

P.E.R.C. NO. 2008-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHORE REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2005-098

SHORE REGIONAL EDUCATION
ASSOCIATION and LINDA CONWAY,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Shore Regional Board of Education. The Complaint was based on an unfair practice charge filed by the Shore Regional Education Association and Linda Conway. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when the principal/superintendent assigned Conway to the computer lab rather than the Learning Center. The Commission concludes that Conway would not have been assigned to the Learning Center even if the principal/superintendent had not been hostile towards her role as Association president.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Law Office of Alexis Tucci (Alexis Tucci and Virgil G. Icasiano, on the briefs)

For the Charging Parties, Selikoff & Cohen, attorneys (Carol H. Alling and Steven R. Cohen, on the briefs)

DECISION

In September 2004, the Shore Regional Board of Education reopened its renovated high school library as the Russell T. Olivadotti Learning Center. Leonard Schnappauf, who is both the high school principal and superintendent, assigned William Valenti to serve as the Learning Center librarian and assigned Linda Conway, who is president of the Shore Regional Education Association, to oversee a computer lab (E-1) supplementing the library. A Hearing Examiner concluded that Schnappauf's hostility towards Conway's Association leadership was a motivating factor in not assigning Conway to the Learning Center, but that Valenti would have received the Learning Center

assignment even absent Schnappauf's hostility based on the unanimous recommendation of the administrative management team. That team believed that Valenti's vivacity better fit the Board's vision of the Learning Center as a haven where students would be eager to come and read, while Conway's personality better fit the more traditional research focus of the computer lab. We accept the Hearing Examiner's conclusions and dismiss the Complaint.

This case began on October 15, 2004, when the Association and Conway filed an unfair practice charge against the Board. They alleged that the Board violated 5.4a(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when Schnappauf, as its agent, assigned Conway to the computer lab rather than the Learning Center.^{1/} The Board's Answer denied that Schnappauf was hostile towards Conway because of her Association activity and asserted that the mission statement for the renovated library led to Valenti's selection as the Learning Center librarian.

Hearing Examiner Patricia Taylor Todd conducted eight days of hearing. The parties filed post-hearing briefs.

^{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" 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 guaranteed to them by this act."

On March 15, 2007, the Hearing Examiner issued a report recommending that the Complaint be dismissed based on the conclusions described in the first paragraph of this opinion. H.E. No. 2007-5, 33 NJPER 54 (¶21 2007). The charging parties have excepted to the Hearing Examiner's conclusion that Valenti would have been assigned to the Learning Center even if Schnappauf had not been hostile to Conway's Association activity, while the Board has excepted to the Hearing Examiner's conclusion that Schnappauf was hostile to that activity. We will recite and respond to the parties' exceptions in our analysis of the issues.

We have reviewed the record. The record supports the Hearing Examiner's credibility determinations and findings of fact (H.E. at 3-39) so we adopt and incorporate them. However, we clarify the first sentence of finding no. 14 to state that Article VIII of the parties' contract (J-1) provides that the daily teaching load is five teaching periods, an assigned duty period (cafeteria, study hall, hall duty, office duty, library duty) and bus duty, plus a homeroom assignment, and that library duty may be added provided a fully certified librarian is present. Article VIII does not distinguish between the Association president and other teaching staff members. We also modify finding no. 15 to eliminate the reference to the number of teaching periods assigned to Valenti as an English teacher. The record does not specify that number. In our analysis, we also

add specific illustrations of the facts found concerning Valenti's and Conway's interactions with students.

In re Bridgewater Tp., 95 N.J. 235 (1984), articulates the standards for determining whether a public employer has illegally retaliated against an employee. A charging party must first prove that hostility towards activity protected by our Act motivated the contested personnel action. If the charging party meets that burden, an unfair practice will be found unless the employer demonstrates that it would have taken the same action absent the hostility. Assessing the whole record, we conclude that the management team's unanimous recommendation that Valenti be chosen as librarian would have led to his assignment even if Schnappauf's ultimate acceptance of that recommendation had not been partially motivated by his hostility towards Conway's assertiveness as Association president.

The key to unlocking this case lies in understanding the change in educational philosophy embodied in the mission statement for the new Learning Center and then enacted by assigning Valenti to oversee the Center. Findings no. 19-23 of the Hearing Examiner's report detail the facts establishing this change. We summarize them in the next paragraph.

Tracy Handerhan was hired as Director of Curriculum and Instruction in August 2002. Believing that encouraging the desire to read is the top factor in improving student

performance, she found that the high school library was not used enough or attractive enough to draw students in. Handerhan, Schnappauf, and Melissa Drexler, the Information Network Administrator, met with Dr. Ross Todd of the Rutgers University School of Communication to discuss how to make the library more appealing to students. Todd impressed Handerhan as a visionary, one who inspired her to want a library on every corner. He told her that a modern librarian should no longer be viewed as "the keeper of the books" and instead should be someone whose personality would attract students and faculty and make the library warm and welcoming.

Handerhan presented Todd's vision to the Board and it approved renovating the library and hiring a consultant. Following Todd's recommendation and with Schnappauf's approval, Handerhan formed a Renaissance Committee composed of administrators, teachers (including Conway and Valenti) and students to develop a philosophy, vision, and layout for a library of the 21st century. Excited by Todd's ideas, the committee adopted this mission statement:

The Shore Regional High School Library Media Center will continue to grow and develop to serve our educational community as both a hub and a haven where learning can be enhanced, the universe explored, and information integrated and synthesized in a supportive environment.

