

D.U.P. NO. 2023-11

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

In the Matter of

SADDLE RIVER BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2022-100

SADDLE RIVER EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices partially dismisses an unfair practice charge filed by the Saddle River Education Association ("Association") against the Saddle River School District ("District"). The charge alleged that the District violated N.J.S.A. 34:13A-5.4a(1) and (3) when it approved the transfer of eight unit members to new teaching assignments for the 2021-22 school year. The charge also alleged that the District unilaterally changed a bereavement leave policy. The Association asserts that the District acted in retaliation for two votes of no confidence concerning the District Superintendent.

The Director dismissed the 5.4a(3) allegation, determining that the Association failed to allege the occurrence of an adverse employment action. The Director issued a complaint on the 5.4a(1) violation, since the transfers and policy change, under the circumstances described in the charge, could have a tendency to interfere with employee rights under the Act. The Director determined that a more comprehensive factual record was necessary to determine the validity of the District's asserted business justification.

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Appearances:

For the Respondent,
Cleary Giacobbe Alfieri Jacobs, LLC attorneys
(Frances L. Febres, of counsel)

For the Charging Party,
Zazzali Fagella Nowak Kleinbaum and Friedman, attorneys
(Raymond N. Baldino, of counsel)

PARTIAL REFUSAL TO ISSUE COMPLAINT

On October 28, 2021 and March 9, 2022, the Saddle River Education Association ("Association" or "Union") filed an unfair practice charge and an amended charge, respectively, against the Saddle River School District ("District"). The Association alleges that the District violated section 5.4a (1) and (3)^{1/} of

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees on the exercise of the rights guaranteed to them by this act; and (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 the rights
(continued...)

the New Jersey Employer-Employee Relations Act ("Act") when, on April 28, 2021, it approved the transfer of eight Association unit members to new teaching assignments for the 2021-22 school year. The Association alleges that the transfers were in retaliation for two "votes of no confidence" in the District Superintendent, and because of multiple grievances filed by the Union that are critical of the Superintendent. The charge also alleges that the District retaliated against members of the Association by unilaterally changing the bereavement leave policy to require that members produce documentation that had never previously been required.

An exploratory conference was conducted with the parties on February 10, 2022. The District argued that the Association's charge should be dismissed because it, as the public employer, has the right to reassign personnel, and because nothing in the charge alleges that the members were impacted by an adverse employment action. The District also contends that the teacher reassignments were part of a larger educational restructuring plan, entirely unrelated to Association activity, that had been in place in the District since 2018. The Association, by contrast, maintains that the District acted in retaliation for

1/ (...continued)
guaranteed to them by the Act. The initial filing included an allegation that the District also violated section 5.4a(5) of the Act that was withdrawn in the amended unfair practice charge.

protected activity and that the transfers and policy change were motivated by anti-union animus.

The Commission has authority to issue a complaint where it appears that the 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.

I find the following facts:

The Association and the District are parties to a Collective Negotiations Agreement ("CNA") extending from July 1, 2018 through June 30, 2022.

On March 20, 2019, the Association conducted a vote of no confidence concerning the District Superintendent. A statement regarding the vote was read into the record at the March 20, 2019 District Board of Education meeting.

Between September, 2020 and April, 2021, the Association filed multiple grievances against the District. One grievance, filed on November 18, 2020, concerned the Superintendent's alleged lack of "professionalism."

On January 20, 2021, the Association conducted and approved a second vote of no confidence against the Superintendent. The

vote was again read into the record at a contemporaneous Board of Education meeting.

The Association alleges that "shortly after"^{2/} the second vote of no confidence, the District modified its bereavement leave policy to require documentation from the requesting unit employee that had never previously been required. The Association alleges that, following the change, a member's request for bereavement leave was ". . . treated with skepticism . . ." by the District.

On April 28, 2021, District approved the transfer of eight (8) unit members to new teaching assignments for the 2021-2022 school year, effective on September 1, 2021. The Association asserts that the transfers were announced "almost immediately after" members were interviewed by the District (on April 12 and 13, 2021) regarding the Association's November 18, 2020 grievance alleging the Superintendent's lack of professionalism.

