

1 STATE OF NEW YORK

2 SUPREME COURT : COUNTY OF MONROE

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4 In the Matter of the Application : INDEX NO.
of JOHN BAYNES, Individually, and as : 2006/07768
5 President of the Fairport Educators :
Association for an Order & Judgment :
6 Pursuant to Article 78 of the CPLR, :

7 Petitioner, :

-vs-

8 : SPECIAL TERM
FAIRPORT CENTRAL SCHOOL DISTRICT, :
9 BOARD OF EDUCATION OF THE FAIRPORT : DECISION
CENTRAL SCHOOL DISTRICT, :
10 JANET STULPIN in her Capacities as the :
Clerk and the Records Access Officer :
11 of the Fairport Central School District, :
and THOMAS KOEHLER, as a necessary party,:

12 Respondents. :

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15 Hall of Justice
Rochester, New York
November 1, 2006

16 Before:

17 HONORABLE DAVID D. EGAN
Supreme Court Justice

18 Appearances:

19 NEW YORK STATE UNITED TEACHERS
20 BY: ROBERT REILLY, ESQ.
21 800 Troy-Schenectady Road
Latham, New York 12110-2455
22 Attorney for Petitioner

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24 Lori G. Keenan, CSR, RPR
Senior Court Reporter

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2 Appearances:

DAVID A. HOOVER, ESQ.
8303 West Point Drive
E. Amherst, New York 14051
Attorney for Respondent

THOMAS A. KOEHLER, Pro Se
501 Thayer Road
Fairport, New York 14450

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2 THE COURT: The matter of the application of
3 John Baynes verses Fairport Central School District.

4 MR. REILLY: Robert Reilly, of counsel to James
5 R. Sandner, attorney for Mr. Baynes and Fairport
6 Education Association.

7 MR. HOOVER: David Hoover, attorney for Fairport
8 School District.

9 MR. KOEHLER: I am Tom Koehler, representing
10 myself.

11 (Motion argument by the parties was heard by the Court.)

12 THE COURT: Respondents move to dismiss this
13 Article 78 petition for lack of standing and on the
14 grounds no cause of action exists.

15 This proceeding arises out of two Freedom of
16 Information Law ("FOIL") requests made on or about
17 May 8, 2006 by Respondent Koehler and served upon
18 Respondent Stulpin in her capacity as records access
19 officer for the Respondent Fairport School District,
20 ("FCSD"). The first request sought copies of e-mails
21 sent or received by Petitioner John Baynes from
22 March 1 of 2006 to May 7, 2006 that do not involve a
23 FCSD student. The material sought included e-mails
24 that were, in whole or in part, related to Fairport
25 Educators Association ("FEA"). The second request

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2 sought an e-mail entitled "Candidate endorsement from
3 John Baynes" and the desk top source of the e-mail
4 sent to the FEA members on May 4, 2006.

5 On June 20, 2006, Ms. Stulpin wrote to
6 Respondent Koehler and advised him, in sum and
7 substance, that it was the District's intention to
8 comply with his request, but that each e-mail would
9 have to be reviewed to determine whether any
10 statutory bases existed prohibiting disclosure under
11 FOIL. Apparently, the District believed that
12 Respondent Koehler had already obtained a copy of the
13 second requested e-mail concerning "Candidate
14 endorsement from John Baynes" from another source.
15 The District estimated that it would take until
16 June 30, 2006 to make the aforementioned
17 determinations. On or about June 23, 2006,
18 conversations between counsel for Petitioner and
19 Respondent resulted in a promise by the District not
20 to release any requested information until judicial
21 resolution of this matter.

22 Article 15(F)(1) of the pertinent collective
23 bargaining agreement provides that the FEA may use
24 the office machines and equipment of the District.
25 It appears from the record that past practice and

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2 Article 15(F)(1) have been construed to permit the
3 use of the District's electronic mail for union
4 purposes. The electronic data generated by these
5 activities are stored in the servers and systems
6 belonging to the District. A separate District
7 Administrative regulation (#53505) which implements
8 Board policy #53500 provides, in effect, that all
9 data stored in such files and servers are District
10 property and that the District may access such files
11 to ensure system integrity. The regulation also
12 states that individuals should not have any
13 expectation of privacy in such records. No discrete
14 regulation or agreement exists which explicitly makes
15 FEA electronic correspondence in possession of the
16 District immune to FOIL disclosure.

