I.R. NO. 94-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-94-360

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Piscataway Township Board of Education from substituting a contractual study or non-teaching period with a teaching period. The Board acknowledges it intends to take the alleged action but claims it has a contractual right to do so under the parties collective negotiations agreement. Here, the employer has relied on the terms of the same agreement that the Association claims has been violated. Accordingly, there was a significant question as to whether the charging party will prevail before the full Commission. See State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984),The Application was denied.

I.R. NO. 94-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-94-360

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Rubin, Rubin, Malgran & Kuhn, attorneys
(David B. Rubin, of counsel)

For the Charging Party
Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On June 3, 1994, the Piscataway Township Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Piscataway Township Board of Education engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)[1/] when on May 9, 1994, the Board informed the Association membership that it intended

---

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. (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."

to substitute the contractual study or non-teaching activity period with a teaching class period yet refused to negotiate the impact of their increased work load on the high school staff.

An Order to Show Cause was filed with the unfair practice charge. The order was executed and the parties waived a hearing and have relied on the papers submitted.

The Board acknowledges it intends to take the alleged action but claims it has a contractual right to do so.

The Charging Party and Board are parties to a collective negotiations agreement for the period July 1, 1992 through June 30, 1995.

Article XV Teachers Section B.1 of the agreement provides:

> The daily teaching load of high school teachers (grades 9-12) shall be six (6) teaching periods and the assignment of a supervised study or another non-teaching activity period, exclusive of preparation time, shall be one of the six (6) periods. Any teacher in the high school who teaches seven (7) classes shall be paid an additional salary amount equal to 1/6th of his/her annual salary. All reasonable efforts shall be made for all teachers in the senior high school to have one (1) preparation period per day. Subject to the above, senior high school classroom teachers shall not be required to make more than three (3) preparations at one time in not more than two (2) subjet areas. If, because of the number of classroom teachers in a particular subject, more than three (3) preparations are required, senior high school personnel concerned shall have a daily teaching load of five (5) teaching periods and no supervised study period or other non-teaching activity shall be assigned.

This dispute centers around the interpretation of Article XV. While the Association claims this article gives high school teachers the right to a "supervised study or another non-teaching activity period as part of their load of six teaching periods." The Board argues this same provision gives it the right to assign six teaching periods to high school teachers; it argues that the contract does not confer a right to a non-teaching activity period, rather it argues that it merely provides that if such a period is assigned it will be credited as a teaching period.

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/

In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that a mere contract violation does not, absent more, constitute an unfair

---

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).

practice. Here, as in Human Services, the Charging Party alleges the contract has been violated while the Respondent argues in turn that it had a right to take the disputed action pursuant to the terms of the same contract provision.

Accordingly, there is a significant question as to whether the Charging Party will prevail before the Commission. It has failed to meet its heavy burden for the granting of interim relief.

The application for interim relief is denied.

Edmund G. Gerber
Commission Designee

DATED: June 24, 1994
Trenton, New Jersey