H.E. NO. 2003-9

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-2002-188

IRVINGTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Irvington Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5), when it refused to provide information to the Association. In particular, she found, with the exception of social security numbers, the Association established that the information requested was potentially relevant and necessary to service its membership. The Hearing Examiner rejected the Board's contentions that Charging Party must first establish the Board acted in bad faith or that the failure to provide information prevented the Association from conducting union business.

H.E. NO. 2003-9

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-2002-188

IRVINGTON EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Hunt, Hamlin & Ridley, attorneys
(Ronald C. Hunt, of counsel)

For the Charging Party
Oxfeld Cohen, LLC, attorneys
(Nancy I. Oxfeld, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On January 4 and March 28, 2002, the Irvington Education Association (Association or Charging Party) filed a charge and amended charge (C-1)[1/] against the Irvington Board of Education (Board or Respondent) alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act),

---

1/ "C-" represents Commission exhibits; "CP-" represents Charging Party's exhibits; and "R-" represents Respondent's exhibits.

specifically 5.4a(1) and (5).[2/] The charge/amended charge alleges in Count One that the Board and superintendent repudiated the parties negotiated grievance procedure, and in Count Two that the Board refused to provide information requested by the Association as the majority representative of certificated and non-certificated employees employed by the Board. It asserts the information is necessary to enable it to properly fulfill its statutory obligation to negotiate and administer the parties' collective negotiations agreement.

On April 12, 2002, Charging Party withdrew Count One of the charge/amended charge (C-3). On May 24, 2002, a Complaint and Notice of Hearing issued on the remaining charge/amended charge (C-1).

On June 19, 2002, the Board filed its Answer (C-2) generally denying the allegations in Counts One and Two of the charge/amended charge and raising as a separate defense that the charge/amended charge is untimely.

A hearing was conducted on August 27, 2002.[3/] Before

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, and (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."

3/ Transcript reference shall be "T-".

presenting its witnesses, I granted Charging Party's motion to amend the complaint to add a request for relief directing the Respondent provide all information requested in Count Two of the charge and for such other relief as the Commission may deem just and equitable (C-4) and to further amend the complaint under various subsections of Count II, paragraph 11. N.J.A.C. 19:14-2.2. Specifically, I granted Charging Party's request to amend the complaint under Count II, paragraph 11 to withdraw subsection (d) regarding a request for the June 18, 2001 Personnel Committee agenda in its entirety, to change subsection (i) to reflect no request for information was made on October 18, 2001, and to change the dates reflected in subsections (j) and (k) to reflect that the requests for information were made on August 24, 2001, not on September 1, 2001 (T18-T21). During the course of the hearing, I also granted Charging Party's request to withdraw items (f), (g) and (h) under paragraph 11 of Count II since those items were provided by Respondent on the day of hearing (CP-8, T58-T60, see also Charging Party's post-hearing brief at pp. 1-2). The parties examined witnesses and introduced exhibits. After granting Respondent's request for additional time, post-hearing briefs were filed by October 22, 2002 and reply briefs by October 30, 2002. Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Irvington Board of Education is a public Employer within the meaning of the Act. The Irvington Education Association

is a public employee organization and is the majority representative for non-supervisory certificated and non-certificated employees employed by the Board in four separate units consisting of teachers, para-professionals, secretaries and transportation workers (CP-1 through CP-4, T95-T96).

2. The Board and Association are parties to four collective negotiations agreements with varying effective dates as follows: (a) teachers unit - effective from July 1, 2000 through June 30, 2003 (CP-1); (b) para-professionals unit - effective from July 1, 1999 through June 30, 2002 (CP-2); (d) secretaries unit -- effective from July 1, 1999 through June 30, 2002 (CP-3); (d) transportation unit - effective from July 1, 1997 through June 30, 2000. The transportation unit consists of school bus drivers, bus attendants, mechanics and maintenance employees (CP-4).4/

Each contract contains an agency fee provision permitting the deduction of 80% of regular dues for individuals who are not members of the Association (T40, T70).

3. Madeline Edwards, a twenty-four year Board employee, has been the president of the Association for the past seven years. Her responsibilities include, but are not limited to, contract negotiations and grievance processing (T94-T95).

4/ A memorandum of agreement for the transportation unit has been agreed upon by the parties although it is unclear whether it has been ratified or executed. No new contract has been prepared for that unit (T33, T96-T97).

