

D.U.P. NO. 2022-15

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

WOODSTOWN-PILESGROVE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2022-017

LISA QUIRK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Lisa Quirk against the Woodstown-Pilesgrove Board of Education (Board). The charge alleges the Board violated sections 5.4a(1), (3) and (4) of the New Jersey Employer-Employee Relations Act (Act) by terminating her employment in retaliation for Quirk's filing of grievances that challenge the Board's COVID-19 vaccination and testing protocols, which were mandated by Governor Murphy's Executive Order 253. The Executive Order required all Board employees either receive a COVID-19 vaccination or be tested for COVID-19 prior to returning to school by October 18, 2021. Quirk refused to comply with the Executive Order and asserted the COVID-19 vaccination and testing policy violated her civil rights and her right to freely exercise her religion under the First Amendment of the United States Constitution. The Director found the Board's termination did not violate the Act because: (1) Quirk's complaints about the Executive Order were personal gripes, not protected activity under the Act; (2) there was no nexus between her termination and the filing of her grievances, and (3) the Board had a managerial prerogative and substantial business justification for refusing to allow Quirk to return to work until she complied with the Governor's Executive Order.

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Appearances:

For the Respondent,  
Parker McCay P.A., attorneys  
(Jeffrey P. Catalano, of counsel)

For the Charging Party,  
(Lisa Quirk, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On February 14 and 28, 2022, Lisa Quirk (Quirk or Charging Party) filed an unfair practice charge and amended charge against the Woodstown-Pilesgrove Board of Education (Board or Respondent). The charge, as amended, alleges the Board violated section 5.4a(1), (3) and (4)<sup>1/</sup> of the New Jersey Employer-Employee

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, retraining or coercing employees on 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 rights guaranteed to them by this act; and (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit,  
(continued...)

Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by terminating Quirk's employment in retaliation for her filing of grievances challenging the Board's COVID-19 vaccination and testing protocols ("COVID Protocols"). According to Quirk, the COVID Protocols, which required all Board employees to provide proof of vaccination or a negative COVID-19 test result within 7 days of returning to work, were not included in her contract of employment with the Board and did not justify her termination. Quirk also alleges that her termination for failing to comply with COVID Protocols violated her civil rights and her right under the First Amendment of the United States Constitution to freely exercise her religion.<sup>2/</sup>

On or about April 14, 2022, the Board filed and served on Quirk a position statement, the 2020-2023 collective negotiations agreement between the Board and the Woodstown-Pilesgrove Education Association (Association), and a Certification with Exhibits from Interim Superintendent Steven Crispin ("Crispin Cert.").<sup>3/</sup> The Board contends that the COVID Protocols were not

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1/ (...continued)  
petition or complaint or given any information or testimony under this act."

2/ Quirk also filed a complaint against the Board with the New Jersey Division on Civil Rights, which remains pending.

3/ The Board emailed its submissions to Quirk on April 25, 2022. The Board's submissions were also forwarded by email to Quirk from a Commission staff agent on May 11, 2022.

(continued...)

a discretionary policy decision, but were mandated by Governor Murphy's Executive Order No. 253 (EO). The Board asserts that non-compliance with the EO can result in criminal penalties, including up to a \$1,000 fine or up to six (6) months in County Jail.<sup>4/</sup> The Board further contends that implementation of the COVID-19 Protocols was a managerial prerogative and that Quirk's termination was not in retaliation for her filing of grievances, but instead for her refusal to comply with the COVID-19 Protocols. Moreover, the Board maintains that the claims in Quirk's grievances were personal gripes and not protected activity under the Act. Finally, the Board argues the Commission lacks jurisdiction over Quirk's constitutional and civil rights claims.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER

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<sup>3/</sup> (...continued)  
Quirk was afforded an opportunity to reply to the Board's submissions, but did not file a response.

<sup>4/</sup> The Board cites to N.J.S.A. App. A:9-49 and 50 in support of this contention.

93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

Quirk was a non-tenured, Spanish teacher employed by the Board. She was also included in the collective negotiations unit represented by the Association.

