

I.R. NO. 98-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-98-336

PARSIPPANY-TROY HILLS EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

Parsippany-Troy Hills Education Association applied for interim relief seeking to restrain the Parsippany-Troy Hills Board of Education from effectuating a directive requiring the Association's president and grievance chairperson, and only those Association officers, to conduct all meetings in the superintendent's office with either a taped or stenographic record made of such meeting. The Commission Designee found that the Association demonstrated a likelihood of success in its claim that the Board's action violates 5.4a(1) and that it would be irreparably harmed if the Board were allowed to effectuate its directive.

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Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Lawrence S. Schwartz, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On March 13, 1998, the Parsippany-Troy Hills Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Parsippany-Troy Hills Board of Education ("Board") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1) and (3).^{1/} In its unfair practice charge, the Association alleges

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

that the superintendent threatened retaliation and insubordination charges against the Association president in response to his engaging in protected activity; the superintendent has attempted to insert himself into the relationship between the Association president and the membership; and the superintendent is depriving Association members that their right to be represented by an Association officer of their choosing by requiring the president and the grievance chairperson, but only those two Association officers, to conduct any meeting in which they are involved in the superintendent's office with both a stenographic and tape recorded record made of such meeting.^{2/}

The unfair practice charge was accompanied by a request for interim relief. An order to show cause was executed and a hearing was conducted on April 22, 1998. The parties submitted briefs and exhibits and argued orally.

During oral argument, the Association clarified that it is seeking interim relief only on the issue concerning the superintendent's directive requiring President Capsouras and

^{1/} Footnote Continued From Previous Page

restraining or coercing employees in 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 the rights guaranteed to them by this act."

^{2/} During oral argument, the Board indicated that it would require either a taped or stenographic record be made of the meeting, not both.

Grievance Chairperson Helou to conduct their meetings in the superintendent's office with a stenographic and tape recorded record.

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 issue before me is whether the Board's directive requiring Capsouras and Helou to conduct any meeting at the superintendent's office with a taped or stenographic record meets the Commission's standard to obtain interim relief. On January 22, 1998, Superintendent Tom Brennan issued a memorandum to administrators and supervisors entitled "Meeting Procedures" (J-4).^{3/} J-4, in relevant part, states:

Effective immediately any meeting which you attend and which includes Mrs. Geri Helou [grievance chairperson] or Mr. John Capsouras [Association President] in any capacity other than teacher, must be held under the following conditions:

^{3/} Joint exhibits admitted into evidence are marked "J".

- At the Superintendent's office
- with both a tape and stenographic record being kept of the meeting
- with a representative of your professional Association

By copy of this memo I will be informing Mrs. Helou and Mr. Capsouras of these conditions.

In Middletown Tp. Bd. of Ed., H.E. No. 95-23, 21 NJPER 203 (¶26131 1995) adopted in relevant part P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), John DeGenito, a teacher and freshman basketball coach, was approached by High School Principal Feuer, who was responsible for supervising DeGenito's coaching responsibilities. DeGenito had been informed by a parent of one of his players that another parent complained to Feuer about a "spitting" incident in a practice session. Feuer told DeGenito that no "major investigation" was being conducted into the incident, and that he should not be alarmed. DeGenito told Feuer that if a meeting was necessary he would call in grievance chairperson D'Alessandro to represent him. Feuer told DeGenito not to bring D'Alessandro into the matter because he has a way of "...overreacting [and] blowing things out of proportion." Middletown, 21 NJPER at 207. The Commission affirmed the hearing examiner's finding that Feuer's remarks were directed toward the character of D'Alessandro's representation and tended to interfere with the exercise of rights guaranteed by the Act and violated 5.4a(1).

Similarly, in this matter, the memorandum (J-4) appears to effect the character of Capsouras' and Helou's representation and may result in disparately treating Association officers Capsouras

and Helou in the performance of their representational responsibilities. The sole reason for such disparate treatment arises out of Capsouras' and Helou's exercise of protected activity. Any employee wishing to be represented by Capsouras or Helou must appear in the superintendent's office and subject themselves to a taped or stenographic record of the proceeding. This procedure constitutes a disincentive among unit members to seek the representational services of Capsouras or Helou and may tend to interfere with unit members' rights to select a union official of their choosing in violation of 5.4a(1) of the Act. See New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). See also Red Bank Ed. Assn. v. Red Bank Bd. of Ed., 78 N.J. 122 (1978). Additionally, it appears that J-4 is directed at the character of Capsouras' and Helou's representation in violation of 5.4a(1). Middletown. Accordingly, I find that the Association has demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on its factual and legal allegation that the effectuation of J-4 violates 5.4a(1) of the Act.

The Commission cannot effectively remedy a situation whereby any unit member has selected an Association representative other than the president or grievance chair because such employee did not wish to undergo the more onerous requirements of appearing in the superintendent's office and having the meeting recorded on tape and stenographically. Additionally, there is no effective remedy available to Capsouras or Helou for losing the opportunity to

represent a member who was dissuaded from approaching them for assistance as the result of the superintendent's directive. Consequently, I find that the Association has demonstrated that it will be irreparably harmed if the requested relief is not granted.

In weighing the relative hardship to the parties, I find that the scale is tipped in favor of the Association, since they will be irreparably harmed absent the granting of relief. The Board merely returns to the status quo in respect to the manner in which the Association president and grievance chair were allowed to operate previously. There is no claim that the public interest would be harmed if I issue interim relief, and I find that granting interim relief would not injure the public interest.

ORDER

It is ORDERED that the Board is restrained from effectuating (J-4). This is an interim order and will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: April 24, 1998
Trenton, New Jersey