Andaiye Foluke has been employed by the Board for sixteen years. In 1999 she served on the negotiations committee for the most recent contracts and was grievance co-chair (T32-T33, T38). In her capacity as grievance chair, Foluke monitors Board policies to ensure compliance with the parties' contracts, investigates member claims and initiates grievances when warranted (T39). Additionally, since June 2001 she has held the titles of Association vice-president and membership chair. As membership chair, she has the responsibility for recruitment as well as maintaining and up-dating membership lists by, among other duties, monitoring leaves of absence, transfers and retirements. She also maintains a current data base to recruit new members and ensure that non-members pay agency fees as provided in the parties' contracts (T40-T41).

Foluke Requests for Information

4. On November 24, 2000, Foluke wrote Supervisor of Staff Development Dr. Rick Hangge requesting a September 8, 2000 memorandum which he sent to mentor teachers. She needed the information to process a grievance relating to teacher pay for mentoring (CP-5, T42, T73). Foluke's letter requested a response no later than December 4, 2000 (CP-5). Neither Dr. Hangge nor anyone else responded to her request (T43).5/

5/ Respondent sought to impeach Foluke's testimony by arguing in its post-hearing brief that the Association must have received a copy of Hangge's September 8, 2000 memorandum

Footnote Continued on Next Page

6. On June 13, 2001, Foluke, in her capacity as grievance committee co-chair, requested Assistant Superintendent Ethel Davion confirm and/or clarify her directives regarding classroom observations by district supervisors. Foluke particularly wanted information on either verbal or written directives addressing pre- and post- observation conferences and "indiscriminate use of NE ratings on teacher evaluations" (CP-6). NE represents "not effective" rating (T45). The Association considered Davion's directives a violation of the parties' contract (CP-6, T45-T46, T77, T79-T80, T82-T83). In particular Article X of the teacher's contract entitled "Teacher Evaluation" requires a pre-evaluation conference prior to each classroom observation and the provision of a draft copy of the observation at least two days prior to the conference (CP-1).

When Foluke contacted supervisors and principals to ascertain why teachers were receiving NE ratings even when their overall ratings were satisfactory, she was informed that Davion had instructed them to do so (T46). Foluke received no response to her

---

5/ Footnote Continued From Previous Page

because it was offered into evidence at the grievance arbitration relating to mentor pay, and Foluke was present and testified at the arbitration (Respondent brief at p. 4). However, there is no testimony in my record as to what if anything was offered into evidence at the grievance arbitration nor is the September 8, 2000 memorandum which Respondent attached as an exhibit to its brief part of the evidentiary record in this matter (T72-T75). Therefore, I make no findings based on the arguments in Respondent's brief or the attached exhibits.

request for information concerning classroom observation directives (T52).

7. On May 1, 2001, Foluke, as grievance co-chair, filed a revised level one grievance entitled "assignment of extracurricular trips - bus drivers." The contract for the transportation unit contains a clause related to extra-curricular bus runs. Specifically, Article XVIII of the transportation unit contract entitled "Special Trips" addresses assignment to special trips and rates of pay. In particular, paragraph 1(c) provides:

> Details concerning who was assigned, the amount paid, and the hours of extra trips shall be made available to the Association. (CP-4)

The May 1 grievance asserted that bus drivers had been denied assignment by seniority to special field and extracurricular trips on nine specified dates in April and May 2001. Foluke sent the grievance to Supervisor of Transportation Beverly Fisher (CP-4, CP-17, T53-T54, T147). The grievance was revised from the one originally submitted because Fisher wanted more details before she considered the grievance (T56).

On June 13, 2001 Foluke sent another letter to Fisher regarding the May 1 grievance about bus drivers who were denied the opportunity to be assigned special field and extracurricular trips by seniority as per the parties' contract. In the letter, Foluke stated that the grievance committee was still awaiting details concerning the names of bus attendants/aides who were assigned extracurricular trips during school year 2000-2001 together with the

rate of pay agreed upon, the amounts paid and the hours of the trips. Foluke asserted the information had to be provided pursuant to Article XVIII of the parties' contract (CP-7).

When Fisher received the June 13 request, she telephoned her supervisor, Mike Steele, and faxed him a copy of the letter. He told her he would respond. Fisher had no further contact with him about the request, but Steele did not respond (T129).

