

I.R. NO. 89-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-89-156

BAYONNE TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to issue a restraint requested by the Bayonne Teachers Association against the Bayonne Board of Education. The Board unilaterally implemented a new salary structure without reaching an agreement with the Association. Here, however, there was evidence of a genuine post-factfinding impasse and the Association did not meet its burden of demonstrating that it has a substantial likelihood of success on the facts of this matter.

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Appearances:

For the Respondent
Apruzzese, McDermott, Mastro & Murphy
(Robert T. Clarke, of counsel)

For the Charging Party
Zazzali, Zazzali, Fagella & Nowak
(Richard A. Friedman, of counsel)

INTERLOCUTORY DECISION

On December 9, 1988, the Bayonne Teachers Association ("Association") filed an unfair practice charge accompanied by an Application for Interim Relief with the Public Employment Relations Commission ("Commission"). The charge alleges that the Bayonne Board of Education ("Board") unilaterally and improperly implemented salary increases that were not negotiated with the Association. The charge contains a lengthy recitation of the negotiation history. Specifically, the last collective negotiations contract between the parties expired August 31, 1987. The parties commenced negotiations in March 1987 for a successor agreement. Extensive negotiations

continued and in August 1987 the parties declared an impasse and meetings were held with a mediator/conciliator. In March 1988, a fact-finder made recommendations on salaries which the parties did not accept. It is noted that all other terms and conditions of employment were agreed upon.

At the November 15, 1988 negotiations session between the Board and the Association, both presented four-year packages covering salary guides for 1987-88 through 1990-91. The Board's proposal was for salary increases of 6.2% for 1987-88; 10.2% for 1988-89; 9.6% for 1989-90 and 12.3% for 1990-91. The Association's counterproposal was acceptance of the salary increases for the first two years with alterations of the 4th year guide to provide money for the institution of longevity payments for the 3rd year and increases of 10.6% in the 3rd year and 10.5% for the 4th year. The parties failed to reach an agreement at this session and another meeting was held on November 29, 1988. At that time, the Board scheduled a meeting of its own for December 5, 1988. On November 30, 1988, the Board sent telegrams to the Association asking that the Association meet with the Board before December 5, 1988 in order to settle the contract since the Board was contemplating implementing its offer. The Board stated that it was willing to negotiate prior to the meeting of December 5, 1988. The parties met on December 2, 1988. The Board stated that it would have no more money put into its package and would hold firm to its November 15, 1988 package. The Association requested to negotiate a longevity

provision. No agreement was made at this December 2, 1988 meeting. On December 5, 1988, the Board met and adopted the final offer which was the package of November 15, 1988.

On the morning of December 6, 1988, the Board issued checks to employees of the unit represented by the Association which were retroactive checks for the 1987-88 school year and the current school year. These checks reflect the raise in the Board's final offer. The Association seeks to restrain the Board from implementing the new salary structure on its next regular payday December 15, 1988. The Association contends that these actions violated subsection 5.4(a)(1) and (5).^{1/}

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

^{1/} The Association also alleges violations of subsection (b)(2), (3), (4) and (5). These subsections refer to unfair practices committed by employee representatives. No facts were introduced on these charges and accordingly, they will not be considered here as part of the demand for interim relief.

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The Board, by way of affidavit, does not dispute much of the history of this matter as stated in the Association's charge. However, by way of affidavit of Clifford Doll, the Business Administrator of the Board, the Board asserts that the Association reviewed the Board's proposal at the December 2 meeting. A representative of the Association stated that the Association's counterproposal was its bottom line and he would not take anything less back to the teachers. Further, the affidavit goes on to say that the Association's negotiator's agreed that the parties were at intractable positions and stated "If you change your position, call us."

The Commission has long held that an employer may implement its last best offer in negotiations after a post-factfinding impasse if negotiations were in good faith. See Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977); Rutgers, the State University, P.E.R.C. No. 80-114, 6 NJPER 180 (¶11086 1980). The affidavit of the Board is evidence of a genuine post-factfinding impasse. Therefore, I do not believe the Association met its burden of demonstrating that it

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

has a substantial likelihood of success on the facts.^{3/} The
Application for Interim Relief is denied.


Edmund G. Gerber
Commission Designee

Dated: December 16, 1988
Trenton, New Jersey

3/ It is noted that the salary raises as implemented by the Board matched the salary raise in the Association's final offer. If there is not a final Commission decision in this matter prior to the start of the 3rd year of the Board's implemented offer, the Association may renew its application for interim relief.