On August 23, 2021, Governor Murphy signed Executive Order No. 253 (EO).<sup>5/</sup> The EO required all preschool through Grade 12 public school district personnel to either be vaccinated against COVID-19 or get tested for COVID-19 at least once per week. The EO does not provide any exemptions for the testing requirement, as testing was purported to be a reasonable accommodation for employees choosing not to get vaccinated for medical or religious reasons.<sup>6/</sup> By the terms of the EO, all school districts had

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5/ The Executive Order is available online at <https://nj.gov/infobank/eo/056murphy/>. The EO was issued pursuant to the Governor's authority under the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq.; and the New Jersey Civilian Defense and Disaster Control Act, N.J.S.A. App. A:9-33 et seq.

6/ I am not deciding whether the EO's testing requirements were an adequate accommodation of Quirk's religious beliefs under our state and federal constitutions. We need not decide that question, as it is best left to a court of competent jurisdiction over constitutional claims. Franklin Lakes Bd. of Ed., P.E.R.C. No. 95-24, 20 NJPER 395 (¶25198 1994), aff'd 21 NJPER 362 (¶26224 1995); State of New Jersey, D.U.P. No. 97-15, 22 NJPER 339, 341 (¶27176 1996) (Director dismisses charge and notes that First Amendment constitutional claim "does not fall within the purview of the Act and thus we cannot consider its merits"). Here, I  
(continued...)

until October 18, 2021 to comply with the vaccination and/or testing requirements. Failure to comply with the EO could result in up to a \$1,000 fine or imprisonment in a County Jail for up to 6 months.

The EO also delineates the obligations of all Board employees in Paragraphs 11 and 12, which provide:

It shall be the duty of every person or entity in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order, and to cooperate fully with any Administrative Orders issued pursuant to this Order.

No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

On October 18, 2021, Quirk reported to work but did not comply with the EO's vaccination or testing requirements.

(Crispin Cert., Para. 1). Quirk was not permitted to enter the school premises absent proof of compliance with the EO mandate. Despite being made aware of these preconditions for returning to work, Quirk the next day (October 19) again reported to work

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6/ (...continued)  
am simply describing the EO's stated purpose for the testing alternative to vaccination.

without having complied with the EO. (Crispin Cert., Para. 2). In response, Quirk was sent home and placed on unpaid leave until she provided proof of compliance with the EO. (Crispin Cert., Para. 2).

On October 22, 2021, Steven Crispin, the Superintendent of the Woodstown-Pilesgrove Regional School District (District), provided Quirk with a letter (also known as a "Rice Notice"<sup>7/</sup>) notifying Quirk that at the Board's October 28, 2022 meeting, the Board would enter into closed session and discuss personnel matters that ". . . could impact your employment with the School District." (Crispin Cert., Para.3 and Exhibit A). On October 27, 2022, Crispin decided to recommend Quirk's termination upon 30 days notice to the Board at its meeting scheduled for the evening of October 28, 2022. (Crispin Cert., Para. 4).

On the morning of October 28, 2022, Quirk filed six grievances with Crispin.<sup>8/</sup> All six grievances center around the Board's refusal to allow Quirk to return to work absent proof of

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<sup>7/</sup> A Rice Notice is written notification to an employee that the board of education intends to consider personnel matters related to him/her; see Rice v. Union Cty Reg. H.S. Bd. Ed., 155 N.J. Super. 64 (App. Div. 1977).

<sup>8/</sup> As alleged in the February 14 charge, the Association declined to pursue Quirk's grievances because, in their view, the claims were not a "grievable offense" under the Association's collective negotiations agreement. The Association nonetheless provided Quirk with a "grievance form" to pursue her claims against the Board. On February 28, Quirk amended her charge and withdrew her allegations against the Association for not pursuing her grievances.

COVID vaccination or testing pursuant to the EO. The grievances present, in pertinent part, the following claims<sup>9/</sup>:

(1) The Board has "excluded [Quirk} from work" and not paid her compensation in violation of ". . . all the sections of the Agreement that pertain to the dates and hours that I [Quirk] am expected to work that was agreed upon when I signed the contract [of employment with Board];

(2) On October 18 and 19, when Quirk reported to work, the District's building principal asked about her COVID-19 vaccination and testing status in a "non-private setting" and on both occasions was asked by the principal to leave work for non-compliance. This directive by the principal to leave work is characterized by Quirk as ". . . an attempt to intentionally humiliate and intimidate me in front of students and teachers" and an "attempt to shame me into complying with the COVID-19 vaccination and testing mandates";

(3) Quirk alleges that the Board does not provide "accommodations for the COVID-19 Vax/COVID-19 testing mandates for those that are unvaccinated", which, she alleges, violates the "Americans with Disabilities Act, as well as the New Jersey Law Against Discrimination"; and

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<sup>9/</sup> Quirk's grievances are provided in Exhibit B to the Crispin certification.



(4) The Board has not provided Quirk with religious, philosophical and medical exemptions to the COVID Protocols and EO, which, according to Quirk, "potentially impacts the employment of all association members, has not been negotiated to my knowledge and amended [Quirk's employment] contract.

At Crispin's recommendation, the Board voted on October 28 to terminate Quirk's employment on 30 days notice for her refusal to undergo COVID testing. (Crispin Cert., Para. 6). On October 29, 2021, Quirk emailed Crispin, requesting a written statement of reasons for her termination. (Crispin Cert., Para. 7). Crispin responded the same day and wrote:

I believe you are well aware of the reasons the Board of Education terminated your employment, but will gladly memorialize them in this letter. You were hired to teach at Woodstown High School. You are presently not teaching because you have refused to comply with the provisions of Executive Order No. 253, to include, refusing to undergo a COVID-19 test, as required. Your continued refusal not to comply has resulted in two weeks in which the students of Woodstown High School have not had the benefit of a properly certified teacher in their classroom. The board of education feels that our students are entitled to the best education that can be provided and that to allow this arrangement to continue would be detrimental to their education. It is for that reason that the Board feels the need to hire a permanent teacher in this position.

[Crispin Cert., Para. 7).

On November 1 and December 16, 2021, Crispin and the Board afforded Quirk an opportunity to be heard on the grievances

challenging her termination. After the hearings, Crispin and the Board denied the grievances on November 3 and December 20, 2021.

### **ANALYSIS**

While admitting non-compliance with COVID Protocols and the EO, Quirk contends she should not have been terminated for her non-compliance because (1) the COVID Protocols were not part of her employment agreement with the Board; and (2) conditioning her return to work by complying with the EO violated her civil rights and constitutional right to freely exercise her religion under the First Amendment. Quirk also asserts that her termination was in retaliation for filing grievances with Crispin on October 28, 2022. The Board disagrees and argues Quirk's termination was not in retaliation for protected activity, but for her refusal to comply with COVID Protocols. The Board further contends that her civil rights and constitutional claims are not protected activity under the Act and were instead personal gripes about her termination. Moreover, setting aside the merits of her civil rights and constitutional claims, the Board argues the Public Employment Relations Commission (Commission) lacks jurisdiction over such claims. For the following reasons, I agree with the Board and dismiss Quirk's charge.

**Section 5.4a(3) and (4) Standards**

Section 5.4a(3) of the Act prohibits public employers from discriminating against an employee in regard to his or her hiring, tenure of employment and/or any term or condition of his or her employment to encourage or discourage that employee from exercising rights under the Act. N.J.S.A. 34:13A-5.4a(3). To prove a violation of Section 5.4a(3), a Charging Party “. . . must make a *prima facie* showing sufficient to support the inference . . .” that protected activity “. . . was a motivating factor or a substantial factor in the employer’s decision.” In re Bridgewater Tp., 95 N.J. 233, 242 (1984). “Mere-presence of anti-union animus is not enough.” Id. The Charging Party “. . . must establish anti-union animus was a motivating force or a substantial reason for the employer’s action.” Id.

