I.R. NO. 93-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREDON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-93-424

FREDON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Fredon Township Education Association brought an Application for Interim Relief against the Fredon Township Board of Education alleging it unilaterally implemented terms and conditions of employment for the period 1991-94 after reaching a post fact-finding impasse. The Board sent a letter to the Association that, notwithstanding the unilateral imposition of terms and conditions of employment, the Board was willing to meet and continue negotiations with regard to a successor agreement.

The Association contends that it was an unfair practice for the Board to offer to negotiate while at the same time declaring there is an impasse in negotiations. It was further alleged that the terms and conditions of employment the Board is about to implement do not reflect the employer's last best offer. It was found that there was a dispute as to the percentage of raises the individual employees received but the dispute seems to be rooted in different estimates of the number of employees in the affected unit. The Association failed to met its heavy burden and the application was denied.

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Appearances:

For the Respondent
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Joel G. Scharff, of counsel)

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

INTERLOCUTORY DECISION

On June 3, 1993, The Fredon Township Education Association filed an unfair practice charge with the Public Employment Relations Commission, alleging that the Fredon Township Board of Education violated 34:13A-5.1 et seq., specifically subsections 5.4(a)(1) and (5)[1/] when on April 23, it announced it was going to unilaterally implement terms and conditions of employment upon employees who are represented by the Association.

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."

The unfair practice charge was accompanied by an application for interim releif. The Association seeks to restrain the Board from implementing terms and conditions of employment. An order to show cause was executed and was heard on June 21, 1993. At that time, the parties were given an opportunity to submit evidence, exam and cross-examine witnesses and argue orally.

The Association is the exclusive representative of all certified employees of the Board. The last negotiated agreement between the parties expired on June 30, 1991. Negotiations for a successor agreement commenced in October 1990. In March 1991, the Association filed a Notice of Impasse with the Commission. A mediator was assigned and met with the parties but they failed to reach an agreement. Fact-finding was invoked and on March 16, 1993, the Fact-Finder issued her Report and Recommendations.

On or about April 23, 1993, the Board unilaterally implemented terms and conditions of employment for the period 1991-94 and provided the Association with a document setting forth the terms and conditions that it was unilaterally implementing.

The Association alleges that by correspondence dated April 23, 1993, the Board advised the Association that, notwithstanding the unilateral imposition of terms and conditions of employment, it was willing to meet and continue negotiations with regard to a successor agreement. The Association contends that it was an unfair practice for the Board to offer to negotiate while at the same time declaring there is an impasse in negotiations evinces bad faith and constitutes on unfair practice.

The Association further alleges that the terms and conditions of employment the Board is about to implement do not reflect the last, best offer of the Board.

The Association also asserts that the totality of conduct of the Board during the entire course of negotiations constitute bad-faith negotiations.

The Board opposes the application. It claims the parties have reached a genuine post fact-finding impasse and it has the right to implement its last, best offer. It claims its offer to negotiate was misinterpreted. It only seeks to implement its offer on wages and longevity and further adopting such medical co-pay and deductibles schedules as to fully implement its negotiations proposal. It indicated that it is prepared to negotiate the other aspects of the contract.

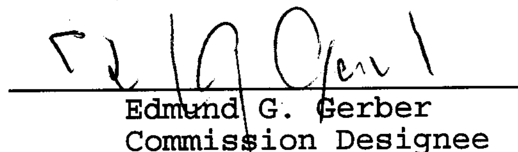
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a 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.[2/]

At the hearing, the Association called Wolfgang Rast as a witness who testified that the salaries about to be implemented do not constitute raises of 3.5% and 4% annually, the Boards' alleged last, best offer, but are closer to 4% the first year and no raise the second year. I am not pursuaded by this testimony that the Board did not implement its last, best offer. The raises to be implemented match the salaries in the guide used by the Board in negotiations. This guide was never challenged by the Association in fact-finding and the differences in the percentage seem to be rooted in different estimates of the number of employees in the affected unit. Similarly, the other facts in this matter are in dispute and can only be resolved after a full hearing.

I find the Association has failed to meet its heavy burden of showing it has a substantial likelihood of prevailing on the facts of this matter. This matter will go foward to a full hearing on the merits.

The application for interim releif is denied.



Edmund G. Gerber
Commission Designee

DATED: June 23, 1993
Trenton, New Jersey

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).