Association members on March 13 and April 13, 2012 do not violate section 5.4a(1). Cooley's comments generally fall under the category of protected employer free speech; they represent her opinion about teacher performance on work-related matters. The comments reveal nothing more than the Principal's concern about the "effective delivery of governmental services." No facts suggest that the alleged "reprimand" on April 13 threatened discipline or was disciplinary. The charge does not allege facts connecting Cooley's comments about volunteering to Association activities. The allegation that her comments were motivated by the belief that teachers were engaging in "unified activity" is irrelevant under section 5.4a(1). The test for an 5.4a(1) violation is objective and in this instance, concerns Cooley's statements and conduct, rather than her motives. The threshold question is whether a reasonable person could interpret Cooley's remarks as tending to interfere with the exercise of employee rights under the Act. Commercial Tp. Bd. of Ed. In the absence of any other

facts, I find that her conduct does not meet that standard. Accordingly, I dismiss the 5.4(a)(1) allegation.

N.J.S.A. 34:13A-5.4a(2) prohibits an employer from dominating or interfering with the administration of an employee organization. In Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), aff'd NJPER Supp.2d 182 (¶159 App. Div. 1987), the Commission explained:

Domination exists when the organization is directed by the employer, rather than the employees. . . . Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity.

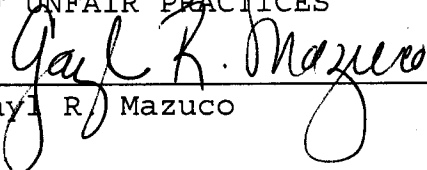
Principal Cooley's remarks are not directed at the Association and no allegations suggest that her conduct interfered with the Association's administration or its ability to function independently. Accordingly, I dismiss the 5.4a(2) allegation.

Under all of these circumstances, I find that the Commission's complaint issuance standard has not been met.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Gay R. Mazuco

DATED:      October 10, 2013  
              Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by October 21, 2013.