On August 2, 2001 Foluke made a request of Superintendent Ernest Smith for the extracurricular bus run information for bus attendants and aides (CP-8).[6/] She never received a response to her request for the bus attendant/bus aide information or about bus runs for the 2000/2001 school year, nor was she told by anyone that some of the records could not be accessed because they were in a sealed room (T57-T58).[7/]

On August 27, 2002, the morning of the hearing in this matter, Respondent produced daily transportation logs for extra curricular bus runs for the months of April, May and June 2001. The logs contained the names of the driver and aide for dates on which

---

6/ Bus aides and bus attendants are the same titles (T54, T125).

7/ Foluke testified generally that she was told by the Association's transportation representative that Director of Human Resources Anthony Salters invited the union's transportation representative to inspect the records in his office. However, neither Salters nor the transportation representative testified. It is unclear when, if at all, Salters made this offer and what, if any, records he was making available, therefore I make no finding as to this testimony (T58-T59).

an extracurricular bus run was made during each month together with the amount paid to the driver and aide on the run (R-1 through R-3, T57, T124-T127). Information for some of the specific dates requested in Foluke's May 1, 2001 letter to Fisher, namely April 24 and 25 as well as May 1 and 2, were not included in the daily transportation logs produced on the day of the hearing (R-1 through R-3). It is unclear from the record whether these runs were cancelled and, therefore, no daily log sheets exist for those dates or whether the records exist but were not produced (R-1, R-2, T148-T149, T151-T153).[8/]

The transportation logs for extra-curricular bus runs from September 2000 through March 2001 were not provided to the Association at the hearing because they are maintained in a storage room of the transportation garage which has been sealed since March or April 2002. Prior to March or April 2002, Fisher and others had access to these transportation logs (T128, T145). The record is devoid of testimony as to why the room was sealed and whether, in any event, there is some means to access the records.

8. In the August 2, 2001 request to Smith for transportation information, Foluke renewed her request for clarification about Assistant Superintendent Davion's directives

---

8/ Teachers, not aides, were assigned to extracurricular bus runs with bus drivers prior to April 2001, so presumably if records had been produced for bus runs prior to April 2001, they would reflect information only on bus drivers assigned not on bus attendants (T127-T128, T132-T133).

regarding classroom observations and requested a copy of the Board approved Whole School Reform (WSR) Plan together with other documents (CP-6, CP-8,). There was no response to her requests for Davion's directives or a copy of the WSR plan (CP-8, T57, T59). However, the Association received certain other requested documents namely, the agenda for a June 18, 2001 Personnel Committee meeting, the early childhood plan and budget, Board budgets for 2000-2001 and 2001-2002 and Board facilities plans (T59-T60). Additionally, plans for the implementation of the Reading Recovery program in the elementary schools which had been requested were no longer needed by the Association and the request for that information was withdrawn (T60).

9. On August 24, 2001, Foluke, in her capacity as membership chair, requested that Doris Littlejohn, manager of the department of accounts and controls, confirm the employment status of certain employees in the Association's four bargaining units, some of whom the Association had no record of but were listed in Board records. The information request was triggered by a list of all Board employees broken down by unit which Littlejohn sent Foluke (T61, T85-T86). Foluke traditionally worked with Littlejohn on membership issues and understood that she was the person responsible for maintaining employee records and other employee information (T61, T85-T86).

Foluke also asked Littlejohn to provide a list of employees assigned to the alternative high school and/or adult school together

with their names, positions and social security numbers. This information was needed to determine regular membership or representation fee status. The Association had been sent a list which combined Alternative High School teaching staff and Adult School staff. The Association does not represent Adult School teaching staff (CP-1, CP-9, T61-T62, T65). The Association also needed social security information because it was required by the NJEA for its internal record keeping in order to process information for representation fee payers under the agency shop provisions of the parties' contracts (T70-T71).

Additionally, Foluke requested a list of all coaches together with their effective date of hire and whether they were: (1) full time teachers or administrator/supervisors with stipend; (2) training, strength/conditioning coaches only earning less than $11,400; or (3) sport coaches only (CP-9, T65). The recognition clause of the parties' contract includes a category of employees known as "coaches under contract." Teachers who also served as coaches were members of the Association by virtue of their full-time status. However, the Association also represents individuals hired as part-time employee coaches. The requested information was needed to determine membership status (CP-1, T65).

Foluke also requested information regarding the total number certified staff because the Association's records indicated there were 701 certificated employees while they could only confirm 638 employees (CP-9).

