

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3231-00T5

IN THE MATTER OF IRVINGTON
BOARD OF EDUCATION,

Respondent,

and

IRVINGTON EDUCATION
ASSOCIATION,

Appellant.

Submitted: December 12, 2001 - Decided: **DEC 27 2001**

Before Judges King and Cuff.

On appeal from the Public Employment Relations
Commission, CO-H-99-170.

Oxfeld Cohen, attorneys for appellant (Nancy I.
Oxfeld, on the brief).

Robert E. Anderson, General Counsel, attorney
for respondent.

PER CURIAM

At issue on this appeal are two memoranda, dated September 16, 1998 and October 29, 1998, written by Esmerelda Vargas, principal of the Augusta Street School in Irvington, Essex County, regarding Judith Tasoff, a teacher at the school. In these memoranda, Vargas criticizes Tasoff's conduct as a teaching professional and, in part, as a union representative for appellant the Irvington Education

Association (IEA). The September 16 memo was placed in Tasoff's personnel file. The October 29 memo was not.

The IEA complains that the two memoranda constitute unfair labor practices, in violation of the New Jersey Employer-Employee Relations Act (the Act), N.J.S.A. 34:13A-5.4(a)(1), by interfering with Tasoff's exercise of her rights under the Act and discriminating against Tasoff for having engaged in protected activities, all with the intent of discouraging Tasoff and other IEA members from exercising their rights under the Act.

PERC found that, except in one aspect which is not at issue on appeal, the memoranda did not violate the Act. PERC found, instead, that the memoranda represented "a carefully measured, balanced response" by Vargas, as principal, to a "pattern of disrespectful conduct" by Tasoff, an insubordinate employee.

On this appeal, the IEA challenges Hearing Examiner St. Onge's and PERC's weighing of the facts and credibility determinations. The record shows that PERC's factual findings are supported by credible, competent evidence.

In reviewing a decision by PERC in an unfair practices case, we must accord that decision substantial deference unless it is plainly unreasonable in light of the statutory language or the legislative intent. Turnpike Auth. v. AFSCME Council 73, 150 N.J. 331, 351-52 (1997); In re Hunterdon Cty. Bd. of Chosen Freeholders, 116 N.J. 322, 328-29 (1989). Our review of PERC's factual findings is "limited" because "the evaluation of evidence is the province of PERC rather

than of the courts." Id., at 329; In re Bridgewater Tp., 95 N.J. 235, 245-46 (1984). Factual determinations by an administrative agency must be upheld if they are supported by sufficient credible, competent evidence. Ibid; Goodman v. London Metals Exch., Inc., 86 N.J. 19, 28 (1981). "Though an independent de novo examination of the record might lead a reviewing court to an opposite conclusion, the court's obligation is to examine the record in order to determine whether the evidence and the reasonable inferences to be drawn therefrom could reasonably support the decision." Id. at 28-9.

Here, our independent review of the record reveals that each of PERC's relevant factual findings as expressed by Hearing Examiner St. Onge and adopted by PERC is supported by credible, competent evidence. The IEA challenges PERC's weighing of the evidence, and its apparent decision to credit Vargas' testimony over that of Tasoff's, particularly with respect to Tasoff's misconduct, and Vargas' intent in drafting the memo. It is not our role to second-guess PERC's credibility determinations. In re Bridgewater Tp., 95 N.J. at 245-46; Goodman, 86 N.J. at 28-9. The IEA provides us with no basis for disturbing the agency's factual findings; they must be upheld. Also, the IEA does not challenge PERC's statement of the applicable law. We affirm PERC's decision that the September 16 memo does not violate N.J.S.A. 34:13A-5.4(a)(1). We also affirm PERC's decision that the October 29 memo did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3), for the same reason.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION