

P.E.R.C. NO. 2022-44

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY COLLEGE OF MORRIS

RESPONDENT,

-and-

Docket No. CO-2020-116

ASSOCIATION FOR CHAIRS AND  
ASSISTANT CHAIRS AT THE COUNTY  
COLLEGE OF MORRIS,

CHARGING PARTY.

SYNOPSIS

The Public Employment Relations Commission denies the County College of Morris' motion for summary judgement on a unfair practice charge filed by the Association for Chairs and Assistant Chairs at the County College of Morris. The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(2), (3) (7) and 5.4b, when it withdrew the appointments of three Association members from two committees in retaliation for the Association's October 4, 2019 email complaining of a new proposal that would adversely affect the appointed Association members. The Commission finds that this matter presents numerous issues of disputed material facts that cannot be resolved through summary judgment and require credibility determinations by a hearing examiner.

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, Bressler, Amery, & Ross, attorneys  
(Jed L. Marcus, Esq., of counsel and on the brief)

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

DECISION

On October 24, 2019, the Association for Chairs and Assistant Chairs at the County College of Morris (Association) filed an unfair practice charge (UPC) against the County College of Morris (CCM), which was subsequently amended on February 14, 2020. The amended charge alleges that CCM violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(2), (3), (7) and 5.4b, when it withdrew the appointments of three Association members from two committees in retaliation for the Association's October 4, 2019 email complaining of a new proposal that would adversely affect the appointed Association members.

On July 15, 2021, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing on the alleged violation of 5.4a(3) only and declined to issue a Complaint on 5.4a(2) and (7) due to insufficient evidence to support those allegations.<sup>1/</sup> On January 26, 2022, CCM filed a motion for summary judgment and supporting brief. On February 11, the Association filed its opposition brief to CCM's motion for summary judgment. That same day, the Chair referred the case to the full Commission pursuant to N.J.A.C. 19:14-4.8(a). On February 14, CCM filed its reply to the Association's opposition brief.

In support of its motion for summary judgment, CCM filed briefs, exhibits, and the certifications of Anthony J. Iacono, CCM's President; Dr. Bette Simmons, CCM's Vice President of Student Development and Enrollment Management; Denise Bell and Joanne Hugues, both Executive Administrative Assistants to CCM's Office of the President; and Jed Marcus, CCM's counsel. The

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from (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 the act.; and (7) Violating any of the rules and regulations established by the Commission. 5.4b(1) provides that employee organizations, their representatives or agents are prohibited from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act., which is also not applicable to the UPC based on the Association's allegations.

Association filed a brief, exhibits, and the certifications of Dr. Matthew Jones, a CCM faculty member and Association President; Dr. Jill Schennum, a CCM faculty member and Association officer; and Michael T. Barrett, the Association's counsel. These facts appear.

CCM and the Association are parties to a collective negotiations agreement (CNA) with a term of August 28, 2018 through September 3, 2021, which continues to be observed by the parties. Article 11(E), "Association Rights and Responsibilities, Committee Structures", provides:

The Association will provide the President of the College a list of Association members who will serve as voting members of the Academic Standards Committee and the Curriculum Committee of the President's College Council. There will be one Association member per committee. The Association will also have the right to have a voting member present at meetings of the President's College Council. The Association will provide the President of the College with a list of the above representatives by October 1 of each year. The President of the College shall be free to determine the composition of the balance of the College Council and the standing committees of the College Council. Nothing contained herein shall limit the number, functions, or duties of the standing committees. The Association representatives to such standing committees may be replaced with an alternative by the Association at the request of the President. The President's actions in this regard shall not be subject to grievance procedures.

[Emphasis added].