Finally, Foluke reminded Littlejohn that information was still pending on the position and building assignment of three unit employees because their names appeared on various lists but Foluke could not ascertain their positions and whether they belonged in one of the Association's four bargaining units (CP-9, T66).

Littlejohn responded verbally to Foluke that she had forwarded the request for information to Assistant Superintendent and Board Secretary Victor Demming and that she could not respond to Foluke unless she got approval from Demming (T66-T67, T86-T87, T93). Littlejohn either never heard from Demming or did not receive his approval. Foluke did not receive the information (T66-T67).

On October 9, 2001, Foluke sent Littlejohn a memorandum entitled NJEA-IEA Membership Updates which renewed her August 24 request for information (C-10, T67). Specifically, Foluke reminded Littlejohn that it had been 45 days since she had requested the following information:

> - A date to meet with you and Victor R. Demming to discuss updating the employee records.
> - Identification of approximately 100 employees.
> - A complete list of the employees assigned to the Alternative High School.
> - Specific information regarding coaches.
> (CP-10)

Littlejohn did not respond (T68). However, approximately two weeks before the hearing in this matter, Supervisor of Transportation Fisher received a copy of the first two pages of Foluke's August 24, 2001 request to Littlejohn, namely the request regarding information on the employment status of transportation

unit employees. Her supervisor, Mike Steele, sent the request to Fisher (R-4, T133, T138). Steele asked Fisher to determine the current employment status of the 41 transportation employees listed in Foluke's August 24, 2001 letter to Littlejohn (R-4, T144-T145).

Fisher made notations next to each name indicating whether they were employed as of August 2002 in the transportation department and faxed the information back to Steele. She provided no information as to employment status as of August 24, 2001, when the original request for information was made (R-4, T144-T145). Fisher's response also did not address any of the other information Foluke sought on August 24, 2001, including but not limited to, the employment status of employees in the Association's other bargaining units, the employees assigned to the alternative high school, adult school or coaching positions (R-4, CP-9).

10. On October 16, 2001 Foluke sent a letter to Payroll Clerk Barbara Taylor regarding the social security numbers, home addresses and dates of hire for certain unit employees identified on an attached list (CP-12, T69, T91). Foluke needed the information for the purpose of verifying representation fee status and ensuring that representation fees were deducted from their pay checks (T70). In particular, the NJEA requires the submission of social security numbers in order to deduct the 80% representation fee permitted under the contracts for the Association's four units (T70). Foluke normally requested membership information from Taylor (T71). On October 18, 2001 Foluke went to the Board offices to find out if the

information was available but was told there was no record of her October 16 letter, so she resubmitted it on October 19, 2001 (CP-12, T70-T71, T92).

Foluke received no response to her request (T71).

11. On October 18, 2001, Foluke in her capacity as grievance chair wrote Davion requesting copies of new guidelines regarding submission of applications for attendance at conferences/workshops/visitations which Davion had referred to at an October 17, 2001 Board meeting (CP-11, T68, T87-T88). Based on statements Davion made at the Board meeting, Foluke believed that the guidelines were in writing (T90). Foluke needed this information for the processing of a grievance (T68). Other than the written request, she never spoke to Davion about it (T90-T91). Davion never responded to Foluke's request for this information (T68-T69).

Edward's Requests for Information

12. On September 7, 2001, Association President Edwards sent a request for information regarding the names of all teaching staff assigned to certain listed schools during the 1999-2000 and 2000-2001 academic years, the dates on which they were assigned, and attendance and sign-in records for each individual (CP-13). Edwards needed this information to ensure that 9.2 days of pay was received by the employees as the result of an arbitrator's award (T99). She requested a response within two weeks (CP-13). Edwards never received the requested information (T99).

13. On October 9, 2001, Edwards sent a letter to Superintendent Smith requesting information regarding the teaching experience and/or certifications of three employees, Jason Chambers, Cheryl Chester and Director of Human Resources Anthony Salters. Edwards requested this information because of membership concerns that the individuals did not hold the appropriate certification to evaluate members of the teacher's bargaining unit and/or to apply for an administrator's position.

Employees evaluating members of the teacher's bargaining unit had to hold the appropriate certification. Specifically, Edwards asked for copies of certificates for all three employees as well as verification of Chester's teaching experience (CP-14, T100-T101, T112). In particular, there was a concern that Salters who was assigned to supervise school nurses (bargaining unit employees) did not possess either an RN degree, a school nurse certification or a supervisor's certification (T101).