The Association alleges that the District had never previously transferred so many members in a single year and that many members were transferred to ". . . grades in which they had little experience or preparation."

On May 4, 2021, the Association filed a grievance contesting the reassignments of teachers for the 2021-2022 school year.

2/ The charge does not include a specific date when the bereavement policy was allegedly changed, or when the member submitted a request for leave.

ANALYSIS

Public employees have a right to engage in "protected" conduct and retaliation for the exercise of that right violates the Act. N.J.S.A. 34:13A-5.3; 5.4a(1) and (3). The standards for establishing whether an employer has violated those subsections are set out in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984) ("Bridgewater"). No violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile toward the exercise of the protected rights. Id. at 246. If the charging party proves those elements, the burden shifts to the responding party to demonstrate that it would have taken the same actions regardless of the protected activity. Id.

An adverse employment action is an essential element of 5.4a(3) and (4) claims. State of New Jersey (Dept. of Comm. Affairs), D.U.P. No. 2015-8, 41 NJPER 102; 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). In Ridgefield Park Bd. of

Ed., a section 5.4a(3) allegation was dismissed because “. . . there was no threat [or] change in any terms or conditions of employment.” 10 NJPER at 438. Under our case law, adverse employment actions normally require actual harm to a term and condition of employment. See, e.g., Rutgers University, H.E. No. 2003-2, 28 NJPER 466 (¶33171 2002) (finding no adverse personnel action resulted from staff reorganization where charging party’s title, salary, and benefits remained the same); Seaside Heights, P.E.R.C. No. 99-67, 125 NJPER 96 (¶30042 1999) (finding no violation where the charging party, a lifeguard, considered an assignment less desirable and prestigious, as well as a punishment and demotion, but suffered no loss in pay).

The Association argued that some members were transferred to class grades in which they had little experience. But nothing in the charge alleges that any member suffered a particular adverse employment action as a result of a contested transfer. There is no allegation that transferred teachers lost pay or were otherwise adversely impacted in any term or condition of employment (But cf. Laurel Springs Bd. of Ed., H.E. No 77-17, 3 NJPER 201 (1977), aff’d P.E.R.C. No. 78-4, 3 NJPER 228 (1977), where hearing examiner acknowledged that a transfer between grades imposing greater professional burdens on a teacher in class size, educational achievement and recurrent behavioral problems could be an adverse employment action, “. . . if

motivated by discriminatory considerations.” Id., 3 NJPER at 206).

In a comparable vein, no facts suggest that the change in the bereavement policy - to require some documentation from the unit employee - resulted in an adverse employment action. Although the charge alleges that a unit member’s request for bereavement leave was treated “with skepticism” following the policy change, no allegation suggests that such leave was denied or that the policy change resulted in changes to terms and conditions of employment.^{3/}

Based on the above, because the Association has failed to allege an adverse employment action, it cannot meet the complaint issuance standard set forth in Bridgewater. As such, I dismiss the section 5.4a (3) allegation.

The Association also alleges that the District violated section 5.4a (1). An employer independently violates subsection 5.4a (1) if its action tends to interfere with an employee’s statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 284 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Proof of actual interference, intimidation,

^{3/} Bereavement leave verification, in general, is a managerial prerogative. Carteret Bd. of Ed., P.E.R.C. No. 2009-71, 35 NJPER 213 (¶76 2009); Leonia Bd. of Ed., P.E.R.C. NO. 2004-4, 29 NJPER 373 (¶116 2003); Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551 (¶15256 1984).

restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Id.

I find that the Association has alleged facts sufficient to issue a complaint under section 5.4a (1). The transfer of eight unit members, approximately thirteen weeks after participation in the January 20, 2021 no confidence vote and approximately two weeks after members were interviewed about an alleged lack of professionalism by the Superintendent, could have a tendency to interfere with statutory rights protected under the Act.

I am cognizant of the District's contention that the disputed transfers were part of a District-wide restructuring plan which had been in place since 2018. This contention could serve as a legitimate business justification cutting against the finding of a section 5.4a (1) violation. Such a determination is inappropriate at this juncture, however, as a more comprehensive factual record is necessary to determine the validity of the District's position.

A complaint will issue on the section 5.4a (1) violation.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: September 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 September 30, 2022.