Iacono certifies that, among his many responsibilities, he is CCM's representative for purposes of negotiations and the adjustment of grievances. (Iacono Cert. at ¶3). Iacono certifies that he administers CCM's College Council and its various standing committees, including Academic Standards, Accessibility Advisory, Curriculum, Diversity, Safety, and Student Affairs, which all provide counsel and advice to the President on CCM's operations. (Iacono Cert. at ¶5). Bell certifies that participation on the College Council is voluntary and uncompensated; however, CCM rotates membership on the Council because many faculty members feel that participation positively impacts tenure and promotional decisions. (Bell Cert. at ¶4). Iacono asserts that although that may be true for junior faculty members, senior faculty members, who are tenured, such as Schennum, Jones, and Parella, derive no particular benefit from committee membership other than the satisfaction of serving the CCM community. (Iacono Cert. at ¶12). Iacono further certifies that due to membership on the College Council not affecting the Association members' terms and conditions of employment, the Association has had difficulty filling the slots allotted to it. Ibid.

Bell certifies that the College Council meets once per month for approximately one hour and forty-five minutes, and that the most important committees are for Academic Standards and

Curriculum. (Bell Cert. at ¶5). Iacono certifies that College Council and committee members are selected in several ways, including memberships for the president, vice presidents, and deans of CCM's different schools and also by elections consisting of a majority vote of the faculty within a particular school or division. (Iacono Cert. at ¶¶6-7). Iacono further certifies that, pursuant to the College Council and College Standing Committees Handbook (Handbook), each bargaining unit is allowed to appoint a representative to various standing committees. (Iacono Cert. at ¶8). Iacono certifies that, pursuant to Article 11(E) and the Handbook, he is entitled to appoint members to all standing committees and the College Council at his sole discretion, specifically he may make six "Presidential Appointments" for Academic Standards and nine "Presidential Appointments" for Curriculum. (Iacono Cert. at ¶11).

Bell certifies that she handled the administrative process for selecting members for the College Council and its standing committees for many years, but for the 2019-2020 school year, Hugues, who was a newer employee, took over the process. (Bell Cert. at ¶2). Hugues certifies that on September 9, 2019 she sent emails soliciting interest for College Council and standing committee memberships for the 2019-2020 school year, which resulted in an election among a list of interested persons who responded to the solicitation. (Hugues Cert. at ¶3). Hugues

further certifies that neither Schennum nor Parella expressed any interest in being on the Academic Standards or Curriculum Committee for 2019-2020. (Hugues Cert. at ¶4). Hugues certifies that after the election, she solicited recommendations for Presidential Appointments, and in response, received an email on September 20, 2019 at 10:23 a.m. from James Hart, acting dean of the school of liberal arts, recommending Schennum and Parella for Academic Standards and Jones for Curriculum. (Hugues Cert. at ¶5). Hugues also certifies that she was unfamiliar with the appointment process and did not understand that the recommendations needed to be reviewed and approved by Iacono. (Hugues Cert. at ¶6). Hugues certifies that later that same day, mistakenly and without authorization from Iacono, she informed Schennum and Parella of their appointments to Academic Standards and Jones of his appointment to Curriculum. (Ibid.) The email to Schennum stated:

Good afternoon,

It is my pleasure to inform you that you have been appointed to the Academic Standards Committee as a Department Chair. Your term expires in June 2020. The Co-chairs of the committee will be notified.

Please feel free to contact me if you have any questions or need any additional information. Have a nice weekend.

[Emphasis added].

Once she was aware of her mistake, Hugues wrote an email on October 4, 2019 advising Schennum, Parella, and Jones that they had not been appointed to any committees. Hugues' October 4, 2019 email to Jones, sent at 3:18 p.m., stated:

Dr. Jones,

The appointment email I sent you on September 20 for the Curriculum Committee was in error. I sent the email prematurely. The President has appointed another Department Chair to that position.

I apologize for the confusion.

Jones responded by email on October 9 at 11:41 a.m. with "Thank for the update."

