

I.R. NO. 88-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-88-176

OLD BRIDGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee restrains the unilateral implementation of a smoking ban in non-pupil contact areas by the Old Bridge Township Board of Education. The parties current agreement provided for smoking in such areas. The Commission has previously held that smoking in non-pupil contact areas is a term and condition of employment. This is an interim decision only and is subject to a final Commission determination.

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Appearances:

For the Public Employer
Wilentz, Goldman & Spitzer, Esqs.
(Steven J. Tripp, of counsel)

For the Charging Party
Oxford, Cohen, Blunda, Freidman,
LeVine and Brooks, Esqs.
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On January 6, 1988, the Old Bridge Township Education Association filed an Unfair Practice Charge accompanied by an Application for Interim Relief with the Public Employment Relations Commission. The charge alleges that the Old Bridge Board of Education violated subsections (a)(1), (3) and (5) of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.
("Act")^{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 relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The parties are currently engaged in negotiations for a successor contract and the current contract provides that smoking is permitted in certain non-pupil contact times and places during the day. The Board of Education, without negotiations, unilaterally

^{1/} These subsections 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; and (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."

^{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).

issued new regulations outlawing smoking throughout the school buildings.

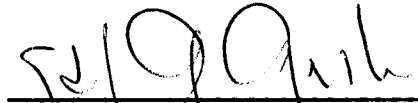
It is well settled that a unilateral alteration of mandatory terms and condition of employment undermines the status quo during negotiations. Such conduct constitutes an unfair practice which is enjoined by interim restraints. See CWA v State of New Jersey, I.R. No. 82-2, 8 NJPER 425 (¶13197 1982); Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey Stockton State College, P.E.R.C. No. 76-6, 1 NJPER 41 (1975) and Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

The Commission has previously held that smoking is a term and condition of employment. In Warren Hills, P.E.R.C. No. 82-8, 7 NJPER 445 (¶12198 1981), it was stated as follows:

The issue involved herein is whether the Board must negotiate with the teachers in deciding whether teachers should be permitted to smoke within the confines of physical facilities exclusively reserved for teachers during non-student contact time. The reasons proffered by the Board may be valid, but they do not render the subject a managerial prerogative. Accordingly, we hold that the arbitration award was made with respect to a grievance concerning a mandatory term and condition of employment.

Accordingly, the Association here has a substantial likelihood of success at a full plenary hearing and in balancing the relative hardship to the parties, I find the conduct of the employer undermines the position of the Association in negotiations; however, the suspension of the new smoking ban would cause no significant harm to the employer. Accordingly, it is hereby ordered that the

smoking ban be suspended pending a full plenary hearing in this matter.



Edmund G. Gerber
Commission Designee

DATED: January 8, 1987
Trenton, New Jersey