I.R. NO. 95-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKEWOOD BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-95-282

LAKEWOOD EDUCATION ASSOCIATION/NJEA,

Charging Party.

Appearances:

For the Respondent,
Cassetta, Taylor & Whalen
(William Hybbeneth, Jr.)

For the Charging Party,
Starkey, Kelley, Blaney & White, attorneys
(Anthony Mancuso, of counsel)

INTERLOCUTORY DECISION

On February 21, 1995, the Lakewood Education Association/NJEA filed an unfair practice charge against the Lakewood Board of Education alleging that the Board engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).[1/] The parties are engaged in negotiations for a successor

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.

collective negotiations agreement to the one which expires in June 1995. It was specifically alleged that during the course of negotiations, the Board of Education proposed numerous changes in its health benefit plan. The Association requested certain information with regards to the cost of the current Board of Education health plan and in particular, the cost of those portions directly related to the Board's proposals. The Board refuses to produce the information requested. Specifically, the Board refuses to answer two questions.

1. What savings does the Board of Education realize if the no-deductible proposals are enacted as presented?

2. What are the costs to the Board of Education to terminate the agreement with the present carrier?

The Board's answer to these questions has been that the cost is strictly the business of the Board of Education.

On May 3, 1995, the Association filed an order to show cause seeking an interim order compelling the Board to provide this information. The order was executed and a hearing on the order was conducted on May 17, 1995.

The Board does not contest the facts as alleged in the unfair practice charge. It is not claiming that it is in financial difficulty and is unable to pay nor does it claim any hardship or special circumstance. Rather, it maintains it has no obligation to provide this information to the Association and claims that the harms to the Association are not irreparable.

The Commission has adopted private sector law in determining whether an employee representative is entitled to information from an employer.[2/] An employee representative is entitled to information which helps it to properly represent employees. However, the employer's obligation to release information is not absolute and the duty to disclose turns upon the circumstances of the particular case. Downe Tp. B/E, P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); Shrewsbury B/E, P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981). NLRB v. Truitt Mfg. Co., 351 U.S. 149, 153.

"The [NLRB] has consistently upheld the right of a union to obtain information that it needs to bargain intelligently." The Developing Labor Law, at 679 (3rd ed. 1992)

> Insurance and pension plan information must be furnished, including the employer's insurance plan cost information and employee benefits thereunder. Because the union might desire to forgo such insurance in favor of increased take-home pay, information about the cost of an insurance plan is considered necessary to effective negotiation for the union in its representation capacity has an affirmative duty to intelligently evaluate all employees benefits for which it is negotiating. [Id. at 650, 651]

This information must be disclosed to the union without regards to the employer's ability to pay. Cone Mills Corp., 413 F2d

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2/ It is appropriate for the Commission to be guided by federal cases interpreting the Labor Management Relations Act, 29 U.S. 181 et seq. See Township of Bridgewater Public Works Assn., 95 N.J. 235 (1984); Lullo v. Int'l Ass'n of Firefighters, 55 N.J. 409 (1970).

447, 71 LRRM 2916 (CA 4, 1969) at 2918. NLRB v. Borden, Inc., Borden Chem. Div., 600 F2d 313, 101 LRRM 2727 (CA 1, 1979)(employer required to furnish union insurance cost figures on a per employee, per hour basis); NLRB v. Feed & Supply Center, 294 F2d 650, 48 LRRM 2993 (CA 9, 1961); NLRB v. John S. Swift Co., supra, note 614 (health and welfare plan; Ironton Publications, 294 NLRB No. 73, 131 LRRM 1426 (1989); O. Voorhees Painting Co., 275 NLRB 779, 119 LRRM 1228 (1985); Accurate Web, 266 NLRB 487, 112 LRRM 1337 (1983), enforced, 818 F2d 273, 125 LRRM 2358 (CA 2, 1987); Bakery, Inc., 259 NLRB 766, 109 LRRM 1025 (1981); Crane Co., 244 NLRB 103, 102 LRRM 1351 (1979)(pension coverage information); Industrial Welding Co., 175 NLRB 477, 71 LRRM 1076 (1969); Skyland Hosiery Mills, supra, note 618 (insurance coverage and portions of premiums paid by employers and employees). Sylvania Elec. Prods. v. NLRB, 358 F2d 591, 61 LRRM 2657 (CA 1), cert. denied, 385 US 852, 63 LRRM 2235 (1966).

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.[3/]

The Association has a substantial likelihood of success on the law in this matter and the facts are not in dispute.

The Commission has recognized the unique status of the parties during collective negotiations. Galloway Tp. B/E v. Galloway Tp. Ed. Assn., 78 N.J. 28 (1992). Negotiations are an on-going process and the information sought is necessary for that process. The withholding of this information therefore, interferes with negotiations. It is likely that no meaningful progress will take place in negotiations until this information is disclosed and without an interim order, this matter might not be resolved until well after the current contract expires in June.

On balance, the greater hardship will result in the denial of the requested relief. Accordingly, I ORDER the Lakewood Board of Education to provide the financial information requested by the Association. Specifically, it must provide to the Association all relevant information on the savings the Board of Education realizes if the no-deductible proposals are enacted as presented and the

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3/ 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).

costs to the Board of Education for terminating the agreement with the present carrier.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: May 19, 1995
Trenton, New Jersey