Edwards received an oral response from Salters that each of the three employees, including himself, was appropriately certificated. His response answered her question. However, she requested that she receive a written response. She received another oral response this time by telephone from the Essex County Superintendent, but there was never any written follow-up on the certification issue (T102-T103, T112-T113).

14. On October 22, 2001, in response to membership concerns regarding tuition reimbursement, Edwards wrote Director of

Human Resources Anthony Salters. She requested a list of all applicants for tuition reimbursement, their tuition amounts and priority numbers (CP-15, T103). The parties' contract requires priority numbers be given to each tuition reimbursement applicant because there is only $65,000 available and members may contractually apply for 100% reimbursement. Therefore, they are reimbursed on a first-come, first-serve basis. If there is no money left at the end of the year for tuition reimbursement then priority numbers are given out for those who received no money. For a period of time, no priority numbers were being assigned which impacted entitlement to tuition reimbursement (T104).

Edwards received no response to her request until May or June 2002 when she received a list of individuals with priority numbers for the coming year and names of individuals who received tuition reimbursement for 2001-2002. However, she received no information concerning applicants for reimbursement prior to October 2001 (T105-T109, T114-T116).

15. On October 29, 2001, Edwards requested a complete salary printout of the payroll period beginning September 27, 2001, for the teacher's bargaining unit. The Association had received a partial list from the Board which was missing names beginning with the letters W, X, Y and Z as well as other bargaining unit employees she identified who were not on the printout (CP-16, T110). Edwards requested a response by November 13, 2001. She received no response to her request (CP-16, T111, T117).

ANALYSIS

In Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981), the Commission, relying on federal precedent, held that an employer must supply information to a majority representative if there is a probability that the information is potentially relevant and that it will be of use to the union in carrying out its representational duties and contract administration which includes grievance processing. Moreover, in State of New Jersey (OER) and CWA, P.E.R.C. No. 88-27, 13 NJPER 752, 754 (¶18284 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988), the Commission further explained that relevance is liberally construed - the information need only be related to the union's function as the collective negotiations representative and appear reasonably necessary for the performance of this function. Relevance is determined through a discovery-type standard; therefore, a broad range of potentially useful information is allowed to the union for effectuation of the negotiations process. See generally, Hardin and Higgins, The Developing Labor Law at 856, 859 (4th ed. 2001); NLRB v. Acme Industrial Co., 385 U.S. 432, 437 (1967); J.I. Case Co. v. NLRB, 253 F.2d 149, 41 LRRM 2679 (7th Cir. 1958). A refusal to supply relevant information constitutes a refusal to negotiate in good faith and violates N.J.S.A. 34:13A-5.4a(5).

Various types of information - particularly that concerning terms and conditions of employment as well as names and home addresses of unit employees - are presumptively relevant. See

University of Medicine and Dentistry of New Jersey, 144 N.J. 511 (1996); UMDNJ (School of Osteopathic Medicine), P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993); NJ Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989).

A union's right to receive information from an employer is not absolute. The employer is not required to produce information clearly irrelevant or confidential. The duty to provide information is evaluated on a case by case basis. State of New Jersey (OER), 13 NJPER at 754. The party asserting confidentiality interests has the burden of proof. NLRB v. U.S. Postal Service, 888 F.2d 1568, 133 LRRM 2152 (11th Cir. 1989), enforcing 289 NLRB 942, 129 LRRM 1169 (1988).

Here, Charging Party made numerous requests for information relative to either contract administration and/or grievance processing between November 2000 and October 2001. It asserts that the information requested was relevant and necessary for the performance of its duties as majority representative.

Respondent generally raises an affirmative defense of timeliness as to any or all of the allegations contained in the charge. It does not challenge the Association's entitlement to most of the documents. Rather, the Board asserts that it made a good faith effort to supply requested documents but suggests that some requests were unclear, addressed to the wrong person or were lost in the bureaucracy. As to the May 2001 request for transportation records relating to extracurricular bus runs, it asserts that since

March or April 2002 the room housing these records has been sealed and it can not access the information. Finally, the Board contends there is no violation of 5.4a(1) and (5) because Charging Party offered no evidence to show that the Board acted in bad faith or that its failure and/or refusal to provide information affected the ability of the Association to represent its members.9/

