

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-85-7

WILLINGBORO BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Commission's Designee denies a request to restrain arbitration regarding a labor organization's right to complete the processing of a grievance which it filed for an employee prior to the employee being removed from the unit, and which concerned issues which arose while the employee remained in the unit. However, the Designee did restrain the arbitrator from issuing an award which might concern the time period subsequent to the employee's removal from the unit.

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Appearances:

For the Respondent
Selikoff & Cohen, Esqs.
(Joel S. Selikoff, of Counsel)

For the Charging Party
Barbour & Costa, Esqs.
(John T. Barbour, of Counsel)

DECISION ON MOTION FOR INTERIM RELIEF

On September 12, 1984 the Willingboro Board of Education ("Board") filed an unfair practice charge and a request for interim relief with the Public Employment Relations Commission ("Commission") alleging that the Willingboro Education Association ("Association") had violated subsections 5.4(b)(1), (2), (3) and (4) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), ^{1/} by attempting to arbitrate the grievance of an employee, James Vance, whose title, Director of Vocational Education, was removed from the unit approximately three months after the grievance had been filed.

1/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and sign such agreement."

Pursuant to N.J.A.C. 19:14-9.2 the Board requested interim relief simultaneously with the filing of the Charge and submitted a verified complaint together with an Order to Show Cause. The Board submitted a letter in lieu of brief in support of its Motion on September 18, 1984, and the Association filed a brief in opposition to the Motion on September 19, 1984. A hearing was conducted herein on the rescheduled date, January 31, 1985. ^{2/}

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are well settled. The test is twofold: the charging Party must establish that it has a substantial likelihood of success in the final Commission decision of the legal and factual allegations, and, it must also establish that irreparable harm will occur if the requested relief is not granted. ^{3/}

The facts show that the Board filed a Clarification of Unit Petition on December 10, 1979 seeking to remove the title of Director of Vocational Education (as well as other titles) from the Association's unit allegedly because of its supervisory respons-

^{2/} The Order to Show Cause in this matter was signed on September 14, 1984 and originally made returnable for September 21, 1984. However, as a result of a joint request the hearing was postponed to explore a resolution of the matter. When the matter could not be resolved, the hearing was rescheduled as indicated.

^{3/} See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of N.J. (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and, In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

ibilities. The parties' recognition clause in the 1980-82 collective agreement, and the 1982-84 collective agreement provided that the Director was included in the Association's unit with the reservation that the parties had the right to adjudicate that issue. ^{4/}

As a result of the above Petition hearings were conducted in late 1981, and a hearing officer's report issued on April 14, 1984 recommending the removal of the Director's title. No exceptions were filed to that report and the Commission in In re Willingboro Board of Education, P.E.R.C. No. 84-146, 10 NJPER 389 (¶15179 1984), adopted the Hearing Officer's recommendation on June 14, 1984 thereby immediately removing the Director from the Association's unit.

Prior to the Hearing Officer's report the Association on March 25, 1984 filed a grievance on behalf of the Director, James Vance, alleging that he had been required to work beyond 7 1/4 hours as provided for in Art. 5 of the parties' collective agreement, and the grievance sought extra compensation for the assigned work. The grievance was denied at step one by the assistant superintendent on April 2, 1984, and denied at step two by the superintendent on April 9, 1984. The Association filed for binding arbitration on May 3, 1984 and in its proposed remedy sought an

^{4/} The recognition clause of the parties' 1980-82 and 1982-84 collective agreements provided at Art. 1 Sec. B that:

B. The parties hereto have agreed that for the purposes of this Agreement the Association was considered to be the representative of the Director of Vocational Education, Coordinator of Music and Coordinator of Health and Physical Education, which determination was made without prejudice to the rights of either the parties hereto or the individuals involved to pursue any appropriate avenue available to any of them for the purpose of obtaining a definitive adjudication of this issue.

order that Vance not be required to work beyond 7 1/4 hours per day, and that he be retroactively compensated for those time periods in which he was required to work beyond his regular workday.

The arbitration has been rescheduled for February 7, 1985 before Arbitrator Herbert Marks.

The Board seeks a restraint of the arbitration because Vance is no longer in the Association's unit and is no longer covered by its collective agreement. Since Vance was removed from the Association's unit because of his supervisory duties, and because of a conflict of interest that existed between himself and the remainder of the unit, the Board argued that it would be a further conflict for the Association to continue to pursue this grievance for Vance because it would only further divide Vance's loyalties between the Board and the Association. The Board maintained that as a result of In re Willingboro, supra, there should be an immediate cessation of representation for Vance by the Association. Furthermore, the Board argued that it would be illegal for the arbitrator to issue a prospective award regarding the length of Vance's workday.

