

D.U.P. NO. 2018-1

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

In the Matter of

TRENTON PUBLIC SCHOOLS,

Respondent,

-and-

Docket No. CO-2015-193

TRENTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practice dismisses an unfair practice charge filed by the Trenton Education Association. The union alleged that the Board unilaterally removed five unit members from their regularly assigned work locations and duties, while being investigated for serious allegations made against them. The teachers were required to sit in a room and received no instruction to perform any tasks throughout the day. The Association further alleged that the Board did not negotiate a schedule of minor discipline with the Association. The Association alleges that the Board's conduct allegedly violates 5.4 a(1), (5), and (7). The Director found that the Board's decision to assign teachers to non-teaching duties was a managerial prerogative. The Director further found that the reassignments did not constitute discipline.

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Appearances:

For the Respondent  
Adams Gutierrez & Lattiboudere, LLR  
(John E. Croot, of counsel)

For the Charging Party  
Mellk O'Neill  
(Edward A. Cridge, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On February 17, 2015, the Trenton Education Association (Association) filed an unfair practice charge against the Trenton Board of Education (Board). The charge alleges that in September 2014, the Board unilaterally removed five unit members from their regularly assigned work locations and duties, and required them to report to the Board's human resources office where they were instructed to sit and given no further instruction or tasks to perform. More specifically, the Association alleges that the

Board did not negotiate a schedule of minor discipline with the Association, pursuant to N.J.S.A. 34:13A-24.<sup>1/</sup> The Board's conduct allegedly violates 5.4a(1), (5), and (7)<sup>2/</sup> of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). As a remedy, the Association seeks an order requiring the Board to immediately return all five unit members

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1/ This provision states: a) Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law. b) The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any actor omission warranting imposition of minor discipline. c) Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10.

2/ 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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

to their regular assignments,<sup>3/</sup> and an order restraining the Board from making these types of assignments in the future.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; 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.

On July 13, 2017, the former Director issued a letter tentatively dismissing the charge and inviting responses. On July 17, 2017, the Association filed a letter brief.

I find the following facts.

The Association represents teachers employed by the Board. The parties are currently operating under a collective negotiations agreement (Agreement) that expires on August 31, 2018.

On or about September 2014, the Board removed five employees from their teaching duties pending investigations into various allegations made against them. Some of the allegations included

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<sup>3/</sup> No unit employees are currently assigned to the human resources office. Two of the five identified employees retired, two were reassigned to other locations, and one employee was terminated. The Board has not assigned any additional employees to the human resources office since the five employees at issue here.

assault and battery, Division of Youth and Family Services violations, criminal arrests, and drug abuse. The Board decided that keeping the teachers in the classroom during the investigations could jeopardize student safety. Each of the five employees were assigned to the human resources office, where they sat in a room and did nothing throughout the workday. The Association maintains that the reassignments constitute discipline, requiring negotiations.

The New Jersey Supreme Court has held that the assignment or reassignment of personnel, particularly from one job assignment to another, is a managerial prerogative. In re IFPTE Local 195 v. State of N.J., 88 N.J. 393, 415-417 (1982); Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. Ed., 78 N.J. 144, 156 (1978). Moreover, the Commission has specifically held that the right to assign teachers to non-teaching duties, and the question of which personnel to assign, are managerial prerogatives. In re Mahwah Bd. Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983); In re Monroe Twp. Bd. Ed., P.E.R.C. No. 80-146, 6 NJPER 301 (¶11143 1980).

In Camden Cty. College, D.U.P. No. 87-10, 13 NJPER 166 (¶18074 1987), multiple unfair practice charges were filed by a professor against the College and his majority representative. One of the charges alleged that the union failed to seek arbitration over the College's decision not to assign the

professor a certain course within the curriculum. The College had taken the position that its decision concerning the assignment or non-assignment of courses was a "managerial prerogative."

The Director determined that an employer, having the managerial prerogative to reassign employees to other positions within its work force, possessed a similar prerogative to assign non-teaching duties to its work force, the assignment of which is neither mandatorily negotiable nor arbitrable. See also, So. Brunswick Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Roselle Bd. of Ed., D.U.P. No. 86-6, 12 NJPER 218, 219 (¶17088 1986) (Director holds, ". . . [a] Board has the managerial right to decide how to assign its work force and any unfair practice charge attempting to restrict such right must be dismissed"). The assignment (or non-assignment) of teaching staff members to teach particular courses is a matter of educational policy and not negotiable or subject to review in arbitration. Camden Cty. College.

Here, as in Camden Cty. College, removing five teachers from their classroom assignments, pending investigations into allegations against them, is a matter of educational policy and not subject to negotiations. No facts indicate that the Board's decision to remove the teachers from their classrooms and reassign them was anything other than an exercise of a managerial

prerogative intended to ensure a safe learning environment for students.

The Association claims that the reassignments constitute discipline, requiring negotiations pursuant to N.J.S.A.

34:13A-24. I disagree.

N.J.S.A. 34:13A-22 provides in relevant part: "[M]inor discipline includes, but is not limited to, various forms of fines and suspensions. . . ." It is undisputed that each employee received their full salary and benefits during the reassignment, and none of them was suspended, fined, or received disciplinary letters. Consequently, I find that the reassignments do not constitute discipline. Finally, no facts have been alleged to support a violation of 5.4a(7).

Under all the circumstances, I find that the Commission's standard for issuing a Complaint has not been met and that the charge should be dismissed. N.J.A.C. 19:14-2.3.

Very truly yours,

/s/Daisy Barreto  
Acting Director of Unfair Practices

DATED: July 24, 2017  
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 August 4, 2017.**