With regard to the timeliness defense, the Act requires that an unfair practice charge must be brought within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4c states:

> . . . no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In application, the statute of limitations period normally begins to run from the date of some particular action, such as the date the alleged unfair labor practice occurred, provided the person(s) affected thereby are aware of the action. The date of the action could be the date an action is announced and/or the date an action is implemented. The action date is known as the "operative date," and the six-month limitations period runs from that date. Therefore, in order to be timely, a charge must be filed within six

---

9/ In its brief, Respondent also asserts that the Association failed to establish a violation of 5.4a(3) and cites Bridgewater Tp. v Bridgewater Public Works Assn., 95 N.J. 235 (1984). I need not address these arguments as the Association does not allege a 5.4a(3) violation.

months of the operative date. Charges and amendments filed past that date are generally untimely. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the charging party that it was "prevented" from filing the charge prior to the expiration of the period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338. The Court noted it would look to equitable considerations in deciding whether a charging party slept on its rights. The Court still expected charging parties to diligently pursue their claims.

The charge and amended charge were filed on January 4, 2002 and March 28, 2002, respectively. Therefore, any operative event occurring before June 4, 2001 or September 28, 2001 would be untimely. There are several operative events which date from the various requests for information and the dates on which the Association became aware that the Board refused to provide the information.

Only one claim appears to be untimely, namely the November 24, 2000 request to Dr. Hangge for a copy of a September 8 memorandum regarding mentor teachers (CP-5). The request asked for a response by December 4, 2000. No response was received by that

date and there is no evidence that the request was renewed at a later date. Additionally, there is no claim the Association was prevented from filing its claim as to the request for mentor teacher information before June 4, 2001. Therefore, its claim as to this request is untimely and must be dismissed. The remaining requests for information occurring between June 13, 2001 and November 13, 2001 (CP-6 through CP-17) are timely.10/

Next, the Board has asserted no challenge to the relevancy of the information requested nor raised an affirmative defense of confidentiality. Where a privacy affirmative defense is asserted, the party asserting it carries the burden of proof. In evaluating this type of issue, the Commission takes a balancing of interests approach. Burlington County, P.E.R.C. No. 88-101, 14 NJPER 327 (¶18121 1988), aff'd NJPER Supp.2d 208. The circumstances of the case are considered including the employee's privacy interest, the union's need for the information and the employer's business reasons for not supplying the information. Id. at 329. Name and address information concerning unit employees is considered to be presumptively relevant. Burlington County.

Recently, in two related decisions the Commission considered charging parties' requests for names and addresses of

---

10/ One level 1 grievance filed on May 1, 2001, requested information relating to extracurricular bus runs with a response date by May 11, 2001 (CP-17). The request, however, was renewed on August 2, 2001, in a letter to Superintendent Ernest Smith (CP-8).

unit members. Morris Cty., P.E.R.C. No. 2003-22, __ NJPER ___ (¶_____ 2002) (Morris I) and Morris Cty., P.E.R.C. No. 2003-32, __ NJPER ___ (¶_____ 2002) (Morris II). The Commission held that the unions were entitled to the information and rejected the employer's assertion of a privacy interest in withholding home addresses. It found that:

> Providing addresses to a majority representative allows for a secure channel of communication of union-employee confidences and eliminates any possibility that the confidences will be disclosed to the employer or interfered with at the workplace. It makes better labor relations sense to provide this secure channel absent a showing of potential danger rather than to deny that secure channel until confidences are breached or interferences occur. Morris II at __.

Several of the Association's requests sought the names and/or addresses of unit members to confirm membership status (CP-9, CP-10, CP-12, CP-13, CP-16). Entitlement to that information is established. It is both relevant and not confidential. However, in one request Charging Party asked also for social security numbers (CP-12). I consider whether employee social security information, like names and/or addresses, is relevant or necessary for the Association in the performance of its representational duties, namely negotiations, contract administration or grievance processing. The only articulated need for this information is NJEA internal record keeping requirements, specifically that the NJEA requires social security numbers to deduct representation fees. Unlike names and home addresses which are presumptively relevant in order for the union to communicate with unit employees, there is no

demonstrable need for the release of social security information in order for the Association to service its membership or maintain its exclusive representational status. Specifically, there is no demonstrated connection between social security numbers and the collection of representation fees. There is, however, an individual privacy expectation concerning social security numbers which transcends internal NJEA record keeping considerations. Besides, if the Association has the names and addresses of unit members, the NJEA who is not a party to this action can communicate directly through the Association with individuals to obtain this information. Therefore, as to the request for information regarding social security numbers, the Association has not met its burden of proof.

