

H.E. NO. 2002-14

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

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-H-2001-54

GLOUCESTER COUNTY COLLEGE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Charging Party.

GLOUCESTER COUNTY COLLEGE,

Charging Party,

-and-

Docket No. CE-H-2001-4

GLOUCESTER COUNTY COLLEGE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Respondent.

SYNOPSIS

A Hearing Examiner denies a public employer's Motion for Summary Judgment on a portion of a consolidated Complaint alleging that the public employee representative, the AFT, negotiated in bad faith. The Complaint alleges, in part, that the AFT had insisted that it (the College) agree not to reorganize the Department of Student Services while an employee performed duties pursuant to an "interim assignment." It also alleges that the AFT unlawfully insisted that it must fill a vacant position within two months. The Motion was denied because a material factual dispute exists about whether the interim positions are included in the AFT-represented negotiations unit. The resolution of the dispute will allow a determination on the negotiations obligations of the parties.

H.E. NO. 2002-14

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

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-H-2001-54

GLOUCESTER COUNTY COLLEGE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Charging Party.

GLOUCESTER COUNTY COLLEGE,

Charging Party,

-and-

Docket No. CE-H-2001-4

GLOUCESTER COUNTY COLLEGE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Respondent.

Appearances:

For the Respondent/Charging Party, Gloucester County
College
Genova, Burns & Vernoia, attorneys
(Sandro Polledri, of counsel)

For the Charging Party/Respondent, AFT
Sagot, Jennings & Sigmond, attorneys
(Mary L. Crangle, of counsel)

HEARING EXAMINER'S DECISION
ON MOTION FOR SUMMARY JUDGMENT

On September 11, 2000, the Gloucester County College
Federation of Teachers, AFT, AFL-CIO (AFT) filed an unfair
practice charge against Gloucester County College (College)

alleging the College violated provisions 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The AFT specifically alleges that beginning on or about June 1, 2000, the College negotiated in bad faith by: (1) unlawfully dealing directly with AFT bargaining unit member Leon Hughes with respect to terms and conditions of employment and (2) by sending representatives to negotiate over extra services contracts for Hughes and fellow unit member Kathy Urban, who lacked authority to negotiate and thus reach agreements with the AFT. The AFT alleges that this conduct ensured that no agreement for extra services contracts for Hughes and Urban could be reached unless the AFT accepted the College's offer. The AFT further claims that the College retaliated against Hughes and Urban by withdrawing their interim assignments because the AFT sought to negotiate terms and conditions of employment related to these interim assignments. Finally, the AFT contends the College engaged in conduct intended to discourage union activities and to disparage and demean the AFT.

^{1/} 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. (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."

On December 26, 2000, the College filed an unfair practice charge against the AFT alleging the AFT violated provisions 5.4b(1), (3) and (5)^{2/} of the Act when, beginning on or about June 29, 2000, the AFT negotiated in bad faith with the College by insisting upon contractual provisions that were non-negotiable. Specifically, the College alleges that the AFT unlawfully insisted that the College agree not to reorganize the Department of Student Services during any interim assignment for Hughes. The charge alleges that the AFT unlawfully insisted that in the event Urban received a promotion to a Director position, the College must fill her counselor position on a full-time basis within two months.

On March 8, 2001, the Director of Unfair Practices issued an Order Consolidating docket nos. CO-2001-54 and CE-2001-4 and a corresponding Consolidated Complaint and Notice of Hearing.

On March 22, 2001, the College filed an Answer to the Consolidated Complaint denying all of the AFT's allegations and setting forth several separate defenses. Specifically, the AFT asserts that: (1) the AFT's allegations fail to state a claim for

^{2/} These provisions prohibit employee organizations, 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) 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."

which relief may be granted; (2) the College did not engage in any unfair practices; (3) the College did not negotiate in bad faith; (4) the College did not engage in direct dealing; (5) the AFT made demands concerning subjects that were non-negotiable and outside the scope of negotiations; (6) the AFT invoked the final offer provisions of the parties' collective negotiations agreement; (7) the AFT did not negotiate in good faith and; (8) the AFT does not have standing to assert its unfair practice charge.

