

I.R. NO. 2008-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAFAYETTE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2008-223

LAFAYETTE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

_____The Lafayette Education Association filed an unfair practice charge, accompanied by an application for interim relief, alleging that the Lafayette Board of Education violated the Act when it unilaterally required instructional aides to work a full-day on student early dismissal days after the aides organized. The Board responded that it required the aides to work a full-day for training. The Board argues that it has not completed negotiating a contract with the aides; the aides signed individual employment contracts prior to organizing that set their work hours; and it has not refused to negotiate. The Commission designee finds that since material facts are in dispute, the Association has not established a likelihood of success that it will prevail on its legal and factual allegations, a requisite element to obtain interim relief. The designee denied the Association's application for interim relief.

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Appearances:

For the Respondent, Scarinci & Hollenbeck, LLC
attorneys (Robin T. McMahon, attorney)

For the Charging Party, Oxfeld Cohen, LLC attorneys
(Randi Doner April, on the brief, Sanford R. Oxfeld,
argued orally)

INTERLOCUTORY DECISION

_____ On February 5, 2008, the Lafayette Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Lafayette Township Board of Education ("Board") violated subsection 5.4a(1)^{1/}, (3) and (5) of the New Jersey Employer-Employee

1/ These provisions 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"; "(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"; "(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 (continued...)"

Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally required instructional aides to work a full-day on student early dismissal days after the aides organized for collective negotiations purposes. The unfair practice charge was accompanied by an application for interim relief. On February 6, I executed an Order to Show Cause and set a telephone conference call return date of March 7 for oral argument. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The Lafayette Township Board of Education voluntarily recognized the Lafayette Education Association as the authorized representative of instructional aides in the district on October 29, 2007. The parties have not negotiated a written agreement.

Prior to forming the negotiations unit, the Association alleges that the instructional aides were dismissed with the students on early dismissal days and were paid for a full-day. After they organized, the Association alleges the Board retaliated against them by requiring that they work a full-day on six student early dismissal days at the same salary and by refusing to negotiate with respect to this unilateral change in their terms and conditions of employment.

1/ (...continued)
in that unit, or refusing to process grievances presented by the majority representative."

The Board responded to the charge that it required aides to attend training on the student dismissal days. The Board contends that the aides signed individual employment contracts that control their hours prior to their organization and recognition as a unit. The Board argues that the individual contracts set their hours of work, with limited exception, at 8:15 a.m. through 3:00 p.m. with an unpaid lunch of 30 minutes. The Board alleges that it is required by law to provide training and professional development opportunities to its instructional aides and that the only time it can accomplish this is when students are not in the building. The Board also disputes that the Association has requested to negotiate over the work days, hours and compensation for aides attending training during work hours and similarly disputes that it has refused to negotiate with the Association.

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. DeGioia, 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).

At this early stage of the case, there exists a factual dispute as to whether the Association requested negotiations and whether the Board refused to negotiate with the Association. The Board also disputes other material facts alleged in the charge. The Board disputes that it was motivated by the aide's organizing activity when it required them to attend training on early dismissal days. To counter the Board's contentions, the Association has not proffered any competent proof of anti-union motivation by the Board. Thus, I find that the Association has not carried its burden of establishing a substantial likelihood of success on the merits, a requisite element to obtain interim relief. Accordingly, this case will proceed through the normal unfair practice processing mechanism.

ORDER

_____The Association's application for interim relief is denied.

Mary E. Hennessy-Shotter
Commission Designee

DATED: March 7, 2008