Next, as to the October 9, 2001 request for confirmation of the certificated status of three employees, Association President Edward's received a verbal response from both Director of Human Resources Salters and the Essex County Superintendent confirming that the appropriate certifications were held by the three employees (CP-14, T102). Although the request was for "copies of teaching certificates" as well as verification of the teaching experience of one of the three employees (Cheryl Chester), Edwards admitted on cross examination that their responses satisfied her request for information as to the certification issue. As to Chester's teaching experience, Edwards testified on direct that verification of her certification satisfied this request also (T101). After these

discussions, she did not renew her request for a written response (T112-T113). Although the Association was entitled to the information as originally requested, namely copies of the certificates or at least a letter verifying the information communicated by Salters and the Superintendent, Edward's testimony shows that she got the information as to the certification of the individuals, albeit in a verbal not written form, and does not need copies of the certificates to satisfy the request. Therefore, there is a technical violation of 5.4a(5) but no remedy since Edwards' acceptance of the verbal response waived any additional right to the certificates absent a renewed request for copies of the documents.

Regarding the remaining requests, the Association has established that it requested relevant information and that the Board failed to respond repeatedly to its requests. Specifically, concerning the Association's October 22, 2001 request for applicants for tuition reimbursement, their amount of tuition and their priority numbers (CP-15), it appears that the Board supplied information, albeit not until May or June 2002, for the 2001-2002 school year. However, it did not supply the information originally requested covering the 2000-2001 school year which would have established entitlement to priority numbers for tuition reimbursement as of October 2001. Therefore, the Association is still entitled to the information regarding tuition applicants, tuition amounts and priority numbers which pre-date its October 2001 request.

As to the request for information on extra curricular bus runs for the 2000-2001 academic year, the Board asserts that it cannot produce these records for September 2000 through March 2001[11/] because the transportation garage storage room which houses the records requested are sealed (CP-7, CP-8, CP-17). However, these records were accessible prior to March or April 2002. The request was made initially in May of 2001. The Board has articulated no reason for the non-production of the information between the May 2001 request and the sealing of the record room in 2002, nor has it explained why the sealing of the room prevents it from accessing the requested information. Therefore, absent some other defense permitting the withholding of this information, the Board is obligated to provide the Association with the transportation logs for the entire 2000-2001 academic year, even if it needs to unseal the records room to do so.

Finally, the Board contends that the Association was not entitled to information such as home addresses and dates of hire it requested on October 16, 2001 (CP-12) regarding specified employees because these employees were not members of the Association although presumably unit employees. The information, the Board asserts, was clearly irrelevant to the Association's representation of its members. However, the parties' contract entitles the Association to collect representation fees from non-members. Moreover, under 5.3

11/ The Board produced the records for April, May and June 2001 on the first day of hearing.

of the Act "[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and **without regard to employee organization membership** [emphasis added]." Therefore, the Association is entitled to information about unit employees regardless of membership status.

As to its remaining requests, the Association has established that the information requested was relevant to grievance processing and/or contract administration, including maintaining current membership lists, and that it did not receive the information requested. Regarding the Board's assertion that some requests were unclear, it failed to provide evidence to support its contention or to explain why, if it did not understand the Association's request, it did not ask for clarification. In most instances, the Board did not respond to the requests. For example, in one instance, Transportation Supervisor Fisher asked for more details on a grievance pertaining to extra-curricular bus runs. As a result, Foluke revised the grievance CP-17, T56). However, Fisher did not respond to subsequent requests for information about the bus runs until the hearing date (T57). Even then, the response provided only partial information.

Additionally, the Board's contention that some requests were addressed to the wrong individuals was not supported by the

evidence. In each instance inquiries were made to individuals, such as Payroll Clerk Taylor, Fisher or Littlejohn, who the Association perceived from previous communications were responsible for the information requested or, such as Davion, who had direct knowledge of the requested information. However, even if the information requests in some instances should have been directed more appropriately to others, the only way the Association could have known to redirect its inquiries were if the Board or its agents had responded. In most instances, the Association received no response.

