

I.R. NO. 90-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL SCHOOL  
DISTRICT BOARD OF EDUCATION AND  
PACE, PROFESSIONAL AND CLERICAL  
EMPLOYEES, ILGWU,

Respondents,

-and-

Docket No. CO-90-33

MATAWAN REGIONAL TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

On June 23, 1989, the Commission issued Matawan-Aberdeen Reg. Bd of Ed, P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989). The Commission ordered that the Board negotiate in good faith for 30 days with the Matawan-Aberdeen Regional Teachers Association. The Association brought this application for interim relief seeking to compel the Board to negotiate in good faith. Given the conflicting nature of submitted affidavits, the Association failed to show it had a substantial likelihood of proving the Board refused to negotiate in good faith and its application was denied.

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Appearances:

For the Respondent - Board of Education  
Kenney, Kenney, Gross & McDonough, Esqs.  
(Michael J. Gross, of counsel)

For the Respondent - PACE  
Lester Kushner, Esq.

For the Charging Party  
Oxford, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs.  
(Mark J. Blunda, of counsel)

INTERLOCUTORY DECISION

On August 2, 1989, the Matawan Regional Teachers Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Matawan-Aberdeen Regional School District Board of Education ("Board") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.3; specifically, 5.4(a)(1),(2),(3),(4),(5) and

(7)<sup>1/</sup> when it failed to negotiate in good faith pursuant to a Commission Order. The unfair practice charge was accompanied by a demand for interim relief. An Order to Show Cause was executed and pursuant to the Order. A hearing was held on August 11, 1989. At the hearing, the complaint was amended to include PACE, Professional and Clerical Employees, ILGWU ("PACE") as a second respondent. The following facts are not in dispute.

On June 23, 1989, the Commission issued Matawan-Aberdeen Reg. Bd of Ed, P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989). It found that the Board committed an unfair practice by dealing directly with certain clerical employees and entering into a memorandum of agreement with those employees rather than the Association's officially designated representative. The Commission ordered that the memorandum be rescinded and that the Board immediately negotiate in good faith for 30 days with the Association on behalf of the clerical employees retroactive to July 1, 1986.

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

Prior to the issuance of the Commission decision, PACE had filed a representation petition for the secretaries. The Director of Representation suspended the processing of the petition pending the issuance of the decision. The Commission ordered that PACE's petition remain inactive until the conclusion of the 30-day negotiations period.

The Association maintains that the Board failed to negotiate in good faith as per the Commission's order. It requests that an order issue compelling additional negotiations and that PACE's representation petition be pended during the additional negotiations 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.<sup>2/</sup>

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<sup>2/</sup> 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).

Pursuant to the Commission order of June 23, the parties met in negotiations on July 11, 17, and 20, 1989. The Association, by way of the affidavit of Marie Panos, argues that at the three meetings, the Association proposed that the Board agree to the three-year Memorandum (which would track the settlement between the Board and the Association's teacher unit) plus a fourth year but the Board rejected all of the Association's proposals. Specifically, on July 11, the Board placed on the table the Memorandum it signed with three unauthorized secretaries and announced that acceptance of the memo as the new contract was its only position. The Board allegedly repeated this proposal at the July 17 meeting. On July 20, the Board placed an offer on the negotiations table which included its July 11 proposal plus a fourth year 3.5% wage increase. The Board announced it would raise its offer to 4.2% only if the Association immediately agreed. If the Association did not immediately accept that proposal, the offer would return to 3.5%. The Association and Board already have an agreement for an 8.3% increase<sup>3/</sup> for teachers for the fourth year.

The Association also argues that correspondence dated July 21, 1989 from the Board attorney to the Commission offices was authored before the Commission's 30-day bargaining order expired on July 23, 1989. This correspondence included voter lists for the PACE representation petition and asked for election advice.

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3/ Plus an increase in the dental care.

The Board, by way of the affidavit of Bruce Quinn, states that the Association's demand on July 11 included a demand that the Board distribute an additional \$35,000 to the teachers unit. At the July 17 meeting, the Association announced it would drop its demand for \$35,000 for the teachers unit if the Board gave the secretaries a 12% raise in the fourth year of the proposed contract. The Board negotiators responded that if the Association dropped its demand for a "double digit increase for the fourth year", they would seek "full Board direction" on a fourth year salary increase.

At the final meeting on the 19th, the Association stated it would settle for a 9.3% increase. The Board responded with a proposal for a 3.5% increase. Later that evening, the Association stated it would reduce its demand for a 9.3% increase to 8.3% but this proposal would last for 2 minutes then the Association would revert to its previous proposal. The Board responded that it would raise its proposal to 4.1% for a similar two minute period.


No agreement was ever reached.

Given the conflicting nature of the submitted affidavits, the ultimate disposition of this case remains in doubt. The Association has failed to show it has a substantial likelihood of success in proving the Board failed to negotiate in good faith.

Similarly, correspondence sent by the Board attorney prior to the conclusion of the 30-day negotiations period does not establish bad faith for the purpose of granting interim relief. The letter was not postmarked until Friday, July 21, the day after the

last negotiations session between the parties. The letter was not delivered until Monday, July 24 after the conclusion of the 30-day period.

Accordingly, the Application for Interim Relief is denied.

  
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Edmund G. Gerber  
Commission Designee

Dated: August 22, 1989  
Trenton, New Jersey