Hugues certifies that on October 15, 2019 she sent Jones an email asking him to "please send me your appointments for ACAC openings on College Council and the Academic Standards Committee," but neither Jones nor the Association made any appointments in response for the 2019-2020 school year. (Hugues Cert. at ¶8). Hugues also certifies that the Association did not appoint anyone to the College Council for the 2021-2022 school year, but it did appoint representatives to the Academic Standards, Curriculum, and Diversity Committees. (Hugues Cert. at ¶9). Additionally, Bell certifies that the Association did not appoint anyone as its representative on College Council, Academic Standards and Curriculum committees for 2018-2019, the Association again made no appointments for College Council and

Academic Standards for 2020-2021, and in 2021-2022, the Association made no appointments to College Council. (Bell Cert. at ¶18). Iacono asserts that the Association could have utilized its appointment power, and specifically Jones could have appointed himself to the Curriculum Committee, but they chose not to, demonstrating that they really did not want to serve on the standing committees. (Iacono Cert. at ¶30).

Iacono certifies that at the time Hugues sent the September 20 notification emails he, Bell, and Simmons had not yet met to review and deliberate about committee appointments. He asserts that he never authorized Hugues to send the notification emails, and was unaware that she had sent the notification emails. (Iacono Cert. at ¶15). Iacono further certifies that he did not learn of Hugues' mistaken notification email until October 4, 2019, when he, Simmons and Bell met to review the recommendations and decide on the committee appointments, and thereafter, he directed Hugues to notify Schennum, Parella, and Jones that they had not been appointed. (Iacono Cert. at ¶16).

Iacono certifies that he had no knowledge of the Association's October 4, 2019 complaint email until the Association filed its amended UPC in 2020. (Iacono Cert. at ¶17). Simmons and Bell similarly certify to not having knowledge of the Association's complaint email. (Simmons Cert. at ¶ 5; Bell Cert. at ¶ 12). After reviewing the complaint email, Iacono certifies

that the Association's complaint did not adversely impact the Association members' terms and conditions of employment. Instead, he asserts that there was a proposed "minor" shift in the job duties of administrative assistants in a different bargaining unit, which amounted to the administrative assistants typing into their computers what they were already typing on paper. (Iacono Cert. at ¶¶18-19).

Iacono certifies that he had several reasons he did not appoint Schennum, Parella, and Jones to standing committees for 2019-2020. (Iacono Cert. at ¶22). Iacono certifies that his committee appointments had nothing to do with the Association's complaint email, noting that he appointed 15 of the 25 Association members who signed that email to standing committees, one of which is an Association officer. (Iacono Cert. at ¶32). Iacono certifies that he considered those faculty members who had expressed interest in serving but had not been elected. (Iacono Cert. at ¶21). Iacono further certifies that, for 2019-2020, he decided to let the chairs of the various standing committees recommend members, and neither chair of the Academic Standards nor Curriculum committees recommended Schennum, Parella, or Jones. (Iacono Cert. at ¶23). Iacono also certifies that, in his experience working with Schennum, Parella, and Jones on College Council and standing committees in the past, they did not actively participate and had poor attendance. (Iacono Cert. at

¶¶24-28). Iacono certifies that given Schennum, Parella, and Jones' poor performance and attendance with their committee appointments, he decided it was important to appoint more junior faculty members and chairs in order to burnish their resumes and meet tenure and promotion requirements. (Iacono Cert. at ¶29).

Iacono certifies, in support of CCM's lack of anti-union animus, that the parties have an amicable relationship as evidenced by the fact that the Association has not filed an actual grievance and there has not been an arbitration since 2016, no unfair practice charges have been filed, and no claims of harassment, discrimination or retaliation were brought by the Association against CCM. Moreover, the parties reached agreement on a successor CNA in May 2019 as well as a Memorandum of Understanding on Deductions from Salary and Distance Education Administration in August 2021. (Iacono Cert. at ¶4). Iacono also certifies his denial of the Association's claim that he dislikes the Association because it recommended that CCM hire a different candidate for President in 2016. (Iacono Cert. at ¶33).