A Charging Party can make a *prima facie* showing of discrimination in one of two ways: by either presenting direct evidence of anti-union motivation for an adverse employer action<sup>10/</sup> or by presenting circumstantial evidence of anti-union animus. In a circumstantial evidence case, a Charging Party must

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<sup>10/</sup> “Direct evidence” of anti-union animus is where an employer representative communicates that an adverse personnel action was taken because of protected activity. See Borough of Chester, I.R. No. 2002-8, 28 NJPER 162 (¶33058 2002), recon. den. P.E.R.C. No. 2002-59, 28 NJPER 220 (¶33076 2002) (Police Chief’s memorandum stating that a “union grievance was to blame” for an adverse scheduling change was direct evidence of animus).

show that an employee engaged in protected activity, that the employer knew of this activity, and that the employer was hostile toward the exercise of that protected activity. 95 N.J. at 246. If a Charging Party establishes a prima facie case of discrimination, the burden of proof then shifts to the employer to demonstrate by a preponderance of evidence that the same adverse action would have occurred in the absence of protected activity. Id. at 242.

Section 5.4a(4) of the Act prohibits a public employer from “discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this Act.” N.J.S.A. 34:13A-5.4a(4). This section is intended to insure “free and uncoerced access” to the Commission’s processes and affords protection to employees who file petitions, affidavits, unfair practice charges, or provide other information to the Commission during our processing of Commission cases. Randolph Tp. Bd. of Ed., P.E.R.C. No. 82-119, 8 NJPER 365, 367 (¶13167 1982), aff'd NJPER Supp. 2d 136 (¶117 App. Div. 1983). The protections under this section do not extend to filings, testimony or information provided in cases outside the coverage of our Act. Id.

The burden of proving a 5.4a(4) claim is virtually identical to the burden of proving a 5.4a(3) violation under Bridgewater.

Randolph Tp. Bd. of Ed.; State of New Jersey (Community Affairs), D.U.P. No. 2015-8, 41 NJPER 315, 316 (¶102 2014). An adverse employment action and the nexus between that action and protected activity are essential elements to Section 5.4 a(3) and (4) claims. Ridgefield Park Bd. of Ed., H.E. No. 84-052, 10 NJPER 229 (¶15115 1984), adopted P.E.R.C. No. 84-152, 10 NJPER 437 (¶15195 1984), aff'd NJPER Supp. 2d 150 (¶133 App. Div. 1985); State of New Jersey (Judiciary), D.U.P. No. 2013-6, 40 NJPER 24 (¶10 2013). If the alleged adverse employment action would have occurred regardless of the alleged protected activity or filing under (a) (4), there can be no violation of the Act. Id.

***Definition of Protected Activity***

Public employees enjoy the right, without fear of penalty or reprisal, to form, join and assist any employee organization. N.J.S.A. 34:13A-5.3. The Act also protects concerted activity engaged in for employees' mutual aid and protection. City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498, 500 n.3 (¶18183 1987); State of New Jersey, P.E.R.C. No. 2006-11, 31 NJPER 276 (¶109 2005). Protected, concerted activity may include ". . . individual conduct such as complaints, arguments, objections, letters or similar activity-related to enforcing a collective negotiations agreement or preserving or protesting working conditions in a recognized or certified unit." 31 NJPER

at 279. "However, mere 'personal griping' does not constitute protected activity." Id.

For instance, in Essex Cty. College, P.E.R.C. No. 88-32, 13 NJPER 763 (¶18289 1987), the Commission held that where a county college had a policy of distributing paychecks at 4 p.m., a part-time employee did not engage in protected activity when she complained about not receiving her paycheck at the end of her workday at 1:15 p.m. In reaching this conclusion, the Commission explained:

She was not acting on behalf of an employee organization; she did not act in concert with anyone; and her complaint was on behalf of herself individually and did not relate to enforcing a collective negotiations agreement or changing the working conditions of employees other than herself. See also State of New Jersey (Public Defender), P.E.R.C. No. 86-67, 12 NJPER 12 (¶17003 1985), recon. den. 12 NJPER 199 (¶17026 1986), aff'd NJPER Supp. 2d 169 (¶148 App. Div. 1987)

[13 NJPER 763]

Here, like the aggrieved employee in Essex County College, Quirk's claims<sup>11/</sup> against the Board concerning the EO was not

