

I.R. NO. 2015-4

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY VOCATIONAL TECHNICAL  
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-2015-010

MERCER COUNTY VOCATIONAL TECHNICAL  
BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

A Commission designee denies an application for interim relief in an unfair practice case filed by the Mercer County Vocational Schools Board of Education. The Board's charge asserts that the Mercer County Vocational Education Association engaged in unfair practices when employees represented by the Association declined to volunteer to serve as chaperones for a 30 student field trip scheduled for a Saturday. The designee finds that the Board did not establish that it was likely to succeed on the merits of its charge as it is undisputed that serving as a field trip chaperone is a voluntary activity. In addition, the designee concluded that the Board failed to show it would be irreparably harmed as it did not establish how many chaperones would be needed on the trip or that it could not use other adults (e.g. administrators) to serve in that capacity.

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Appearances:

For the Respondent, Mellk O'Neill, attorneys (Edward  
Cridge, of counsel)

For the Charging Party, Parker McCay, attorneys  
(Melissa M. Ferrara, of counsel)

INTERLOCUTORY DECISION

On January 13, 2015, the Mercer County Vocational Technical  
Schools Board of Education (Board) filed an unfair practice  
charge with the Public Employment Relations Commission  
(Commission) alleging that the Mercer County Vocational Education  
Association (Association) was engaging in unfair practices within  
the meaning of the New Jersey Employer-Employee Relations Act  
(Act), N.J.S.A. 34:13A-1 et seq., specifically by violating  
5.4b(1) (3) and (5).<sup>1/</sup> The Board alleges that during the course

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<sup>1/</sup> These provisions prohibit employee organizations, their  
representatives or agents from: (1) Interfering with,  
restraining or coercing employees in the exercise of the  
(continued...)

of collective negotiations, the Association and employees it represents changed their practice of volunteering to chaperone school events and field trips.

The unfair practice charge was accompanied by an application for interim relief asserting that the Board was substantially likely to prove that the Association had changed working conditions while the parties were engaged in collective negotiations because employees had not volunteered to chaperone an upcoming 30 student field trip to be held on a Saturday at a facility in Monmouth County. The Board's application alleges that, if employees represented by the Association do not volunteer to chaperone the event, it will suffer irreparable harm. The Board seeks to have the Commission "order the Association to continue its volunteering activities, to cease and desist from interfering with employee rights [and] to negotiate in good faith. . ."

In support of its application the Board filed a brief, exhibits and certifications. The Association filed a brief and exhibits opposing the Board's request for interim relief.

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1/ (...continued)  
rights guaranteed to them by this act; (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.

An order to show cause was executed on January 23, 2015 and a return date was scheduled for February 3. I was assigned, as a Commission designee, to hear the application.

On February 3, 2015, I held a hearing via a telephone conference call, at which both parties argued orally. At the end of the hearing, I denied the Board's interim relief application in a written order. This decision more fully sets forth my reasoning.

The Association represents full-time employees including teaching staff, support staff, teaching assistants, counselors, coordinators, social workers and other personnel. The Board and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2011 to June 30, 2014.<sup>2/</sup> These articles address work and compensation for activities performed beyond the regular school day and/or on weekends.

ARTICLE XII, WORKDAY

A.3. Attendance at the following evening events shall continue to be on a voluntary basis without monetary compensation; however, secondary teachers who volunteer to work at the following evening events, as necessary, shall receive an early release time of 2:45 p.m. on the day of the event. Full-time post-secondary teachers who volunteer to work at the following events, as necessary, shall receive an early release time of 15 minutes on the two consecutive days immediately following the day of the event.

(1) Student Orientation Night

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<sup>2/</sup> The parties are currently in mediation to resolve an impasse over the terms of a successor CNA.

- (2) Parents' Night
- (3) Open House
- (4) Graduation

In addition to the above, secondary and post-secondary teachers who volunteer to work at least eight (8) additional documented hours at Board approved, after contracted workday activities, shall be given one compensatory day. Beyond one (1) compensatory day earned, with prior approval of the Superintendent, an hourly rate of \$31 will be paid.

ARTICLE XX SALARIES: Paragraph F. Chaperoning Stipend.

Employees shall receive a taxable stipend for chaperoning student activities as follows:

- Seventy-Five Dollars (\$75.00) per weekend day
- One Hundred Dollars (\$100.00) overnight and
- One Hundred Dollars (\$100.00) for next day.

The Board cites no other provision of the contract as being relevant to this dispute.

It is undisputed that, for at least the past six years, when the need arises for chaperone(s), a school principal will notify staff that such volunteer opportunities are available. This is done informally, through e-mail, during a staff meeting or by the principal contacting staff members s/he believes may be interested.

After volunteers come forward, the names of those who are accepted are submitted to the Board for approval and they are compensated in accordance with the CNA.

