I.R. NO. 2003-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKEHURST BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2002-352

LAKEHURST EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Sinn, Fitzsimmons, Cantoli, West & Pardes, attorneys
(Kenneth Fitzsimmons, of counsel)

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

SYNOPSIS

The Lakehurst Education Association filed an unfair practice charge, accompanied by an application for interim relief, alleging that the Lakehurst Board of Education unilaterally extended the work year of the child study team during negotiations. The Board contends that it was required to extend the child study team's work year to comply with various State education regulations and directives. The Commission Designee found that requiring the child study team to work an extended work year may have been an exercise of managerial prerogative and, therefore, non-negotiable. The Association's application for interim relief was denied.

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INTERLOCUTORY DECISION

On June 28, 2002, the Lakehurst Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Lakehurst 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 N.J.S.A. 34:13A-5.4a(1), (3) and (5).[1/] The Association alleges that the

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

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Board unilaterally altered terms and conditions of employment during the course of successor collective negotiations by extending the work year of the four employees comprising the child study team, particularly that of the speech correctionist. The unfair practice charge was accompanied by an application for interim relief. On July 1, 2002, I executed an order to show cause and set a return date for August 2, 2002. At the Association's request, and with the Board's agreement, the return date was rescheduled to August 20, 2002. By the time oral argument was conducted, the period covering the work year extension had been completed. The Association seeks an order preventing the Board from unilaterally extending the work year of the child study team's members. The parties submitted briefs, affidavits, and exhibits in accordance with the Commission's rules and argued orally on the scheduled return date. The following facts appear.

The Association and the Board are parties to a collective negotiations agreement covering the period July 1, 1999 through June 30, 2002. The parties are currently engaged in negotiations for a successor agreement to begin retroactively on July 1, 2002.

1/ Footnote Continued From Previous Page

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."

For the 2001-2002 academic year, the child study team was comprised of four ten-month positions which included the child study team coordinator/learning disability teacher-consultant, school psychologist, school social worker, and speech correctionist. On May 29, 2002, the Board adopted a resolution abolishing the four ten-month child study team positions and, simultaneously, passed a second resolution establishing the same four child study team positions working a ten-month and 20 day school year. On or about May 30, 2002, the child study team members were informed that the Board had abolished their ten-month positions and were offered employment in the newly created positions which included the additional 20 day term. The Board required the child study team members to accept the new positions by June 14, 2002, since it anticipated members to begin working the extended term on June 24, 2002.

The Board contends that it was required by Department of Education regulation to establish an extended school year program for special education students. Along with the extended special education program, the Board is required to provide "related services" which are delivered by the child study team. On May 7, 2002, the Board received a letter from Ocean County Superintendent Lucille Rielly indicating that:

> ...related services are required as part of the extended school year program. Funding for the extended school year program is dependent upon the provision of all the required services in the student IEP's.

It asserts that in order to comply with various State regulations requiring that related services be part of the extended education program and to avoid the loss of necessary funding, it had no choice but to extend the work year for the child study team members. It claims that speech correctionist Susan Tatlow was best suited to deliver services during the extended education program because she provided the bulk of the speech services to the students during the regular academic year.

While the parties have not completed negotiations concerning the issues raised by the work year extension of the child study team members, they are currently negotiating regarding certain impact issues including, for example, compensation and leave time. It appears that the parties intend to continue negotiations on child study team work year extension issues during their on-going negotiations for the successor agreement.

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).

In Board of Education of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Education Association, 81 N.J. 582 (1980), the New Jersey Supreme Court adopted a balancing test requiring that the "nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives." Id. at 589-591. The Court held, "[w]hen the dominate issue is an educational goal, there is no obligation to negotiate . . . . Id. at 591. However, "[i]t is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions." Id. at 593. Thus, "[t]erms and conditions of employment arising as impact issues are . . . mandatorily negotiable unless negotiations would significantly interfere with the related prerogative." Piscataway Tp. Ed. Ass'n v. Piscataway Tp. Bd. of Ed., 307 N.J. Super. 263, 275 (1998).

Teacher work year is mandatorily negotiable. Piscataway Tp. Bd. of Ed. and Piscataway Principals Assn., P.E.R.C. No. 77-65, 3 NJPER 169 (1977) and P.E.R.C. No. 77-37, 3 NJPER 72, aff'd 169 N.J. Super 98 (App. Div 1978); Burlington County Faculty Assn. v. Board of Trustees, 64 N.J. 10 (1973); Pascack Valley Reg. H.S. Dist., P.E.R.C. No. 99-104, 25 NJPER 295 (¶30124 1999); Lenape Valley Reg. Bd. of Ed., P.E.R.C. No. 97-25, 22 NJPER 360 (¶27189 1996); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994). The Board's abolition of the 10-month child study team

positions and its creation of "new" 10-month, 20 day positions does not appear to change the fact that the Board's action was a work year modification and is normally mandatorily negotiable. However, the Association's right to negotiate regarding mandatory subjects of negotiation must be balanced against the employer's right to be free from interference with its exercise of its managerial prerogatives. In this case, it appears that the Board's extension of the child study team's work year was implemented in order to remain compliant with Department of Education regulations requiring related services be provided with the extended special education program for students. See Newark School District, H.E. No. 97-29, 23 NJPER 327 (¶28149 1997) adopted P.E.R.C. No. 96-68, 24 NJPER 11 (¶29007 1997); Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992). Accordingly, on balance, the Board may not have incurred an obligation to negotiate regarding the determination to extend the child study team members' work year prior to implementation under the specific facts of this case. However, the Board still incurs a continuing obligation to negotiate with respect to impact issues flowing from its decision to extend the work year. Piscataway Tp. Ed. Ass'n. During oral argument and pursuant to its written submissions, the Board has acknowledged its on-going obligation to engage in good faith negotiations on impact issues arising from its implementation of the work year extension. Such impact issues, upon demand during negotaitions, could include which employees, provided they are qualified, actually work the extended work year. See Hoboken.

Implementation of a managerial prerogative does not legally constitute a change in terms and conditions of employment, thus, such exercise does not otherwise chill ongoing negotiations. See New Jersey Division of State Police, I.R. No. 2001-7, 27 NJPER 155 (¶32053 2001). Consequently, for the reasons expressed above, I find that the Association has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, one of the requisite elements to obtain interim relief. Moreover, the period of extension has already been completed. Accordingly, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice process.

ORDER

The Association's application for interim relief is denied.

Stuart Reichman
Commission Designee

DATED: August 26, 2002
Trenton, New Jersey