The Board's assertion it did not violate the Act because bureaucratic inefficiencies, not bad faith, prevented it from responding to the Association's requests lacked merit. An employer's motive is irrelevant to finding a violation in this context. In State of New Jersey (OER), P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), the Commission declined to reconsider its earlier decision in State of New Jersey (OER), 13 NJPER 752, and rejected the State's contention that a subjective finding of bad faith is necessary to establish a violation of 5.4a(5). Additionally, although a public employer's bureaucratic inefficiency may be an explanation for its failure to provide potentially relevant information requested by a majority representative, it is not a defense to a violation of 5.4a(5).

Finally, I reject the Board's contention that in order to establish a violation, Charging Party must first proffer evidence that the Board's refusal to provide the requested information

prevented Association from conducting union business. This is not the standard established by our case law. In Shrewsbury Bd. of Ed., the Commission determined that the employer must supply information if there is a probability that the information is potentially relevant and will be of use to the union in carrying out its duties. As explained by the Commission in State of New Jersey (OER), 13 NJPER at 754, the rationale underlying the broad discovery standard applied to information requests is to enable the majority representative to evaluate the merits of an employee claim and weed out unmeritorious claims. Here, the Association has established reasons for its numerous information requests which reasons are potentially relevant to its statutory duties relating to grievance processing and/or contract administration.

Based on the foregoing, I find that the Board's pattern of non-response and/or untimely response to the Association's requests for information over a period of time prevented the Association from properly representing its members and violated 5.4a(1), derivatively and independently, and a(5) of the Act.

CONCLUSIONS OF LAW

The Board violated 5.4a(1), derivatively and independently, and a(5) of the Act by either not responding, responding in an untimely manner or refusing to provide relevant information to the Association over a period of time, particularly information requested in exhibits CP-6, CP-7, CP-8 paragraphs 1 and 3 together with the Board approved Whole School Reform Plan, CP-9, CP-10,

CP-11, CP-12, CP-13, CP-15, CP-16 and CP-17 with the exception of social security numbers where requested.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. Respondent Board cease and desist from

1. Interfering with restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by refusing to provide the Irvington Education Association with information requested in exhibits CP-6, CP-7, CP-8 paragraphs 1 and 3 together with the Board approved Whole School Reform Plan, CP-9, CP-10, CP-11, CP-12, CP-13, CP-15, CP-16 and CP-17 with the exception of social security numbers where requested.

2. Refusing to negotiate in good faith with the Irvington Education Association concerning terms and conditions of employment, particularly by not disclosing relevant information or disclosing information in an untimely manner.

B. That the Board take the following affirmative action:

1. Provide the Association with information requested in exhibits CP-6, CP-7, CP-8 paragraphs 1 and 3 together with the Board approved Whole School Reform Plan, CP-9, CP-10, CP-11, CP-12, CP-13, CP-15, CP-16 and CP-17 with the exception of social security numbers where requested.

2. Reimburse the Association for any damages incurred, including but not limited to, the cost of arbitration adjournments, as a result of the employer's failure to provide the requested information.

3. Extend the time for filing grievances related to the information requested until such time as the information is supplied to the Association.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

Wendy L. Young
Hearing Examiner

DATED: November 14, 2002
Trenton, New Jersey

RECOMMENDED

NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with restrain or coerce our employees in the exercise of rights guaranteed to them by the Act, particularly by refusing to provide the Irvington Education Association with information requested in exhibits CP-6, CP-7, CP-8 paragraphs 1 and 3 together with the Board approved Whole School Reform Plan, CP-9, CP-10, CP-11, CP-12, CP-13, CP-15, CP-16 and CP-17 with the exception of social security numbers where requested.

WE WILL NOT refuse to negotiate in good faith with the Irvington Education Association concerning terms and conditions of employment, particularly by not disclosing relevant information or disclosing information in an untimely manner.

WE WILL provide the Association with the information requested in exhibits CP-6, CP-7, CP-8 paragraphs 1 and 3 together with the Board approved Whole School Reform Plan, CP-9, CP-10, CP-11, CP-12, CP-13, CP-15, CP-16 and CP-17 with the exception of social security numbers where requested.

WE WILL reimburse the Association for any damages incurred, including but not limited to, the cost of arbitration adjournments, as a result of the employer's failure to provide the requested information.

WE WILL extend the time for filing grievances related to the information requested until such time as the information is supplied to the Association.

Docket No. CO-H-2002-188 Irvington Board of Education
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

d:\percdocs\notice 10/93