

I.R. NO. 95-13

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG HILL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-95-109

LONG HILL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to grant an order restraining the Long Hill Board of Education. In September 1994, the Board issued teaching schedules which allegedly increased pupil contact time and reduced duty-free lunch time. The Board argued and introduced evidence to prove that pupil contact time was not raised nor was there a reduction of duty-free lunch time. The disputed facts here can only be resolved after a full plenary hearing. The Association failed to demonstrate that it had a substantial likelihood of success on the facts of the case.

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Appearances:

For the Respondent  
Cassetta, Taylor & Whalen  
Raymond A. Cassetta, consultant

For the Charging Party  
Bucceri & Pincus, attorneys  
Sheldon H. Pincus, of counsel

INTERLOCUTORY DECISION

On October 11, 1994, the Long Hill Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Long Hill Board of Education committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).<sup>1/</sup> The Association and Board are parties to a collective

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<sup>1/</sup> 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."

negotiations agreement which expired on June 30, 1994. The parties are currently negotiating for a new agreement.

In September 1994, the Board issued classroom teaching schedules for the Central Middle School. It was alleged that: (1) the schedules included a unilateral increase in pupil contact time and a unilateral decrease in duty-free lunch time for the majority of the classroom teachers and (2) the establishment of an Advisor/Advisee Program unilaterally increased pupil contact time and (3) the recently expired contract provides for committees for curriculum development. The meetings for the committee extend beyond the normal working hours. This provision also contains a sunset provision. It is alleged that the Board abrogated the sunset provision and continues to schedule curriculum development meetings outside the normal school day.

The unfair practice charge was accompanied by an order to show cause which was executed and a hearing was conducted on October 20, 1994. The transcript was received on December 6, 1994.

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.<sup>2/</sup>

The Association contends that a new schedule was promulgated in the Central Middle School which increased pupil contact time approximately 22 minutes a teacher. The exact amount of pupil contact time varied from teacher to teacher. This unilateral increase during negotiations for a new contract has placed an impermissible chill on negotiations. See Evesham Tp. B/E, I.R. No. 95-10, 21 NJPER \_\_\_\_ (\_\_\_\_ 1994). However, the Board contended that there is an actual drop in pupil contact time. The record reveals that a major factor in this discrepancy concerns the elimination of a period known as the "supplemental curriculum period". The Board contends this period should be counted as pupil contact time while the Association argues this should be counted as free time. The Association has not demonstrated it has a substantial likelihood of success in proving pupil contact time has increased. This issue can only be resolved after a full plenary hearing. There was also testimony that individual teachers had been assigned a greater number of classroom hours than in 1993-94. However, the record indicates that these work-loads increases were not permanent assignments. These were temporary and/or mistakes in

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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).

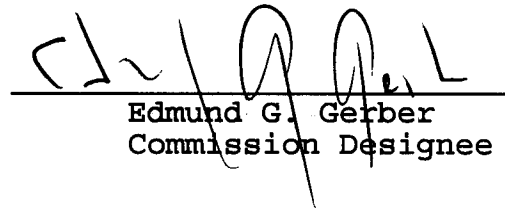
assignments at the start of the school year that were being worked out.

Similarly, because the issue of pupil contact time is in dispute, I cannot say the increase in the Advisor/Advisee Program has resulted in an increase in pupil contact time. The Association has not shown it has a substantial likelihood of success in prevailing on the facts as to its allegation that pupil contact time has increased.

Finally, the contract provision concerning career development meeting allows for meeting outside the school day but provides that this provision "becomes obsolete with the expiration of the existing contract."

This contract provision cannot be read to limit the Board's managerial right to schedule meetings. Under the term of the sunset provision, these employees may now be entitled to additional compensation. However, that may be for an arbitrator to decide and is not an appropriate matter for an interim relief application.

The application for interim relief is denied.



Edmund G. Gerber  
Commission Designee

DATED: December 13, 1994  
Trenton, New Jersey