

I.R. NO. 2021-29

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY COLLEGE FACULTY ASSOCIATION,

Respondent,

-and-

Docket No. CE-2021-011

MORRIS COUNTY COLLEGE,

Charging Party.

**SYNOPSIS**

A Commission Designee dissolves the temporary restraints that were issued and denies an application for interim relief filed by Morris County College against the Morris County College Faculty Association alleging that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4b(2) and (3), when it sent the College President a threatening email after non-renewing seven non-tenured faculty members, trespassed onto his property and damaged certain personal property, posted lies about the President on social media in an attempt to get him fired, and used the college's Blackboard platform to contact students and spread lies about the President. The Designee finds that the College has failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. The unfair practice charge was transferred to the Director of Unfair Practices for further processing.

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Appearances:

For the Respondent,  
Oxfeld Cohen, P.C., attorneys  
(Sanford R. Oxfeld and William Hannan, of counsel)

For the Charging Party  
Bressler, Amery & Ross, P.C., attorneys  
(Jed L. Marcus, of counsel)

INTERLOCUTORY DECISION

On May 24, 2021, County College of Morris (CCM) filed an unfair practice charge, together with an application for interim relief, against the County College of Morris Faculty Association (Association). The charge alleges that on or about April 16, 2021, the City violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically

subsections 5.4b(2) and (3)<sup>1/</sup>, when it sent the College President, Anthony Iacono (Iacono), a threatening email after non-renewing seven non-tenured faculty members, trespassed onto his property and damaged certain personal property, posted lies about the President on social media in an attempt to get him fired, requested to follow his children and wife on Instagram and Twitter, and used the college's Blackboard platform to contact students and spread lies about Iacono.

CCM's application for interim relief requests the following relief pending disposition of the underlying unfair practice charge, including temporary restraints:

-the Association, through its officers and agents, be enjoined from having any contact with Iacono's family members, whether face to face, virtually, or through the internet.

-the Association, through its officers and agents, be enjoined from issuing any communications to CCM students about its labor dispute with CCM.

-the Association, through its officers and agents, rescind any request to follow any of Iacono's family members on social media, including but not limited to his wife and his minor children.

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1/ These provisions prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustments of grievances. (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.

**PROCEDURAL HISTORY**

On May 26, 2021, I signed an Order to Show Cause temporarily restraining the Association from initiating or having any contact with Iacono's family members, whether face to face, virtually, or through any social media platforms, restraining the Association, through its officers and agents either directly or indirectly, from trespassing onto Iacono's personal property, and restraining the Association from using CCM's email system and/or Blackboard platform to communicate or solicit student support regarding the parties' labor dispute. I also specified that CCM could move for dissolution or modification of the temporary restraints on two days' notice or on such other notice as may be ordered. I also directed the Association to file any opposition by June 11; CCM to file any reply by June 17; and set June 21 as the return date for oral argument.<sup>2/</sup>

On June 28, party representatives engaged in oral argument during a telephone conference call. At the conclusion of the call, I tried to encourage CCM to reconsider settling the matter but there was no interest in doing so.

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2/ The briefing schedule and return date was ultimately adjusted due to settlement discussions that failed to culminate in an agreement. CCM filed its brief on June 17, and the Association filed its brief in opposition to the Order to Show Cause and in support of a Motion for Dissolution of Temporary Restraints on June 24.

In support of the application for interim relief, CCM submitted a petition verified by Iacono, a brief, and exhibits. In opposition, the Association submitted a brief and the certification of its President, James Capozzi (Capozzi).

#### **FINDINGS OF FACT**

CCM is a public community college located in Randolph, New Jersey. The Association represents all full-time teaching faculty employed by CCM. (Iacono verified petition para. 2). CCM and the Association are parties to a collective negotiations agreement (CNA) in effect from September 3, 2019 through September 2, 2022 (Capozzi certification para. 2).

On or about April 16, 2021, CCM informed seven (7) non-tenured faculty members that their employment contracts were not being renewed. (Iacono verified petition para. 6). One of the seven faculty members was Capozzi, Association President and lead negotiator from September 2019 until ratification of the most recent agreement in January 2020. (Capozzi certification para. 3).

While Iacono verifies that he is CCM's representative for purposes of negotiations and the adjustment of grievances, Capozzi certifies that during his tenure as an observer at the negotiating table, and later as Association President, Iacono has never attended a negotiations session. (Capozzi cert. para. 4). Capozzi further certifies that while step 2 grievance appeals are

filed with Iacono's office, he has never played any direct role in the grievance process or attended any grievance hearings during Capozzi's time as Association president. (Capozzi cert. para. 5). Grievances have always been handled by CCM's Human Resources and Labor Relations office during Capozzi's tenure as Association president. (Capozzi cert. para. 5).

