

I.R. NO. 2000-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHESTER TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-99-411

CHESTER TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Chester Township Education Association sought to enjoin the Board from allowing an elementary school principal to include a recommendation in certain teachers' annual performance evaluations calling for them to take graduate courses as a means to improve their teaching performance. The Commission Designee found that the Association had not established that the principal's use of the PIP did not conform to the usual means by which suggestions for improvements to teaching performance are made and, therefore, did not constitute a unilateral change in terms and conditions of employment. Accordingly, the Commission Designee found that the Association had not established a substantial likelihood of success. The Commission Designee denied the Association's application for interim relief.

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Appearances:

For the Respondent, Schwartz, Simon, Edelstein, Celso &
Kessler, attorneys
(Joseph R. Morano, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys
(Gail Oxfeld Kanef, of counsel)

INTERLOCUTORY DECISION

On June 28, 1999, the Chester Township Education Association (Association) filed an unfair practice charge and amended unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Chester Township Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating 5.4a(1), (3) and

(5) of the Act.^{1/} The unfair practice charge was accompanied by an application for interim relief. On July 2, 1999, an order to show cause was executed and a return date was scheduled by mutual agreement of the parties for August 24, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. At the conclusion of oral argument, the parties requested that I refrain from issuing a decision in order to provide them with an opportunity to explore settlement possibilities. On or about September 1, 1999, I was advised that a settlement could not be reached and I was asked to issue a decision. The parties alleged the following facts.

The Association is the exclusive collective negotiations representative for all certified teaching staff members employed by the Board. On or about June 30, 1998, the most recent collective negotiations agreement between the parties expired. The parties are currently engaged in successor negotiations, but as of the date of oral argument no agreement had been reached.

^{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. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

During negotiations, the Board's team proposed that all non-tenured teachers obtain a Master's degree within seven years of the date of their first employment with the Board. The proposal stated that if a non-tenured teacher did not so obtain a Master's degree, his/her annual salary increase would be limited to one hundred dollars (\$100) in the eighth year of employment and would remain at that level until he/she obtained a Master's degree. Under the Board's proposal, prior to the eighth year, the teacher would advance on a regular teachers' salary guide. Additionally, the Board's proposal sought to have all teachers complete nine (9) credit hours of course work towards an advanced graduate degree in the field in which the teacher teaches, within three (3) years of the date of the successor agreement.

In or about June 1999, ten teachers employed at the Dickerson Elementary School received their annual performance evaluations from the school's principal. In the narrative portion of the annual evaluations, the teachers were "encouraged" to continue to pursue training "preferably through a graduate course" rather than through a one- or two-day workshop offering. The principal encouraged the teachers to take a graduate course as opposed to a one- or two-day workshop offering because the principal believed that there are too many facets to an effective program for it to be adequately taught in a short session. The principal was not part of the successor negotiations process.

The annual performance evaluations also contain each teacher's Professional Improvement Plan (PIP). The PIPs of the ten Dickerson teachers specifically called for the teacher to take graduate courses toward a Master's degree; the course work to begin by Spring 2000.

The Association contends that the language contained in the PIP does not merely require the teacher to take graduate courses, but mandates that the teacher enroll in a graduate program leading to a Master's degree. Thus, the Association contends that the PIP requires teachers to matriculate in a Master's program. The Association argues that if a teacher does not fulfill her/his PIP, s/he is subject to discipline.

The Board contends that these teachers' PIPs do not require them to obtain a Master's degree. The Board contends that the principal's actions calling for ten teachers to take graduate courses does not constitute a change in terms and conditions of employment for negotiations unit members as they are tailored to the individual teachers, not the unit as a whole. The Board asserts that it has authority to use the PIP to recommend steps teachers should take to improve their performance and ameliorate weaknesses. The Board concedes that it is required to reimburse teachers for any course work which a teacher is required or requested to take by the administration. The Board contends that a teacher's PIP is precisely the place where the Board would make suggestions to cure perceived educational deficiencies by

recommending suggestions for improvements. The Board cites N.J.A.C. 6:3-4.3 which states that PIPs are created "to correct deficiencies or to continue professional growth." The Board asserts that it was simply following the regulatory framework in formulating the ten teacher's PIPs in accordance with the State Board of Education. Thus, the Board argues that any challenge to the contents of a PIP or challenge to the process by which these PIPs were created should be heard before the Commissioner of Education. Indeed, the Association conceded during oral argument that elements of the instant dispute could be determined by the Commissioner of Education.

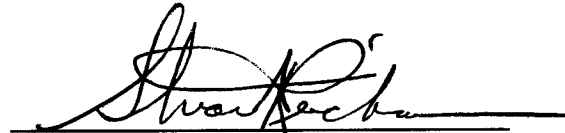
To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Although the Board made proposals concerning graduate level course work and the acquisition of a Master's degree, it has not been clearly established that the PIP placed in the teachers'

annual evaluation by the principal constituted anything other than a means to correct deficiencies or to continue professional growth as provided by the Department of Education's regulations. Other than the ten teachers who received the PIP from the Dickerson Elementary School principal, no other unit teachers were similarly treated. Since it is reasonable to conclude that the PIPs at issue here conform to the usual means by which the Board's administration suggests teaching performance improvements, it is not clearly established that the PIPs in this case constitute a unilateral change in terms and conditions of employment. Further, according to the Board's argument, the PIP merely constitutes a recommendation rather than a strict mandate; presumably, no discipline would flow from not acting on a recommendation. For these reasons, I find that the Association has not established that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, one of the requisite elements to obtain interim relief.

ORDER

The Association's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: September 3, 1999
Trenton, New Jersey