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<sup>11/</sup> It is true that "filing a grievance is a fundamental example of protected activity." Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434, 437 (¶17161 1986). But Quirk's claims, while presented in the form of a grievance, was not protected activity implicating negotiable working conditions. As Quirk alleges and the Association asserted, her complaints about the EO were not a "grievable offense" under the terms of her collective negotiations agreement, nor did it implicate working conditions that two or more unit employees sought to preserve or change. 31 NJPER at 279.

protected activity under the Act, but instead a personal gripe about the conditions for her returning to work. No allegations indicate that Quirk acted on behalf of or in concert with other unit employees in challenging the EO. Nor do Quirk's claims relate to working conditions governed by her unit's collective negotiations agreement or an attempt to preserve or change existing working conditions in concert with other concerned co-workers.<sup>12/</sup> Instead, she was acting on her own behalf in objecting to the EO and refusing to comply with COVID-Protocols. Quirk did not engage in protected activity under the Act.

***Nexus Between Protected Activity and Adverse Employment***

***Actions***

Even if Quirk's objections to the EO are considered to be protected activity, she alleged no facts establishing a nexus between that activity and her termination for two reasons. First, her termination was initiated before she filed grievances for refusing to comply with the EO. Second, Quirk was terminated for refusing to comply with the EO and her non-compliance precluded her return to work irrespective of her October 28 grievances.

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<sup>12/</sup> Although Quirk in one of her grievances refers to the provisions in her collective negotiations agreement governing work days and hours, the Board did not change, repudiate, or alter in any way those terms of her employment. There is no allegation or indication in the record that had Quirk complied with the EO, her work schedule would have been altered in any way.

Adverse employer conduct cannot be a retaliatory response to a grievance if the conduct was initiated without the public employer's prior knowledge of the grievance. State of New Jersey (Dept. of Environmental Protection), H.E. No. 95-2, 20 NJPER 306 (¶25153 1994), adopted P.E.R.C. No. 95-6, 20 NJPER 324 (¶25166 1994); State of New Jersey (Montclair State College), D.U.P. No. 89-12, 15 NJPER 201 (¶20085 1989); Salem County Sheriff's Office, D.U.P. No. 2014-9, 40 NJPER 381 (¶131 2014).

In Dept. of Environmental Protection, the Commission adopted a Hearing Examiner's decision which found that an employer's disciplinary suspension of an employee was not in retaliation for that employee's filing of a grievance. 20 NJPER at 307. The employee filed and delivered a grievance to the employer on February 5, 1993. Id. However, the employer recommended suspending the employee on January 29, 1993. Id. The Hearing Examiner rejected the charging party's contention that the suspension was in retaliation for the employee's grievance since there was no evidence demonstrating the employer initiated the disciplinary process with prior knowledge of the grievance. Id. At 307-308. Critical to this determination was the fact that significant decisions about the discipline were made before the grievance was delivered to the employer. 20 NJPER at 307; State of New Jersey (Montclair State College), 15 NJPER at 202 (Director dismisses charge and holds that the employer's decision



to deny a promotion to an employee was not in retaliation for the employee's filing of a grievance since the employee's grievance was filed after the employer's promotional decision was made); Salem County Sheriff, 40 NJPER at 382 (Director finds suspension of union officer was not in retaliation for officer's filing of grievance because the investigation that led to the suspension was initiated before the grievance was filed).

Here, the Board's termination of Quirk was not in retaliation for her filing of October 28 grievances since that adverse personnel action was set in motion by the District prior to her filing any grievances. On October 22, Crispin notified Quirk that the Board may consider adverse personnel action against her at its October 28 meeting. And on October 27, Crispin decided to recommend Quirk's termination at the October 28 Board meeting. There is no allegation or indication in the record that Crispin was aware that Quirk intended to file grievances challenging the EO on October 22 or 27. Absent prior awareness of the grievances, his decision to terminate her employment could not be in retaliation for her grievances.

