

I.R. NO. 2001-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF TRUSTEES OF BURLINGTON  
COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CO-2001-80

BURLINGTON COUNTY COMMUNITY COLLEGE  
FACULTY ASSOCIATION,

Charging Party.

**SYNOPSIS**

In prior years, class sessions at "satellite" locations scheduled on NJEA Convention dates were cancelled and students were assigned out-of-class, school related assignments, such as library research. Burlington County Community College changed the academic calendar from 15, three hour class sessions per semester to 14, three hour and fifteen minutes class sessions per semester to avoid having to cancel regular class instruction during the NJEA Convention. The Commission Designee found that it appears that the College exercised its inherent managerial prerogative to modify the academic calendar. Therefore, it may not need to engage in negotiations regarding the change. Accordingly, the Designee found that the Association has not established a substantial likelihood of success, a requisite element to obtain a grant of interim relief. The Designee declined to grant interim relief.

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Charging Party.

Appearances:

For the Respondent,  
Capehart & Scatchard, attorneys  
(Alan R. Schmoll and Robert J. Hagerty, of counsel)

For the Charging Party,  
Bergman & Barrett, attorneys  
(Michael T. Barrett, of counsel)

INTERLOCUTORY DECISION

On October 5, 2000, the Burlington County Community College Faculty Association (Association) filed an unfair practice charge<sup>1/</sup> with the Public Employment Relations Commission (Commission) alleging that the Burlington County Community College (College) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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<sup>1/</sup> On October 11, 2000, the charging party filed an amended unfair practice charge clarifying the name of the charging party.

(Act) by violating N.J.S.A. 34:13A-5.4a(1), (2), (3) and (7).<sup>2/</sup>  
The unfair practice charge was accompanied by an application for interim relief.

On October 13, 2000, an order to show cause was executed and a return date was set for November 3, 2000. The parties submitted briefs, affidavits and exhibits in accordance with the Commission rules and argued orally on the return date. The following facts appear.

The College conducts evening college course classes at a number of high schools located throughout the County serving the dual purpose of a community outreach effort and a way to ease the burden on working college students to attend classes. The courses are staffed by College faculty and upon successful course completion, College credit is awarded to the student. The only difference between the classes at the "satellite" facilities and classes at the main College Campus is location.

On November 8 and 9, 2000, several of the "satellite" high school locations were closed because of the scheduled New Jersey

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<sup>2/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

Education Association Convention. As in prior years, in light of those facilities' closure, classes were cancelled. For many years prior to the current semester, the College has maintained a policy with regard to the NJEA convention days whereby the faculty would plan an out-of-class, school related assignment, such as library research, in lieu of regular in-class instruction.

In 1995, the College attempted to institute directives whereby the faculty would be required to submit an instructional plan for the NJEA Convention dates that was subject to the College's approval. By implication, if the instructional plan was not approved, faculty attendance at the NJEA convention could be denied. In October 1995, the Association filed an unfair practice charge accompanied by an application for interim relief, challenging the College's directives. The Association argued that the College's directives impinged on the faculty members' right to attend the NJEA convention and was in contravention of N.J.S.A. 18A:31-2, as applied to the faculty of county colleges through N.J.S.A. 18A:64A-13. In that case, the Commission Designee found that "... the rules promulgated by the College impermissibly interfere with the faculty's statutory right to attend the convention without loss of pay or other benefits."<sup>3/</sup> The Commission Designee restrained the College from imposing the directives. Until the 2000-2001 academic

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<sup>3/</sup> Apparently, an interlocutory decision on the Association's unfair practice charge (Docket No. CO-96-111) was issued to the parties however never published.

year, faculty were again free to plan out-of-class school related assignments in lieu of class instruction on class days which were cancelled due to the NJEA convention.

On or about September 12, 2000, a memorandum was sent to faculty members regarding class cancellations. The memorandum states, in relevant part, the following:

As you already know, classes meeting at the high school locations are now being scheduled for 3 hours and 15 minutes. If you have prior experience teaching at the high school locations you know that from time to time the college is forced to move our classes out of the high school due to scheduling conflicts. This change of location can be problematic for some of our students. In an effort to eliminate the location changes fifteen minutes have been added to each class which allows you to meet the time requirements for the course in fourteen meetings instead of fifteen. **You should meet all classes for three hours and fifteen minutes.** [emphasis in original.]

Thus, the Association contends that by adding fifteen minutes to each class period at the "satellite" locations and eliminating one class period, the College has unilaterally changed terms and conditions of employment (the established practice) without negotiating with the Association. The Association claims this unilateral action on the part of the College violates the Act.

The College contends that it has the managerial right to restructure the academic calendar to provide for fourteen rather than fifteen class meetings for a period of three hours and fifteen minutes rather than for three hours. The College asserts that this revised academic calendar allows faculty to attend the

NJEA Convention and still provides the students with the requisite number of class hours for the course.

To obtain interim 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. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer 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).

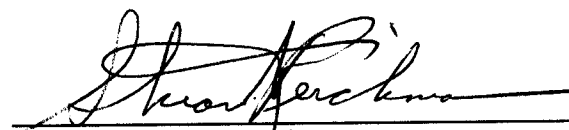
The College has a managerial prerogative to adopt an academic calendar scheduling classes in a particular manner. Burlington Cty College Faculty Assn. v. Board of Trustees, 64 N.J. 10 (1973); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove EA, 81 N.J. 582 (1980); State of New Jersey (Rowan University), P.E.R.C. No. 99-26, 24 NJPER 483 (¶29224 1998). In Rowan University, the Commission noted that:

... when a change in the times services are provided is made for governmental policy reasons, changes in work hours which necessarily flow from that decision are not mandatorily negotiable. See Hoboken Bd. of Ed., P.E.R.C. No. 93-14, 18 NJPER 444 (¶23199 1992); Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992).... [Rowan University at 484.]

In this case, it appears that the College has exercised its inherent managerial prerogative to modify the academic calendar. Consequently, such unilateral action may not be subject to negotiation and does not appear to violate the Act.<sup>4/</sup> Accordingly, under these circumstances, the Association has not, at this juncture of the dispute, established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Thus, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The Association's application for interim relief is denied.

  
Stuart Reichman  
Commission Designee

Dated: November 16, 2000  
Trenton, New Jersey

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<sup>4/</sup> Impact issues arising from the College's change of the academic calendar may be negotiable. Piscataway Ed. Assn. v. Piscataway Tp. Bd. of Ed., 307 N.J. Super. 263 (1998).