According to the certification of the Board's Business Administrator, and a school principal, in December, 2014, the principal informally sought volunteers to chaperone a field trip

by 30 students to attend a conference sponsored by a nationwide student organization (HOSA) that sponsors programs and activities for students interested in careers in the health professions. The conference was scheduled for Saturday February 7, 2015 at the Monmouth County Academy of Applied Health and Science. There is no assertion that the trip is part of the normal workday. In response to her initial inquiry, the principal certifies that two teachers and a secretary expressed interest in chaperoning the event.

On December 23, 2014, the principal sent an e-mail to staff concerning the chaperoning opportunity. In response, the President of the Association replied, "Not unless we have settlement [on a successor CNA]!!! Administration will have to attend." According to the principal's certification, the teachers who had initially volunteered declined the invitation to chaperone. The principal certified that the secretary has "officially volunteered" to chaperone the event. The principal asserts that because no other staff have volunteered, there are insufficient chaperones for the event.

The Association replies that the principal's certification fails to specify how many chaperones are needed to escort 30 students on a one-day field trip. It posits that administrators or other members of the District's leadership can act as chaperones.

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). And, the moving party has the burden of establishing each of the Crowe factors by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

In this case, the Board asserts that because the Association discouraged its members from volunteering to chaperone the weekend field trip, it thereby changed an existing term and condition of employment. Further, it claims that because the Association acted while the parties were engaged in collective negotiations, that action creates a chilling effect on the Board's ability to negotiate terms and conditions of employment. It asserts that, absent interim relief, the hardship to the Board would outweigh any effect on employee interests as the Board would be unable to deliver educational programs while staff

represented by the Association would continue to chaperone as they had in the past.

The Association argues: that the Board will not succeed on the merits of its charge; that it has failed to show it will be irreparably harmed; and that the interests of the Association and its members outweigh any alleged hardship to the Board.

The Association notes that the Board has acknowledged that chaperoning duties, as reflected by the terms of the CNA have been and remain voluntary. Thus no change in any term and condition of employment has occurred. It disputes that there is any past practice that compels a sufficient number of staff represented by the Association to chaperone field trips and that any such practice would conflict with and be trumped by the CNA.

The Association disputes that the Board will suffer irreparable harm noting that the Principal's conclusion that the Board will not be able to adequately staff the field trip is unsupported by any details such as the number of staff needed to chaperone 30 students on a day trip and the availability of District administrators and leadership to act as chaperones.

Weighing the hardships to the parties, the Association asserts that the impact on employees would be greater as they would, under the order the Board seeks, be compelled to perform duties that are unquestionably voluntary. It questions the method by which staff would be directed to perform such



assignments and how those with religious commitments, home care responsibilities, and the obligations of secondary employment would be accommodated.

I conclude that the Board has not met its burden of establishing that grounds exist for the issuance of an order granting interim relief. As it acknowledges that the parties' CNA provides that chaperoning activities are voluntary, there has been no change in that working condition. The issuance of an order directing staff represented by the Association to assume chaperoning duties would make a de facto change in that working condition. The purpose of an interim relief order is to maintain or restore the status quo. See City of East Orange, I.R. No. 2007-5, 32 NJPER 354 (¶148 2006). The relief requested by the Board is inconsistent with that principle.

Nor has the Board established that it will suffer irreparable harm absent an interim relief order. The principal's statement that the Board was without sufficient staff to chaperone the event is insufficient to prove that assertion.

Attached as exhibits to the Business Administrator's certification are portions of several Board meeting agendas recommending approvals of stipends for staff who chaperoned field trips. None of the references to chaperoning stipends state how many students attended the event in question. Some events, like the conference at issue here, were one day conferences on a

weekend, while others involved overnight, or multi-day trips.

There were instances showing that:

- Only one teacher was paid a stipend for chaperoning an overnight trip to a HOSA event;
- One teacher was paid a chaperoning stipend for a one-day HOSA event;
- Two staff members chaperoned a one day HOSA conference; and
- Two staff members chaperoned a five-day HOSA event in Kansas City.

The agendas show only that chaperones represented by the Association were paid for that activity.<sup>3/</sup> They do not establish:

- How many students participated in each field trip or conference listed in the agendas;
- Whether the Board has a policy establishing ratios of chaperones to students for day trips and overnight trips;
- Whether, in addition to staff represented by the Association, the Board used or can use other adults (e.g. administrators) as chaperones.

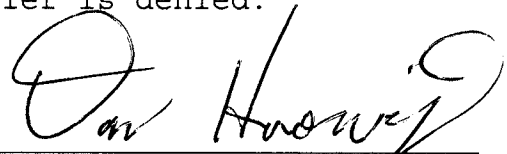
Based on these gaps in the record, the Board did not establish that it would be unable to provide sufficient chaperones for the February 7, 2015 HOSA conference.

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<sup>3/</sup> While the exhibits are agendas, as opposed to minutes of completed actions, I will assume that the Superintendent's recommendations to pay the chaperones were accepted.

ORDER

The Mercer County Vocational Technical Schools Board of Education's application for interim relief is denied.



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DON HOROWITZ  
Commission Designee

DATED: February 9, 2015

Trenton, New Jersey