Schnappauf played no role in developing this mission statement.

Given this vision of the library to be, the question became which person could best realize that vision once the Library Center was renovated. A librarian-media specialist was also needed to oversee the computer lab. Members of the administrative management team discussed these questions (as well as the other items on each weekly agenda) over several months during the spring of 2003 and in May or June unanimously recommended that Valenti be assigned to the Learning Center and that Conway be assigned to the lab. Findings no. 24-26 of the Hearing Examiner's report detail the facts concerning their discussions and decision. We summarize them in the next paragraph.

Schnappauf conducted meetings of the management team every Monday morning. The other team members besides Schnappauf were Handerhan; assistant principals Luise Ann Peters and Steve Nicol; Director of Pupil Personnel Services Rosemary McNamara; Business Administrator Nick Camarano; and Athletic Director Levy. Drexler attended the meetings to report on her technology activities. None of these team members was hostile towards Conway because of her Association activity. Schnappauf asked the team to recommend candidates to oversee the Learning Center and computer lab and did not indicate any preference. All members agreed that Valenti should be appointed to the Learning Center because he was an

affable person who could "market" the library to the students and thus carry out the mission statement and that Conway's skills and personality were better suited to working in the computer lab.

Peters, Drexler, and Handerhan all described student interactions that bore out the team's opinion that Valenti was far more likely than Conway to make the Learning Center more inviting. Peters had observed Valenti's work with students and believed he had a warm and welcoming personality that could help uncomfortable students get going on research papers and could encourage students to read for pleasure (2T91-2T92). Drexler found that Valenti was "an open, genuinely caring individual" while Conway was unapproachable and referred to students in a disparaging manner (4T21-4T23). Drexler specifically noted that Valenti was always out and about in the old library, ready to help students, while Conway remained in the back room and rarely came out to help students (4T19-4T20). Handerhan observed students seeking out Valenti for discussions or to give him a high five in the hallway, while she observed Conway spending a lot of time in her office or performing routine tasks rather than interacting with students.

Although Conway attended the hearings, she did not testify, so the Hearing Examiner drew a negative inference against Conway while crediting the testimony of Drexler and Handerhan about Conway's attitude and actions towards students. We reject the

charging parties' exception to this inference. The testimony that Conway did not rebut centered on concrete observations about her conduct and her statements rather than hearsay and was an important component in determining the basis for the management team's recommendation.

This record establishes that the management team enthusiastically and unanimously recommended that Valenti be assigned to the Learning Center and Conway be assigned to the computer lab. Schnappauff trusted this team of advisors and followed their recommendations unless a recommendation was "completely obtuse" (6T148). This recommendation was sensible rather than obtuse and was therefore accepted. Given these circumstances, we conclude that Schnappauf would have assigned Valenti rather than Conway to the Learning Center even if he had not been hostile towards Conway's role as Association president.

Findings no. 5-11 and 34-36 of the Hearing Examiner's report detail the multiple statements and actions evidencing Schnappauf's hostility, including an incident in 1996 where a teacher was intoxicated and a bottle of alcohol was found in his classroom and an incident in 2002 where Conway informed him of a "no-confidence" vote minutes before a Board meeting was to convene to discuss budget issues that had caused a community uproar. We accept these findings and the credibility determinations that underpin them. We therefore reject the

Board's exceptions arguing that Schnappauf was not hostile towards Conway; that his lack of animus is proved by his decision not to lay her off when he had the opportunity; and that he had wholly legitimate reasons for assigning her to teach English during the year the library was being renovated.

The Hearing Examiner also made findings (nos. 14-16) concerning Conway's assertion of a contractual right to staff the library only five periods a day and why Schnappauf thus thought it necessary during the 2002-2003 school year to limit the library's open hours to odd-numbered periods on odd-numbered days and even-numbered periods on even-numbered days. While the Hearing Examiner did not find that hostility towards this assertion of a contractual right influenced Schnappauf's feelings about the Learning Center assignment, we will assume, for purposes of this decision, that it did. Nevertheless, this evidence of hostility does not erase the fact that Schnappauf would have accepted the management team's staffing recommendation even absent his hostility to her Association activity or her assertion of a contractual right. Under Bridgewater, no violation can be found based on hostility alone. If, as here, an employer has proven that it would have taken the same action absent its hostility to protected activity, the Complaint will be dismissed.

While the charging parties accurately observe that the Board itself did not consider the assignments or independently approve them, this point is immaterial. What counts on this record is not what happened or did not happen at the Board level after Schnappauf made his decision, but what happened at the management team level before that decision was made. This record shows that the Board's agents would have ended up acting the same way even if Conway had not displeased Schnappauf by her forceful leadership or her assertion of a contractual right.

Finally, the charging parties argue that should we find a violation of 5.4a(3), we should also find a violation of 5.4a(1) based on the discouraging effect that not assigning the Association president to the Learning Center would necessarily have on other employees wishing to exercise their rights under our Act. Since we have not found a violation of 5.4a(3), we will not find a violation of 5.4a(1).

For these reasons, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: August 9, 2007

Trenton, New Jersey