In response to CCM's certifications, the Association asserts that the removal of Schennum, Parella, and Jones from the standing committees to which they were appointed on September 20, 2019, via email sent by the President's executive administrative assistant, was in direct retaliation for those Association members publishing a written protest of the President's proposal

to increase the workload of another bargaining unit, the County College of Morris Staff Association (CCMSA), who represent the administrative assistants. (Schennum Cert. at ¶5, Jones Cert. at ¶¶10, 12-13). On October 4, 2019, Dr. Jones transmitted an email to Thomas Burk, CCM's Vice President, signed by 25 other Association members including Schennum, Parella, and Jones, expressing concern over CCMSA members' increased workload, which would in turn affect the Association members' workload. (Schennum Cert. at ¶¶3-4, Jones Cert. at ¶¶15-16). The Association's October 3 complaint email states:

To Whom it May Concern:

It has been brought to the attention of the academic chairpersons that a new proposal will see department administrative assistants assigning and generating contracts for full-time and adjunct faculty members. We have a number of concerns with this proposal and would like to take this opportunity to voice our support for the administrative assistants, who are the true back bone of the college.

These added responsibilities involving the contracts will add to an already overwhelming workload. In recent months, they have been asked to carry the heavy burden of additional enrollment duties, including calling hundreds of students and keeping track of all visitors to their respective departments. Their time is stretched thin, and it is becoming increasingly more difficult to fit all of these jobs and deadlines into their busy workweek. There simply are no more hours left in the day.

Also, the chairpersons have serious concerns about the appropriateness of administrative

assistants being responsible for faculty contracts. So many questions arise when this task is added to their job responsibilities: Who is responsible in case errors occur in the contracts? Are the contracts issued by administrative assistants even valid documents? Will administrative assistants have to answer for discrepancies involving credits, course loads, faculty who teach in two departments, release time, promotion, tenure, stipends, and tutoring hours?

It is our opinion that these additional duties, which are above and beyond the administrative assistant contract, should be their responsibility or the responsibility of anyone in the academic division.

The Association asserts that a mere five hours later after that email was sent, Schennum, Parella, and Jones were informed by Hugues, via email sent at 3:18 p.m., that she had made an error, they had not been appointed, and that the President had made different appointments.

Further explaining why he was aggrieved at his removal from the Curriculum Committee, Jones certifies that at the start of the 2019-2020 school year he sought election to the Curriculum Committee, but he was subsequently notified by Dean Hart that he was removed from the election ballot because he was to be appointed by the President. (Jones Cert. at ¶¶6-8). Jones further certifies that he was concerned about his removal from the election ballot, but was satisfied with his appointment following the September 20 notification email. (Jones Cert. at ¶14).

The Association certifies that committee service is important to the Association members. Jones certifies that participation in the College Council has a positive impact, and thus, removal from the committees represents a significant loss. (Jones Cert. at ¶17). In addition, Jones certifies that it is critical that Chairs participate in Committee activities because decisions are made there that significantly affect their programs and departments. (Jones Cert. at ¶18).

The Association disputes CCM's representation that Schennum, Parella, and Jones were not committed to their past committee service. Schennum certifies that CCM's claim of her poor attendance is untrue and that when she missed a committee meeting it was generally because of another commitment for CCM. (Schennum Cert. at ¶¶3-4). In response to CCM's claim that Schennum is uninterested in committee service, Schennum certifies that she is not currently seeking committee appointment because the President exercises so much influence over the committees that they no longer serve their intended purpose. (Schennum Cert. at ¶8).

The Association also disputes CCM's representation that there is no hostility between the parties, certifying that there is clear and present tension between the parties. (Jones Cert. at ¶24). In support of its claim that Iacono harbors ill-will towards the Association, the Association asserts that in 2016,

during CCM's search for a new president, the Association sent a letter that supported another candidate other than Iacono.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). N.J.A.C. 19:14-4.8(e) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

In determining whether there exists a "genuine issue" of material fact that precludes summary judgment, we must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. We "must grant all the favorable inferences to the non-movant." Id. at 536. A motion for summary judgment should be granted with extreme caution and may not be substituted for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 183, 185 (App. Div. 1981), certif. denied, 87 N.J. 388 (1981). Summary judgment "should be denied unless the right thereto appears so

clearly as to leave no room for controversy.” Saldana v. DeMedio, 275 N.J. Super. 488, 495 (App. Div. 1995).