On April 16, 2021 at 9:11p.m., the Association sent an email to Iacono and three cabinet members protesting the decision to non-renew the seven faculty members (Iacono verified petition Ex. 1). The final paragraph of the email states:

We urge the college to consider the consequences of undermining the faculty who are a cornerstone of this institution and its mission. We look forward to engaging HR toward immediate resolution.(Ex. 1)

Iacono alleges that less than forty eight (48) hours after receiving the Association's email, vandals trespassed onto Iacono's residence and damaged certain personal property. (Iacono verified petition para. 8). The alleged destruction of personal property was damage to tires on a yard cart in Iacono's yard. (Capozzi certification para. 7). Iacono reported this incident to the Mount Olive Township Police Department, who responded to his residence and created a police report. (Capozzi certification Ex. A). Iacono reported that he believed an Association member had something to do with the damage. (Capozzi certification Ex. A). However, the responding officer reported that the ground was

muddy but there were no footprints, and that it was entirely possible that the tires ripped because they were flat. (Capozzi certification Ex. A). Capozzi denies that he nor any other Association officer had any involvement or knowledge concerning the alleged vandalism. (Capozzi certification para. 8, 11).

Since April 16, 2021, Iacono alleges that the Association has engaged in a public campaign to force him to resign or have him fired as president of CCM. (Iacono verified petition para. 12). This includes posting on an Association Facebook and Instagram page sharing its opinion about Iacono and his ability to lead. (Iacono verified petition para. 13). Furthermore, Iacono alleges that the Association has demonstrated animus towards him when it sent a May 4, 2021 email to students using the college's Blackboard platform entitled, "Open Letter to CCM Students from Faculty", that contained numerous lies and solicited student support, and an additional email to students on May 10, 2021. (Iacono verified petition para. 14, 21, Ex. 4,8). These emails violated the CNA and various CCM policies including: Policy Governing Access to and Use of Copyrighted Works; Policy Limiting Solicitation on College Property; Policy on Academic Freedom; and Article XIX (Academic Freedom) of the parties CNA. (Iacono verified petition para. 22, Ex. 9,10).

Iacono certifies that in furtherance of the Association's attempts to intimidate and harass him, it requested to follow his

minor children by and through its Instagram account, @saveccmfaculty, and requested to follow his wife on Twitter by and through its account with the same handle, @saveccmfaculty. (Iacono verified petition para. 17,18, Ex. 6,7). Iacono certifies that the Association's attempt to "surveil and harass" Iacono and his family has caused them emotional distress. (Iacono verified petition para. 20).

### **ANALYSIS**

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmeyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

N.J.S.A. 34:13A-5.4b(2) makes it an unfair practice for an employee organization to interfere with, restrain, or coerce a public employer in the selection of his representative for the

purposes of negotiations or the adjustments of grievances. To establish a violation of this section, an employer must prove “. . . a coercive pattern of union conduct designed to interfere with the employer’s choice of representative for purposes of collective bargaining.” Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 6 (¶17002 1985).

In Downe Tp. Bd. of Ed., the Commission interpreted and applied subsection 5.4b(2) for the first time. The Commission discussed several decisions by the National Labor Relations Board (NLRB) as examples of a “coercive pattern of conduct” under subsection 5.4b(2), including union threats of strikes, work stoppages, or refusing to bargain unless the employer discharged, demoted or otherwise changed their negotiations representative. 12 NJPER at 6.

CCM has failed to demonstrate a likelihood of prevailing in a final commission decision on its legal and factual allegations with respect to 5.4b(2). As a threshold matter, CCM cannot claim that Iacono is its representative for purposes of collective negotiations and adjustment of grievances when he did not attend a single negotiation session for the current CNA and does not participate in any grievance meetings. However, even if we assume that Iacono was CCM’s representative for negotiations and adjustment of grievances, CCM has not shown a substantial likelihood of prevailing on its legal allegations.

After CCM decided to non-renew seven faculty members, on April 16, 2021, CCM sent Iacono and three cabinet members an email protesting the decision and imploring CCM to consider other options. CCM alleges this email contained threatening language, specifically the words "consider the consequences." In a vacuum, this could potentially be construed as threatening language. However, after review of the letter in its entirety and in the proper context, it is clear there was nothing threatening about this email. The last paragraph states, "we urge the college to consider the consequences of undermining the faculty who are a cornerstone of this institution and its mission. We look forward to engaging HR toward immediate resolution." The Association threatens nobody, and instead seeks reconsideration of the decision to non renew the faculty members and an opportunity to collaborate with CCM on alternative solutions.

