

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-99-152

BURLINGTON COUNTY COLLEGE FACULTY
ASSOCIATION,

Charging Party.

SYNOPSIS

Burlington County College has established a policy, to be implemented in January 1999, requiring faculty to obtain certain levels of academic credentials to teach or continue to teach at the College. The Burlington County College Faculty Association alleges that the College has not negotiated the terms of the policy with it and sought a stay of the policy's implementation until negotiations have been completed. The Commission designee denied the Association's application for interim relief on the grounds that it appears that the College may have a managerial prerogative to establish and implement the policy. Consequently, the Commission Designee found that the Association was unable to show that it has a substantial likelihood of success on the merits.

I.R. NO. 99-8

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Appearances:

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

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

INTERLOCUTORY DECISION

On November 13, 1998, the Burlington County College Faculty Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Burlington County 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. (Act). The Association alleges that

the College violated N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7)^{1/}
The unfair practice charge was accompanied by an application for interim relief. On November 17, 1998, an order to show cause was executed and a return date was initially scheduled for December 10, 1998, and, subsequently, rescheduled to December 17, 1998. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

The Association states that in 1996, the College proposed a policy entitled "Minimum Faculty Credentials" which establishes levels of academic achievement which must be obtained by faculty members in order to teach or continue to teach at the College. The Association claims that because of its opposition to the imposition of the policy, the College, until now, has refrained from implementing it. The Association asserts that on October 2, 1998, the College advised that it would implement the policy in January 1999. The Association contends that the parties met several times in an effort to resolve their differing views on elements of the

^{1/} 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. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

policy. No resolution was achieved. The Association contends that the College has advised that it will now move to implement the policy. The Association argues that the implementation may result in the reassignment of tenured faculty members to positions where they hold degrees but have no teaching experience. For example, the Association cites a situation where a faculty member, holding the requisite minimum academic credentials in accounting, has been successfully teaching english for years, but is not credentialed to teach english. This faculty member may now be reassigned to teach accounting courses. The Association also points out that under the new policy, faculty may be required to obtain graduate degrees. The Association states that faculty may lose the opportunity to teach additional courses (overload) which the faculty member had previously taught, although the member may not hold the requisite minimum academic credential for that course. The Association contends that faculty members who lose the opportunity to teach such additional courses suffer a loss of income. Through its application for interim relief, the Association seeks a stay of the imposition of the policy and an order directing the College to engage in collective negotiations over the terms of the policy prior to putting it into effect.

The College argues that the development and implementation of the minimum credentials policy constitutes an exercise of its inherent managerial prerogative and is not subject to collective negotiations with the Association. Additionally, the College

asserts that it is statutorily authorized to establish the minimum academic qualifications for faculty members. Further, the College contends that no faculty members will lose their jobs or be laid-off as the result of the implementation of the policy in January 1999.

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 Commission has previously addressed the issue of minimum academic credentials. In Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375 (1977), the Board of Trustees of Salem Community College wished to adopt a policy which required all faculty members who did not then meet academic rank requirements to satisfactorily complete nine academic credits per year in order to qualify for the faculty rank which they had obtained through work experience. Salem Community College sought to implement a minimum credentials policy to effectuate the College's transformation from a vocational school to a community college. Some vocational school

employees and others hired by the College soon after its founding in 1972 were given credit for work experience even though their academic backgrounds were less than deemed appropriate and necessary by Salem Community College. The Commission found that the decision of Salem Community College to require faculty members who had benefited from work experience credits to now earn academic credits is an educational policy decision.^{2/} Id. at 376.

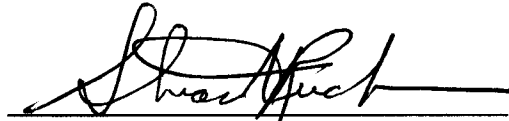
Consequently, it appears that the development and implementation of the minimum credentials policy by Burlington County College constitutes an exercise of its inherent managerial prerogative to establish qualifications for faculty members. Since the College may exercise its managerial rights without incurring an obligation to first engage in negotiations, the Association has not demonstrated that it has a substantial likelihood of prevailing in a

^{2/} While in 1977, the Commission found Salem Community College's policy requiring faculty to obtain minimum academic credentials to constitute an educational policy decision and not mandatorily negotiable, it found the issue to be permissively negotiable. Subsequently, in Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), the Supreme Court held that permissive topics of negotiations were only applicable to police and fire employees. Matters of educational policy constitute inherent managerial prerogatives and are not mandatorily negotiable. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

final Commission decision, one of the requisite elements to obtain interim relief.^{3/}

ORDER

The Association's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.


Stuart Reighman
Commission Designee

DATED: December 23, 1998
Trenton, New Jersey

^{3/} During oral argument, the College recognized its obligation to engage in collective negotiations on the mandatorily negotiable impact aspects flowing from the exercise of its managerial prerogative to implement the minimum credentials policy. Piscataway Tp. Bd. of Ed., 307 N.J. Super 263 (App Div. 1998), certif. den. 156 N.J. 385 (1998); See also Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984).