

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

In the Matter of

PASSAIC COUNTY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-152-140

PASSAIC COUNTY TECHNICAL AND  
VOCATIONAL EDUCATION ASSOCIATION,  
INC.,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission denies a Motion for Summary Judgment. The Hearing Examiner found that genuine issues of material fact existed that warranted a full hearing. In addition, the Hearing Examiner found that the Board was not entitled to summary judgment as a matter of law.

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Appearances:

For the Respondent  
Edward G. O'Byrne, Esq.

For the Charging Party  
Bucceri & Pincus, Esqs.  
(Sheldon H. Pincus, of Counsel)

DECISION ON MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 13, 1984 by the Passaic County Technical and Vocational Education Association ("Association") alleging that the Passaic County Board of Education ("Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that the Board interfered with, restrained and coerced employees Cerisano and Terrizzi in the exercise of the rights

guaranteed to them by the Act, by unlawfully reprimanding them for statements they made at a public Board meeting all of which was alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 17, 1985. On May 30, 1985 the Board filed a Motion for Summary Judgment accompanied by an Answer to the Complaint, and a brief in support of the Motion. The Association filed a brief in opposition to the Motion on June 5, 1985.<sup>2/</sup>

On June 12, 1985 the Chairman of the Commission, pursuant to N.J.A.C. 19:14-4.8(a), referred the Motion to me for determination.

In order to render a decision, in whole or in part, in favor of a motion for summary judgment there must be no genuine issue as to any material fact, and the moving party must be entitled

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

<sup>2/</sup> The Board apparently filed a reply brief on June 26, 1985. However, there is no evidence that the Association's attorney was served with that brief. Although I would normally refuse to consider a brief that was not served upon opposing counsel, there is no need to reject that brief since it merely reiterates the arguments raised in the Board's earlier brief.

to prevail as a matter of law. N.J.S.A. 19:14-4.8(d) and N.J.A.C. 1:1-13.2.

The Board filed this Motion based primarily upon jurisdictional grounds. It argued that in view of Federal Court action concerning Cerisano's and Terrizzi's same April 12 statements, that the Association should not be allowed to pursue the "same issue" before the Commission. The Board argued that under the "entire controversy doctrine" (single controversy doctrine) it is unlawful to permit the "same persons" to litigate the "same issues" time after time. Stone v. William Steinen Mfg. Co., 7 N.J.Super. 321, 327 (County Court 1949). The Board further argued that the June 19, 1984 letters were not letters of reprimand, and that they were not issued because of the employees' exercise of protected activity.

Upon the record as it exists to date, I make the following:

Undisputed Findings of Fact

1. The Passaic County Board of Education is a public employer within the meaning of the Act and is the employer of Leonard Cerisano and Michael Terrizzi.

2. The Passaic County Technical and Vocational Education Association is a majority representative within the meaning of the Act.<sup>3/</sup>

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<sup>3/</sup> Although the Board did not dispute a finding that the Association is a majority representative within the meaning of the Act, it did note that a question concerning representation existed regarding the instant unit.

3. Cerisano and Terrizzi are public employees within the meaning of the Act, and are tenured teachers employed by the Board, and Cerisano is President of the Association.

4. On April 12, 1984 Cerisano and Terrizzi appeared at a public Board meeting and addressed the Board regarding specific topics.

5. The Association alleged that after the meeting on April 12, 1984, both Cerisano and Terrizzi were orally chastised for making the statements, and that Cerisano was told that disciplinary action was being contemplated by the Board. The Board denied those allegations.

6. By letters dated June 19, 1984, Cerisano and Terrizzi were formally reprimanded for their April 12 statements to the Board. Those letters were placed in their individual personnel files. Cerisano's letter specifically referred to his position as Association President.

7. On August 28, 1984 Cerisano and Terrizzi filed, as individuals, a complaint against the Board with the United States District Court for New Jersey alleging that the June 19, 1984 letters of reprimand violated their rights under the First and Fourteenth Amendments to the Constitution of the United States, and violated the Civil Rights Act of 1981.