17 The motion to dismiss is granted. The Court has
18 examined the record and the applicable law and cannot
19 find any statutory basis for exempting disclosure of
20 the records sought by Respondent Koehler. If it
21 appears from Respondent Stulpin's review of the
22 information sought that information may be subject to
23 exemption under FOIL, then Respondent Stulpin should
24 take appropriate action under FOIL.

25 From the information before the Court, the

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2 records sought are clearly "records" in the
3 possession of a covered "agency" under the provisions
4 of the Public Officers Law ("POL") §86. None of the
5 exemptions contained in the POL §87(2) are implicated
6 by Respondent Koehler's request. The collective
7 bargaining agreement does not contain any specific
8 covenants to keep such matters confidential. Had
9 that been the intention of the parties, it would have
10 been embodied in the agreement.

11 Since public facilities funded by the taxpayers
12 of the District are being used to run and maintain
13 the systems being used by the FEA, and since District
14 Administrative regulation #53505 clearly provides
15 that information of this nature in its possession is
16 not private, the Court can find no basis upon which
17 to recognize the FEA's right to prevent disclosure
18 under FOIL.

19 Furthermore, FEA has no remedy under POL §89(5)
20 as that section only provides that a proceeding may
21 be brought to prevent the disclosure of trade secret
22 material under POL §87(2)(d). Petitioners, on this
23 record, have never requested of the Respondent
24 District that such matters be kept confidential in
25 advance of such a proceeding as is required by

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2 POL §89(5). Petitioners are also not aggrieved
3 persons who have been denied access to a record under
4 POL §89(4)(b), thus they have no capacity to bring
5 this proceeding.

6 The Court is unpersuaded by Petitioner's
7 citation to an Arizona case. Furthermore, nothing in
8 the Taylor Law is in direct conflict with the meaning
9 and effect of the FOIL statute. The fact that
10 "impairment" of "present or imminent contract awards
11 or collective bargaining negotiations" are explicitly
12 mentioned in POL §87(2)(c) to the exclusion of other
13 labor relations issues such as routine correspondence
14 undermines Petitioner's entire proposition. No
15 showing has been made that any material sought by
16 Respondent Koehler implicates the material mentioned
17 in POL §87(2)(c). In the instance that perhaps it
18 might, then it is incumbent upon the FCSD to restrict
19 dissemination of this material.

20 The Court barely finds this dispute ripe enough
21 for judicial resolution for the very fact that the
22 Court has not seen the proposed material or e-mails
23 and cannot make a judgment that any of it would be
24 confidential under law. Moreover, Petitioners are
25 not aggrieved within the meaning of POL §89(4)(b)

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2 such that they can bring a preemptive proceeding to
3 prevent disclosure.

4 Accordingly, Petitioners lack the capacity to
5 bring this proceeding and have failed to state a
6 cause of action.

7 Motion is granted. The petition is denied and
8 dismissed. Respondent to submit an Order and attach
9 a copy of this transcript for filing within 60 days.

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1 CERTIFICATION

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3 I, Lori G. Keenan, hereby certify that I am an
4 Official Court Reporter, Supreme and County Court, Rochester,
5 Monroe County, New York, duly appointed;

6 That I reported by machine shorthand the proceedings
7 had in Supreme Court on the 1st day of November, 2006, before
8 the Honorable David D. Egan, Supreme Court Justice, in the
9 Matter of the Application of John Baynes, Individually and as
10 President of the Fairport Educators Association for an Order &
11 Judgement pursuant to Article 78 of the CPLR , Petitioner,
12 against Fairport Central School District, Board of Education
13 of the Fairport Central School District, Janet Stulpin in her
14 capacities as the Clerk and the Records Access Officer of the
15 Fairport Central School District, and Thomas Koehler as a
16 necessary party, Respondents;

17 And the foregoing transcript, pages numbered
18 2 through 8, is a true, accurate and correct record of my
19 machine shorthand notes.

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Lori G. Keenan, C.S.R.

23 Dated this 1st day

24 of November, 2006, at

25 Rochester, New York.