On March 30, 2001, the AFT filed its Answer to the Consolidated Complaint denying all of the College's allegations and setting forth the following affirmative defenses: (1) the Complaint fails to state a claim upon which relief may be granted; (2) the AFT always negotiated with the College in good faith and in accordance with the parties' agreement; (3) the College waived any claims with respect to non-negotiable subjects of negotiations by failing to file a timely scope of negotiations petition; and (4) the subject matter of the Complaint is moot.

On August 31, 2001, the College filed a Motion for Summary Judgment, along with supporting brief and exhibits, with the Commission, and a request for a stay of the pending hearing. On September 5, 2001, the Motion was referred to me for a decision. N.J.A.C. 19:14-4.8.

On September 24, 2001, the AFT filed an opposing brief with supporting documents, specifically an affidavit. The AFT did not oppose the College's request for a stay of the pending

hearing. Accordingly, I granted the College's request for a stay.

On October 3, 2001, the College filed a reply to the AFT's September 24, 2001 brief.

* * * *

Summary Judgment will be granted:

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...is entitled to its requested relief as a matter of law.
[N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995) specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Applying these standards and relying upon the pleadings, I make the following:

FINDINGS OF FACT

1. The AFT represents a unit of College employees including full-time teaching staff, counselors, media coordinators, college nurses and librarians. Leon Hughes and Kathy Urban hold positions that are included within this unit.

2. The AFT and the College are parties to a collective negotiations agreement effective July 1, 1998 through June 30, 2001. The parties are currently in negotiations for a successor agreement.

3. Article III of the agreement addresses faculty assignments. Specifically, section 3.3(g) is a provision for negotiating the terms and conditions of employment for AFT unit employees whose regular work requirements are modified and who assume or are assigned non-teaching responsibilities. These are referred to by the parties as "extra services contracts."

4. The vice president of student services is responsible for duties related to student recruitment, enrollment, development and creation of a departmental budget. The title is not covered by any collective negotiations agreement.

5. In or around April 2000, the College began to conduct a search for the vice president of student services position because the incumbent announced her upcoming retirement. Leon Hughes had experience in the area of student recruitment and development.

6. In June 2000, the AFT learned that the College had dealt directly with Hughes concerning terms and conditions of

employment by offering him an extra services contract. The contract proposed that he assume, for a limited defined period, certain non-teaching responsibilities as a result of the vacancy in the vice president of student services position and further established the terms and conditions of employment related thereto. After AFT President Joseph Manganello had inquired about this circumstance, on June 8, 2000, College representative Charles McClain presented the Federation with a copy of the extra services contract which he had been negotiating directly with Hughes. The AFT then initiated the negotiations process as specified in the parties' agreement.

7. Simultaneously, in June 2000, the College began to conduct a search for the vacant position of director of student development, advising and registration. This title is responsible for student counseling and advising activities as well as supervising the registration process. This position is represented by the International Union of Electrical, Machine and Furniture Workers (IUE), not the AFT.

8. AFT unit member Kathy Urban appeared to be qualified for the vacant director position. On June 14, 2000, the College presented the Federation with a memorandum and a proposed extra services contract for Urban. The proposed contract included compensation she would receive if she assumed certain non-teaching responsibilities for a limited defined period, as a result of the vacancy in the director of student development, advising and registration title. The AFT again initiated the negotiations process, in accordance with the parties' agreement.

9. Throughout the rest of June and into July 2000, College and AFT representatives negotiated and exchanged proposals and counterproposals concerning the contents of the extra services contracts for Hughes and Urban. At all times, the College asserted that they wished to provide temporary coverage for the duties of the vacant vice president and director positions by assigning Hughes and Urban, respectively, the titles on an interim basis, but that: (1) they both remained AFT members; (2) they were not being permanently assigned to the vacant positions; and (3) their compensation and other terms and conditions of employment related to their interim positions would be established through an extra services contract. The College never claimed that it did not have an obligation to negotiate concerning these matters, or that by assuming the extra duties, either Hughes or Urban were assuming positions outside the AFT unit. While these negotiations for the extra services contracts were being conducted, both Hughes and Urban continued to hold their unit titles and were not assigned the duties of the vacant positions.

10. The Federation included the following term in its June 29, 2000 counterproposal to the College's proposal regarding interim position for Hughes: "There will be no reorganization of the Department of Student Services during Hughes' interim assignment." On July 5, 2000, the College made a counterproposal to the AFT's June 29, 2000 counterproposal, which did not include an agreement to refrain from reorganizing the department as requested by the AFT.

11. On June 29, 2000, the AFT submitted a counterproposal to the College's June 14, 2000 proposal, regarding the extra services contract for Urban. The AFT proposed that Urban's former counselor position shall be filled on a full-time basis within two months of Urban receiving a promotion to director. On July 5, 2000, the College submitted a counterproposal to the AFT's June 29, 2000 counterproposal which did not include an agreement, as requested by the AFT, to hire a replacement for the counselor position within two months in the event Urban was promoted to director.

12. At no time during the negotiations for the extra services contracts for Hughes and Urban did the College indicate that components of the AFT's proposals or counterproposals were non-negotiable; nor did the College file any scope of negotiations petition with respect to such.

13. On July 7, 2000, pursuant to Section 3.3(g) of the agreement, the AFT submitted its "final proposal" to the College, with respect to the extra services contract for Hughes and its "final proposal" with respect to the extra services contract for Urban. Pursuant to Section 3.3(g), the College had to accept or reject these final offers within five days; the failure of the College to comply would constitute an acceptance of the final offers. On July 10 and July 12, 2000, the College summarily rejected the Federation's "final proposals" for the extra services contracts for both Hughes and Urban. The College then assigned the duties for which the extra services contract were being negotiated to other employees outside the AFT unit.

14. According to the AFT, it became obvious during the negotiations process that the College's negotiators did not possess the requisite authority to negotiate, as evidenced by the fact the AFT's final offers were summarily rejected by the College without any indication as to what area or areas of the AFT's offers were unacceptable.

ANALYSIS

Upon consideration of the record, I hereby deny the College's Motion, as genuine issues of material fact exist.

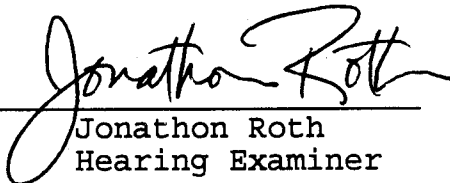
The College claims that its Motion should be granted because: (1) the AFT lacks standing to assert its claims since the proposed interim vice president of student services and director of student development, advising and registration positions for Hughes and Urban, respectively, are outside of the AFT unit, and (2) the College has the prerogative to transfer employees to new positions that are outside the unit. The AFT, however, notes that at no time did the College "transfer" or "promote" Hughes or Urban to positions outside the AFT unit and thus it has always represented them. Further, the AFT stresses that the College never proposed or intended to permanently place Hughes and Urban in the vacant positions. Rather, the College's intent was always to assign them the positions on an interim basis, and, as such, Hughes and Urban would always remain within the AFT unit. The AFT points out that compensation claims for acting in a different capacity, as was proposed for Hughes and Urban in the present case, are mandatorily

negotiable and that this obligation is not extinguished simply because the proposed action or interim position is not within the same collective negotiations unit.

Based on the above, I find that genuine issues of material fact exist. Brill. A hearing will commence with respect to the instant matter on a date mutually agreed upon by the parties.

DECISION

The College's Motion for Summary Judgment is hereby denied.



Jonathon Roth
Hearing Examiner

DATED: April 10, 2002
Trenton, New Jersey