#### Analysis

The Board's Motion must be denied based upon both factual and legal considerations. There are certain outstanding issues of

material fact that must be explored at a full hearing. First, the Association alleges that the June 19 letters were issued in retaliation for the employees' exercise of protected activity, and that those letters were letters of reprimand. The Board denies those allegations. It is therefore necessary to conduct a factual hearing to determine whether the employees were engaged in protected activity when they made the statements, the content of their statements must be considered, and then it must be determined whether the June 19 letters were letters of reprimand. Second, the Association alleged that certain threats were made by Board members regarding the employees' statements. The Board disputed that allegation. The Association must be allowed the opportunity to develop those facts at a full hearing.

In addition to the outstanding material factual issues, there is insufficient legal basis to sustain this Motion at this time. The entire controversy or single controversy doctrine does not apply herein. Neither the parties nor the issues in the Federal Court action are entirely the same as the parties and issue before this Commission. The Federal matter is being pursued by Cerisano and Terrizzi as individuals, whereas, the Charging Party before the Commission clearly is the Association.

I reject the Board's contention in its reply brief that the Association's right to proceed is de minimis, or that the Association is merely performing its contractual obligations to represent Cerisano and Terrizzi. The Board overlooks the fact that

Cerisano is the Association President. He has an obligation to speak for and represent the interests of the Association as a separate entity even if those Association interests differ from his own individual interests on a given issue. The Association in the instant matter, for example, has a vested interest in protecting the right of its President to represent it before the Board and to advance Association beliefs and positions.<sup>4/</sup> The Association, therefore, is a separate and independent entity or "person" from Cerisano and Terrizzi and it has the independent right to pursue its own actions. The single controversy doctrine was not intended to prevent the actions of other parties. Aetna Ins. Co. v. Gilchrist Brothers Inc., 85 N.J. 550 (1981).

To suggest that the Association is not an independent party herein is to negate the significance of a negotiations relationship between a public employer and an employee representative. An adoption of the Board's position here would signify that the Association has no independent or policy making authority in the collective negotiations process, and that such authority was really vested in the individual unit members. That was not the Legislature's intent. Rather, the Legislature intended employee

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<sup>4/</sup> I note that whether Cerisano was engaged in protected activity when he made statements to the Board, and whether he made those statements in his role as Association President, are factual issues yet to be determined. However, the existence of such factual issues are yet other reasons why a full hearing is necessary herein.

representatives to have the authority to represent as a separate entity the interests of all unit members. N.J.S.A. 34:13A-3(f) and 34:13A-5.3. There may very well be times when the Association's interests, and the interests of individual members may be the same. However, that does not mean that an Association can be required to yield its rights to those of individuals. Based upon the instant facts the Association has only one forum--this Commission--to enforce its rights. The fact that individuals have chosen another forum within which to enforce rights afforded to them from laws other than our Act cannot deny the Association the right to proceed herein.

In addition to the difference in parties, there is a difference in issues. In the instant matter the issue is limited to whether the employees were engaged in protected activity within the meaning of our Act, and whether the Board's actions were in response to the exercise of protected activity. The Federal Court action involves a determination regarding individual free speech and civil rights. It is possible for the Association to succeed in the instant matter, but for the employees to fail in Federal Court, or visa versa. In either case, however, the parties and issues here are different from those in the Federal Court action, and in view of the numerous material factual issues yet to be determined, the requirements for summary judgment have not been met.



Accordingly, for the above-stated reasons, I hereby deny the Board's Motion in its entirety.<sup>5/</sup>

  
Arnold H. Zudick  
Hearing Examiner

Dated: July 18, 1985  
Trenton, New Jersey

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<sup>5/</sup> Pursuant to the Board's request, the hearings originally scheduled herein for July 18 and 19, 1985 were cancelled. The hearing will be rescheduled pursuant to an Order Rescheduling Hearing.