In re Bridgewater Tp., 95 N.J. 235, 244 (1984), sets forth the elements that a charging party must prove to establish a violation of 5.4a(3). Under 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. Protected activity is conduct in connection with collective negotiations, grievance processing, contract interpretation or administration, or other related activity on behalf of a union or individual. North Brunswick Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (P4205 1978), aff'd, NJPER Supp. 2d 63 (P45 App. Div. 1979). Protected activity may include individual conduct, such as complaints, arguments, objections, letters or similar activity, related to enforcing a collective negotiations agreement or preserving or protesting working conditions of employees in a recognized or certified unit. State of New Jersey, supra.

Here, we find there are numerous disputed material facts that require an evidentiary hearing. First, the parties dispute

whether anti-union hostility was a factor in the Association's non-appointment to the standing committees. CCM argues that anti-union animus played no role in its decision to not appoint the Association members, but rather, CCM had legitimate, non-retaliatory reasons for not appointing them. CCM claims it has a good relationship with the Association, citing several agreements reached with it and no formal grievances, arbitrations, or UPCs filed by the Association. CCM further argues that many of the Association members who signed the October 4 complaint email were appointed to committees, demonstrating that the complaint email was not a motivating factor in the non-appointment of Schennum, Parella, and Jones. The Association disputes CCM's characterizations of these issues. Summary judgment is not appropriate for 5.4a(3) allegations of retaliation based on hostility to protected union activity when there is a disputed material fact concerning the subjective issue of the employer's motivation. State of N.J. (Judiciary), P.E.R.C. No. 2014-84, 41 NJPER 43 (§11 2014) (although employer proved contractual right to implement Team Leader removals, summary judgment denied on 5.4a(3) allegation of retaliation for protected activity); State of New Jersey, P.E.R.C. No. 2006-11, 31 NJPER 276 (§109 2005) (whether protected activity was a substantial motivating factor in the adverse action, and whether it would have occurred anyway based on performance, "are factual questions that are generally

not appropriate for summary judgment"). When the establishment of such material facts requires an assessment of the employer's state of mind, a hearing is required. Ibid.; Atlantic City, P.E.R.C. No. 2016-40, 42 NJPER 298 (¶85 2015) (hearing required to determine whether City's orders to return officers to work without weapons "were substantially motivated by hostility towards protected activity and would not have occurred anyway based on legitimate, non-discriminatory reasons").<sup>2/</sup> Thus, determination of whether CCM had a retaliatory motive for not appointing the Association members is a disputed factual issue.

Additionally, the parties dispute the nature and impact of CCM's proposed assignment to the administrative assistants, which became the subject of the Association's October 4 complaint email. CCM argues that the Association's October 4 complaint email did not involve the Association members' terms and conditions of employment, but rather the job duties of administrative assistants in a different bargaining unit, and thus, it was not protected activity. CCM further claims that its proposed assignment was a minimal, ministerial change to the administrative assistants' responsibilities, involving them typing into a computer what they used to type on paper. On the

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<sup>2/</sup> See generally, Current N.J. Court Rules, R. 4:46-2, Comment 2.3.4., p. 1491 (2022) ("The [summary judgment] motion should ordinarily not be granted where an action or defense requires determination of a state of mind or intent, such as claims of waiver, bad faith, fraud or duress.")

contrary, the Association's October 4 complaint email details its concern with the administrative assistants' already overburdened workload and the additional task of preparing faculty contracts, which would diminish their ability to assist the Association members. While some assignments are within an employer's non-negotiable managerial prerogative, assignments that impact working hours, workload, or compensation of employees affect the terms and conditions of employment and are mandatorily negotiable. Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983). The Association's October 4 complaint email is akin to the protected activity discussed in North Brunswick and State of New Jersey, supra, namely a complaint protesting the working conditions of employees. Whether this change in assignment, in fact, affected the Association's working conditions requires determination by a hearing examiner.

