

H.E. NO. 90-46

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF TRUSTEES OF MIDDLESEX
COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-H-89-313

FACULTY UNION OF MIDDLESEX COUNTY
COLLEGE, LOCAL 1940, AFT/AFL-CIO,

Charging Party.

SYNOPSIS

The Hearing Examiner grants in part the College's motion for summary judgment and dismisses the Union's claim that the College violated subsection 5.4(a)(5) by failing to negotiate the restructuring of a nursing program, its consequent reduction in force, and subcontracting with another college. These subjects are not mandatorily negotiable as a matter of law. Because fact issues exist, however, the Hearing Examiner denies the motion as it relates to the Union's 5.4(a)(3) claim that the College was motivated by animus to restructure the nursing program.

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Appearances:

For the Respondent, Jackson, Lewis, Schnitzler & Krupman,
Esqs. (Jeffrey J. Corradino, Esq.)

For the Charging Party, Dwyer & Canellis, Esqs.
(Paul J. Burns, Esq.)

HEARING EXAMINER'S RULING ON
MOTION FOR SUMMARY JUDGMENT

On April 21, 1989, the Faculty Union of Middlesex County College, Local 1940, AFT/AFL-CIO ("Local 1940" or "Union") filed an unfair practice charge and request for interim relief alleging that Middlesex County College ("College") violated subsections 5.4(a)(1), (2), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{1/} These subsections 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

Act, N.J.S.A. 34:13A-1 et seq. Local 1940 alleged that on or about December 20, 1988, the College resolved to restructure its nursing program and eliminate its current nursing faculty. The Union claimed that the College failed to negotiate the restructuring and was unlawfully motivated by a dispute that had arisen during collective negotiations. During this "dispute" the nursing faculty, which Local 1940 describes as "95% union and very active," supported a "walkout and demonstration."

On May 8, 1989, a Commission Designee denied the Union's application for interim relief.

On June 6, 1989, the Director of Unfair Practices issued a Complaint and Notice of Hearing assigning the case to Hearing Examiner Marc F. Stuart.

On June 16, 1989, the College filed an Answer admitting that it had adopted a resolution to restructure its nursing program but denying that it was unlawfully motivated or had an obligation to negotiate.

Shortly after Hearing Examiner Stuart resigned from the Commission, the matter was reassigned to me and on October 31, 1989,

1/ Footnote Continued From Previous Page

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. (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."

I scheduled a prehearing conference for December 6, 1989. At the prehearing the parties agreed to a schedule under which the College would file a Motion for Summary Judgment and the Union a response. I granted the parties' requests for extensions and the motion papers were filed by March 27, 1990. On April 19, 1990 the Commission transferred the matter to me for a ruling.

I deny the motion in part and grant it in part.

N.J.A.C. 19:14-4.8(d) provides that:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

In support of its motion, the College relies on affidavits submitted in the interim relief proceeding. The affidavits state generally that: the College has suffered declining enrollment, increased drop out rates and poor results from its nursing graduates on the National Council Licensing Examination (NCLEX) since the early 1980's; in March 1988, the College appointed an Allied Health Ad Hoc Committee to study these problems and suggest remedies; in September 1988, a field representative for the New Jersey State Board of Nursing ("Board") advised the College that recent NCLEX results required the Board to place the College's program on conditional accreditation status; on October 5, 1988, the College faculty struck while the Union and College were in negotiations; on October 19 and 20, the Board field representative met with College

administrators and faculty and discussed inadequacies in the nursing program; on November 22, 1988, the College adopted a resolution directing the President to develop a plan to deal with the County's need for RNs and with the College's declining nursing program enrollment, and to address the possible need for a reduction in force; on December 20, 1988, the President presented a plan which suggested a joint nursing program with UMDNJ and rejecting student applications for the fall 1989 term; and on December 20, 1988, the College adopted the plan and eliminated eight nursing faculty positions.

The College argues that its affidavits show that it decided to restructure the nursing program to improve it. The College also argues that the union has failed to allege facts showing that the College was motivated by animus. Finally, the College argues that it was under no duty to negotiate with the Union about the restructuring, its consequent reduction in force, or subcontracting with UMDNJ.

Of the College's obligation to negotiate, Local 1940 argues that the "elimination of the current faculty is clearly a condition of employment to be negotiated between the parties." (Union brief, p. 9) It adds that, "An examination into the facts must be made to determine whether the subcontracting is legitimate or simply a means to eliminate faculty members without negotiating with the union." (Id. at 10).

The Union also argues that fact questions exist about the College's motive for restructuring the nursing program. It asserts

that the College was motivated by the nursing faculty's support of a job action during acrimonious negotiations.

A motion for summary judgment will be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion and all doubts are to be resolved against the movant. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981). In light of these principles, the Commission has been reluctant to grant summary judgments. See, Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19, 20 (¶14009 1982).

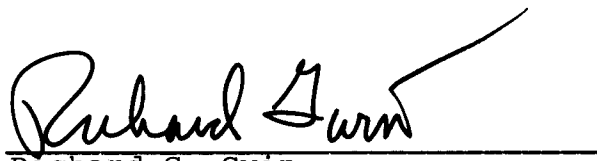
I deny the motion as it relates to the Union's allegations of unlawful motivation. The affidavits submitted by the College clearly express its defense: the College decided to restructure the nursing program and explore a joint program with UMDNJ due to declining enrollment, increased drop-out rates and poor test results. The timing of alleged events, however, raises a question of fact: within weeks of a nursing faculty-supported job action during difficult negotiations, the College decides to restructure the program and eliminate nursing faculty positions. Also in its charge and affirmed in an affidavit is a union allegation that the College President was aware of and disappointed in the nursing faculty's support of the job action. Giving the benefit of all reasonable inferences to the Union, I must deny the motion as it relates to the 5.4(a)(3) allegations.

I grant the motion, however, as it relates to the Union's 5.4(a)(5) allegations. Local 1940 argues that the College had an obligation to negotiate the decision to restructure the program, the decision to reduce force, and the decision to subcontract. These issues are not mandatorily negotiable as a matter of law. In re IFPTE Local 195 v. State, 88 N.J. 393 (1982); Maywood Bd. of Ed. v. Maywood Ed. Assn., 168 N.J. Super. 45 (1979).

I also grant the College's motion as it relates to the 5.4(a)(2) claim. The Union has failed to allege facts which, if true, suggest that the College actually dominated or interfered with the administration of the Union.

RULING

1. I deny the motion as it relates to 5.4(a)(3) allegations.
2. I grant the motion as it relates to 5.4(a)(2) and (5) allegations.



Richard C. Gwin
Hearing Examiner

Dated: April 30, 1990
Trenton, New Jersey