It is also clear that, irrespective of her grievances, Quirk could not work as a teacher in the District absent compliance with the EO. Her refusal to comply with the EO and COVID Protocols was an act of insubordination that justified her termination irrespective of any grievances or protected activity

she may have engaged in. Indeed, the Commission has repeatedly held that even in cases where an employee has engaged in protected activity prior to suffering an adverse personnel action, an employee's insubordination can justify that adverse personnel action consistent with the Act.<sup>13/</sup>

As the Appellate Division recently wrote in a challenge by unions representing City of Newark (City) employees to a COVID-19 vaccination and testing policy adopted by the City:

There are many actions that we take as a society to protect the common good. Sometimes the protection of the many requires an individual, especially a public servant, to act for the public good. The Unions have not cited any facts that would support the purported rights of what appears to be a minority of City employees to pose a risk to coworkers and City residents. The people they are committed to serve, in particular, the aged who are most vulnerable to COVID-19, and children who currently cannot be protected by a vaccine, are placed at greater risk by unvaccinated City workers.

In that regard, it has been long been established that there is no constitutional or statutory right to a government job. Consequently, City employees have the right to get vaccinated and keep their jobs or decidethat they do not want to work for the common good.

[In re City of Newark, 469 N.J. Super. 366, 386-377 (App. Div. 2021) (internal citations and parenthetical quotes omitted)]

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<sup>13/</sup> West Orange Bd. of Ed., P.E.R.C. No. 91-78, 17 NJPER 192 (¶22081 1991); Warren County, P.E.R.C. No. 96-86, 22 NJPER 244 (¶27127 1996); State of New Jersey (Human Services), P.E.R.C. No. 98-126, 24 NJPER 225 (¶29106 1998).

The Appellate Division's rationale in Newark applies with equal force here, despite the alternative of testing for COVID-19 (and reporting negative results) that Quirk also elected to decline.

***Section 5.4a(1) Standards***

In New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978), the Commission articulated this standard for finding a violation of section 5.4a(1) of the Act:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification.

In Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Ass'n, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission explained that the tendency of an employer's conduct to interfere with employee rights is the critical element of an (a)(1) charge, holding that ". . . proof of actual interference, restraint, or coercion is not necessary." Id., 8 NJPER at 552. Moreover, the standard for determining an a(1) violation is objective: the "focus of the inquiry is on the offending communication rather than the subjective beliefs of those receiving it." Tp. of South Orange Village, D.U.P. No. 92-6, 17 NJPER 466 (¶22222 1991); see

also City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶4096 1978), aff'd NJPER Supp. 2d 58 (¶39 App. Div. 1979) (noting that it is the tendency to interfere and not motive or consequences that is essential for finding an a(1) violation).

Here, Quirk's 5.4a(1) claim should be dismissed for two independently sufficient reasons. First, Quirk does not enjoy a protected right under the Act to her job absent compliance with the EO's conditions for her return to work. As the Appellate Division explained in Newark: ". . . it has long been established that there is no constitutional or statutory right to a government job." Newark, 469 N.J. Super. at 386.

Second, the Board has a substantial and legitimate business justification for precluding employees from returning to work who fail to comply with COVID Protocols under the EO. Indeed, the Board has a non-negotiable, managerial prerogative to implement the COVID Protocols. Newark, 469 N.J. Super. at 377. This prerogative is part and parcel of the Board's strong prerogative to protect the health and safety of students, staff and the public Board employees interface with daily. Id.

For these reasons, Quirk's section 5.4a(1) claim is dismissed.

***Jurisdiction***

The Commission does not have jurisdiction to decide Quirk's civil rights and constitutional claims. Franklin Lakes Bd. of Ed., P.E.R.C. No. 95-24, 20 NJPER 395 (¶25198 1994), aff'd 21 NJPER 362 (¶26224 1995) ; New Jersey Transit (Warfield), D.U.P. No. 2017-2, 43 NJPER 84 (¶24 2016), aff'd P.E.R.C. No. 2017-23, 43 NJPER 175 (¶53 2016); State of New Jersey, D.U.P. No. 97-15, 22 NJPER 339, 341 (¶27176 1996). Those claims should be adjudicated by the Division on Civil Rights and/or the courts. Id.

**ORDER**

The unfair practice charge is dismissed.

/s/ Jonathan Roth  
Jonathan Roth  
Director of Unfair Practices

DATED: June 20, 2022  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by June 30, 2022.**