The parties further dispute whether the Association members suffered any harm due to their non-appointment to the standing committees. CCM claims committee membership is voluntary and uncompensated, and thus, tenured Association members like Schennum, Parella, and Jones would lose no benefits from not being appointed to a committee. However, the Association claims that members derive various benefits from committee membership, including the ability to influence the direction and operation of their work environment. The Commission has found that employee

participation in advisory, non-binding committees affects terms and conditions of employment and is negotiable. See Matawan Reg'l Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980) (finding CNA provision mandatorily negotiable because it established a non-binding forum for the expression of faculty views and opinions); Union Cty. Coll., P.E.R.C. No. 2015-24, 41 NJPER 205 (¶70 2014) (finding CNA provision mandatorily negotiable because it only provides for faculty committees to make recommendations to the President and for the President to comply with reasonable requests for information from faculty committees); Trenton Bd. of Ed. P.E.R.C. No. 2019-46, 45 NJPER 403 (¶109 2019) (finding CNA provision establishing committee to meet and discuss matters of governmental policy mandatorily negotiable.) Thus, a factual dispute exists over the impact of the Association members not being appointed to the standing committees.

The parties critically dispute whether CCM knew of the Association's October 4 complaint letter and whether it had any effect on CCM's committee appointments. CCM argues that Iacono, Bell, and Simmons, who decided on the committee appointments on October 4, did not know of the complaint email, and thus, the email could not have affected their deliberations about the committee appointments. The Association provided the October 4 complaint email as an exhibit, which was addressed to Thomas

Burk, CCM's Vice President. Whether Burk received the Association's email and whether he shared it with Iacono, Bell, or Simmons prior to their deliberations about the committee appointments is a disputed factual issue that should be developed and resolved through testimony and the credibility determinations of a hearing examiner.

The parties further dispute the alleged non-retaliatory reasons CCM provided for the Association members' non-appointment to the committees. CCM argues that its non-appointment of the Association members to the committees was non-retaliatory because, pursuant to the CNA, Iacono possesses the sole discretion to make Presidential appointments to the College Council and standing committees. However, we find that this amounts to a contractual defense that does not address the Association's claims of alleged retaliation.

In further support that its actions were non-retaliatory, CCM asserts that the Association members were never in fact appointed, but rather, they were erroneously notified of their "appointment" by the President's inexperienced executive administrative assistant. CCM claims this error was corrected on October 4 as soon as Iacono discovered Hugues' erroneous, unauthorized notification. The Association claims that CCM's account is insufficient to explain the multiple week gap between Hugues' September 20 notification email and her October 4

correction email, which happened to coincide on the same day as, and only several hours after, the transmittal of the Association's October 4 complaint email. Further, Jones certified that he was removed from the Curriculum Committee election ballot and notified, by Dean Hart, that he would instead be appointed to it. Thus, the circumstances surrounding the members' "appointments" to the committees are a disputed factual issue requiring an evidentiary hearing.

The parties also dispute whether the Association members were in fact interested in being appointed to the standing committees. CCM argues that the Association is contractually entitled to use its appointment powers to appoint one member each to the Academic Standards and Curriculum committees, which it chose not to do, demonstrating the Association members did not really want to serve on the committees. CCM further alleges that Schennum, Parella, and Jones had poor attendance and performance when they served on committees in the past. The Association members respond that they were interested in serving on the committees, but due to the President's actions that interest has waned, and they assert that committee attendance records are imprecise. CCM details the Association members' committee attendance; however, CCM does not provide any attendance records (e.g. sign-in sheets).

For the foregoing reasons, we deny CCM's motion for summary judgment as this matter presents numerous issues of disputed material facts that cannot be resolved through summary judgment and require credibility determinations by a hearing examiner. The parties are left to their proofs and affirmative defenses at a hearing.

ORDER

The County College of Morris' motion for summary judgment is denied. The case shall be set for hearing.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: April 28, 2022

Trenton, New Jersey