

I.R. NO. 2003-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEMBERTON BOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-41

PEMBERTON BOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Pemberton Borough Board of Education and the Pemberton Borough Education Association engaged in collective negotiations resulting in a Memorandum of Understanding which was subject to ratification by the negotiators' respective principles. The two Board members who sat on the Board's negotiations team and signed the Memorandum did not vote in favor of ratification. The Commission Designee found that the two Board members had a duty to vote in favor of ratification and ordered the Board to conduct another vote so that the Board members who signed the Memorandum could positively recommend to the Board that it vote in favor of ratification and the two Board members could vote in favor of ratification. Interim relief granted.

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Appearances:

For the Respondent,
Barry J. Wendt, attorney

For the Charging Party,
Zeller & Bryant, attorneys
(Allen S. Zeller, of counsel)

INTERLOCUTORY DECISION

On August 14, 2002, the Pemberton Borough Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Pemberton Borough 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) and (5).^{1/} The Association alleges that the Board

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

violated the Act when the two Board members who sit on the Board's negotiations team did not recommend ratification of a memorandum of understanding to the full Board and, subsequently, did not vote in favor of ratification of the memorandum when they, along with the full Board, voted on that issue. The unfair practice charge was accompanied by an application for interim relief. On August 14, 2002, I executed an order to show cause and set a return date for September 11, 2002. The Association seeks an order preventing the two Board members who served on the Board's negotiations team from refusing to recommend the affirmative ratification of the memorandum of understanding to the full Board and from refusing to vote in favor of ratification. 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 is the majority representative of all classroom teachers and instructional aides. The Board and the Association have been engaged in negotiations for a successor agreement since the expiration of the prior agreement on June 30, 2001. At the outset of negotiations, the parties agreed that any tentative agreement reached would be subject to ratification by both

1/ Footnote Continued From Previous Page

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."

sides. During the course of negotiations, the parties engaged in mediation, which proved unsuccessful, and fact-finding. During fact-finding, the parties reached an agreement culminating in a memorandum of understanding which was signed by members of the Board's and the Association's negotiating committees on July 11, 2002. The preamble of the memorandum stated, in relevant part, the following:

The parties hereby agree to recommend ratification of the following changes to the agreement to their respective principals by no later than July 31, 2002[.]

The memorandum was signed by Board members David Ahrens and Michele Bogdanowicz.

On or about July 16, 2002, the memorandum of understanding was presented to the full Board for its review and ratification. The Board unanimously rejected ratification. The Board determined that additional issues needed to be presented to the Association for negotiations before a final collective agreement could be concluded. The Board claims that it was prevented from communicating with its negotiators due to conflicts of interest applicable to other Board members. Subsequently, the Board's negotiating team conveyed a counter-proposal to the Association.

The Association contends that the two Board members serving on the Board's negotiating committee did not recommend to the Board that the memorandum of understanding be affirmatively ratified. The Board contends that those Board members did recommend ratification of the memorandum, but, voted against ratification because of

additional issues which the majority of the Board sought to include in the collective agreement and so advised its negotiators during the ratification meeting.

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).

This case is nearly identical to Borough of Somerville, H.E. No. 93-10, 18 NJPER 486 (¶23222 1992) adopted P.E.R.C. No. 93-35, 19 NJPER 1 (¶24000 1992) and National Park Bd. of Ed. H.E. No. 93-27, 19 NJPER 290 (¶24150 1993). In Borough of Somerville, the Commission found that the Borough violated its duty to negotiate in good faith where two members of the Borough's negotiations team, who were also Borough Council members, failed to recommend and failed to vote in favor of a tentative agreement as required by the preamble of that agreement. In National Park Bd. of Ed., the Board violated its duty to negotiate in good faith where the Board members, who were signatories to a tentative agreement, failed to

vote in favor of ratification, thereby repudiating the preamble of the agreement.

In the instant case, it is undisputed that the Board members serving on the Board's negotiations team did not vote in favor of ratification.^{2/} Consequently, regardless of whether those Board members recommended ratification, it appears that the Board breached its duty to negotiate in good faith when its negotiators voted against ratification. Borough of Somerville; National Park Bd. of Ed. Accordingly, the Association has established the requisite likelihood of success on its legal and factual allegations in this matter.

The signatories to the memorandum of agreement appear to have a clear duty to vote in favor of ratification in accordance with its express terms. When the Board's negotiating team members voted against ratification and breached their duty to negotiate in good faith, the parties efforts to reach a negotiated settlement is undermined, causing a chilling effect to the negotiations process. I find that such chilling effect, under the particular facts of this case, constitutes irreparable harm to the Association.

In weighing the relative hardship to the parties resulting from the grant or denial of interim relief, I find that the scales tip in favor of the Association. The interim relief order set forth

^{2/} The parties dispute whether the Board members who served on the Board's negotiations team recommended to the Board that it affirmatively ratify the memorandum. The resolution of this issue does not change the outcome of this decision.

below is designed to return the parties to a circumstance where the Board can fulfill its obligation to negotiate in good faith. By not requiring the Board to fulfill its duty under the memorandum of understanding, the negotiation process is chilled and the Association is irreparably harmed. A Commission order at the end of the process when the unfair practice charge is fully litigated would not provide the Association with an effective remedy. The Board suffers significantly less harm as the result of the relief ordered here.


The public interest is not injured by granting an interim relief order in this case. There is no impact upon students or the Board's mission to deliver its educational program. Moreover, the public interest is fostered by requiring the Board to adhere to the tenets of the Act.

Following the Order entered in this case, the above-captioned matter will proceed through the normal unfair practice processing mechanism.

ORDER

The Board is restrained from refusing to fulfill its duty to implement the express terms of the memorandum of agreement. The Board is ordered to conduct another ratification vote pursuant to the memorandum of understanding and Commission caselaw so that the Board members who serve on the Board's negotiating team and executed the memorandum of understanding recommend that the full Board

affirmatively ratify the memorandum of understanding and the Board members who signed the memorandum vote in favor of ratification. This interim order will remain in effect pending a final Commission order in this matter.

A handwritten signature in cursive script, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: September 18, 2002
Trenton, New Jersey