The Association argued that Vance was not actually removed from its unit until June 14, 1984, the date of the Commission's decision, which was well after the filing of the grievance and the demand for arbitration. The Association therefore maintained that it had an obligation to pursue the grievance for that period of time in which Vance remained in the unit. The Association conceded that Vance was not entitled to an award that attempted to cover that period beyond June 14, 1984.

In support of its position the Board relied upon a variety of cases that dealt with the removal of titles from units due to supervisory status and conflict of interest concerns. ^{5/} The Association relied almost entirely upon In re Clearview Reg. Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977) which established the parameters for the filing of clarification of unit petitions and further established when decisions regarding such petitions would become effective. ^{6/} But none of the cases cited by the parties specifically dealt with the issue raised herein.

Having reviewed the facts and law I find that the processing of the instant grievance should not be restrained, but a restraint as to a prospective remedy is appropriate. In general, neither a substantial likelihood of success nor irreparable harm exist to justify interim relief.

Regarding the substantial likelihood requirement, I note first that although the Commission has consistently removed titles

^{5/} For example, the Board cited, State v. Professional Assoc. N.J. Dept. of Education, 64 N.J. 231 (1974); Bd. of Education of West Orange v. Wilton, 57 N.J. 404 (1971); In re Township of East Brunswick, D.R. No. 82-42, 8 NJPER 187 (¶13080 1982); In re Cinnaminson Twp. Board of Education, D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); and, In re Ramapo-Indian Hills Board of Education, D.R. No. 81-26, 7 NJPER 119 (¶12048 1981).

^{6/} The decision in In re Clearview, supra, established that decisions from clarification of unit petitions (such as In re Willingboro, supra) dealing with the removal of titles from negotiations units because of supervisory status or conflict of interest concerns become effective immediately upon the expiration of the collective agreement which was in effect when the clarification of unit petition was filed. In the instant case the agreement in effect when the Board filed the Petition in 1979 had expired long before the Commission issued In re Willingboro on June 14, 1984. Consequently, the Commission's decision removing Vance from the unit was effective immediately.

from negotiations units because of conflicts of interest as set forth in the cases cited by the Board, the Commission has not had an opportunity to decide whether such a removal would require a labor organization to immediately cease processing a grievance which arose when the title was clearly included in the unit. Until the Commission has an opportunity to decide that issue I cannot find that the Board has a substantial likelihood of success herein.

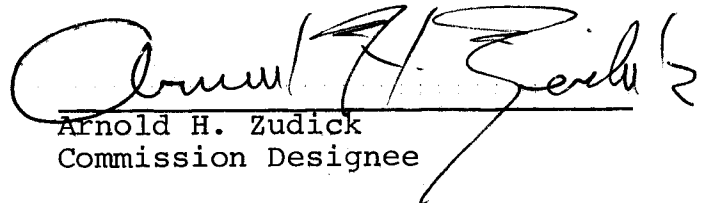
Second, the recognition clause of the parties' collective agreement clearly included the Director in the Association's unit. Since decisions by hearing officers are only recommendations and not effective implementations of a decision, the Director's title was not officially removed from the unit until the Commission issued its order on June 14, 1984. At that point the grievance had already been processed and arbitration initiated, and the Association may have had a legitimate right to complete the arbitration process.

Third, in application of a balancing test, i.e., Woodstown-Pilesgrove Board of Education v. Woodstown-Pilesgrove Education Assn., 81 N.J. 582 (1980), I find that the balance must be struck in favor of permitting the public employee to pursue a grievance dealing with purely economic concerns covering that time period in which he was clearly in the unit, rather than restraining the grievance because of any potential conflict that may arise. In that regard I note that the grievance does not and should not infringe upon the Director's ability to perform his supervisory functions, and there is no evidence that any additional conflict is of a substantial nature.

Regarding the irreparable harm requirement, I note that the instant grievance only concerns contractual issues, the grievance does not appear to interfere with managerial prerogatives of the Board, and the Board has in fact raised contractual defenses to the grievance. Consequently, noting the lack of a substantial likelihood of success as well as no irreparable harm, the Board's request for a restraint of arbitration is denied.

However, the Board is entitled to a restraint with regard to any attempt by the arbitrator to issue a remedy which would affect Vance's terms and conditions of employment from June 14, 1984 and beyond. A remedy of that kind would meet the irreparable harm and substantial likelihood of success standards. In particular, the arbitrator is restrained from issuing an award which would prevent the Board from establishing Vance's workday, and he is restrained from awarding Vance any additional compensation for any extra hours he may have worked from June 14 and beyond.

Accordingly, based upon the foregoing discussion, and but for the restraint as to any prospective remedy, the Board did not satisfy the standards for interim relief and, therefore, its request to restrain the instant arbitration is denied.


Arnold H. Zudick
Commission Designee

Dated: February 5, 1985
Trenton, New Jersey