CCM next alleges harassment and coercive conduct by the Association when Iacono's son found damaged tires on their yard cart at Iacono's residence. Iacono believes that someone from the Association trespassed onto his property and vandalized his yard cart. Not only does Capozzi deny any knowledge or involvement in this incident, the responding Mount Olive Township police officer had his own doubts as to whether the damage was caused by a vandal and found no evidence that anyone trespassed onto the property. These facts do not support CCM's claim that

the Association had anything to do with this incident, or that the incident happened at all.

To further support its b(2) claim, CCM asserts that the Association's social media posts about CCM and Iacono are coercive and interfere with CCM's ability to choose its representative. However, the Act guarantee the Association's right to publicly express its views about labor relations. Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978); Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); Jackson Tp., H.E. No. 88-49, 14 NJPER 293 (¶19109 1988) adopted P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988). See Emarco, Inc., 284 NLRB No. 91, 125 LRRM 1311, 1313 (1987). In Laurel Springs, the Commission held that, "it is the intent of the Act to protect public employees in their proper activities in support of their majority representative. This includes activities to inform the public of their view of a particular dispute or issue as well as their activities at the negotiating table." 3 NJPER at 229 (emphasis supplied). Consequently, the Association's social media posts criticizing Iacono is considered to be protected activity.

CCM also argues that the Association requesting to follow Iacono's minor children on Instagram and his wife on Twitter "constitutes unlawful harassment under New Jersey law" and

"implicates New Jersey's cyber-harassment law."<sup>3/</sup> However, I am tasked with deciding whether this conduct could be a violation of the Act, and it is likely not. CCM cites two cases in support of its claim that I do not find to be analogous. Mt. Olive Twp. Bd. of Educ., P.E.R.C. No. 90-66 (1990) involved placing employees under surveillance and P.B.A. Local No. 273, H.E. No. 88-32 (1988) involved a union official recording telephone conversations. Neither of those cases contain any facts similar to the instant matter. Here, while requesting to follow Iacono's wife and minor children may be in poor taste and completely unnecessary, the mere act of requesting to follow a searchable social media account is not illegal. Every owner of a social media account has the ability to adjust its privacy settings as it sees fit, can decide what personal information and content it wants other accounts to have access to, has the option of declining a follow request, and can also block other accounts. Other than a follow request, there is no evidence in the record that the Association otherwise communicated with Iacono's family or that it obtained access to Iacono's family members' accounts and did anything with information obtained from those accounts. The facts in this case do not support a finding of harassment, surveillance, and most importantly, interference with CCM's ability to choose its collective negotiations representative.

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<sup>3/</sup> CCM cites N.J.S.A. 2C:33-4, 2C:33-4.1(a).

Section 5.4b(3) of the Act requires a majority representative to negotiate in good faith with a public employer concerning terms and conditions of employment. N.J.S.A. 34:13A-5.4b(3); Glen Rock Bd. of Ed., P.E.R.C. No. 82-11 7 NJPER 454 (¶12201 1981). To prove a violation of this section, an employer must establish that the majority representative, by its conduct, adversely impacted negotiations or was an impediment to reaching an agreement. Rutgers University, P.E.R.C. No. 2017-4, 43 NJPER 17 (¶18 2016). CCM's b(3) claim is based on the Association's violation of CCM policies and the parties' CNA when it communicated with students and solicited their support regarding the labor dispute using CCM's email system. As previously discussed, the subject matter of the emails was protected. However, if the communications were indeed violations of CCM's policies and the parties' CNA, CCM has failed to show how there is a substantial likelihood of proving a violation of section 5.4 b(3). It is not clear how, if at all, there is any nexus between the emails and the parties' negotiations process.

Accordingly, I find that CCM has failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite

element under the Crowe factors,<sup>4/</sup> and deny the application for interim relief.

**CONCLUSION**

Under these circumstances, I find that CCM has not sustained the heavy burden required for interim relief under the Crowe factors and deny the application for interim relief pursuant to N.J.A.C. 19:14-9.5(b)3. This case will be transferred to the Director of Unfair Practices for further processing.

**ORDER**

The County College of Morris's application for interim relief is denied and the temporary restraints issued on May 26, 2021 are dissolved.

/s/ Jordan Ablon  
Jordan Ablon  
Commission Designee

DATED: June 30, 2021  
Trenton, New Jersey

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<sup>4/</sup> As a result, I do not need to conduct an analysis of the other elements of the interim relief standard. See, e.g., Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019), Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018), Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017), and New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012).