

I.R. NO. 93-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
VOCATIONAL SCHOOL IN THE
COUNTY OF SUSSEX,

Respondent,

-and-

Docket No. CO-93-390

SUSSEX COUNTY VOCATIONAL-
TECHNICAL EDUCATIONAL ASSOCIATION, INC.,

Charging Party.

SYNOPSIS

A Commission Designee orders the Board of Education of the Vocational School in the County of Sussex to rescind a resolution (promulgated during negotiations) reducing the length of the work year of 12-month employees to 10 months. The length of the work year is mandatorily negotiable and the unilateral change in a term and condition of employment during negotiations impermissibly chills negotiations.

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Appearances:

For the Respondent
Rand, Algeier, Tosti & Woodruff, attorneys
(Robert M. Tosti, of counsel)

For the Charging Party
Bucceri & Pincus, attorneys
(Louis P. Bucceri, of counsel)

INTERLOCUTORY DECISION

On May 4, 1993, the Sussex County Vocational Technical Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Sussex County Vocational School Board of Education committed an unfair practice when, during the course of negotiations for a successor agreement (the current agreement expires June 30, 1993), the Board passed a resolution unilaterally reducing the work year of 12 month unit employees to 10 months. The Board also declared an impasse in negotiations over the issue of compensation for the affected

employees. It was alleged this conduct violated N.J.S.A. 34:13A-1; specifically subsections 5.4(1) and (5) of the Act.^{1/}

The unfair practice charge was accompanied by an Application for Interim Relief. I executed the Order to Show Cause returnable on May 18, 1993.

The Board of Education opposed the Application claiming that it had no obligation to negotiate the reduction of the work year for the 12-month employees since its action constitutes a reduction in force. Further the Application for Interim Relief was premature since the parties had until July 1, 1993 to negotiate a new agreement.

Certain employees in the unit represented by the Association have full-time 12 month positions. These employees include guidance counselors, school social workers, school psychologist and program coordinators. The parties began negotiations in March 1993 for a successor agreement. According to the statement of facts of the Board of Education, the Board informed the Association on March 22, 1993 that it would effect a reduction in force of all 12-month teaching positions. The Board maintained

^{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."

it informed the Association in good faith and as a courtesy, in order to allow any affected Association members to make appropriate plans for the summer. The Board offered to negotiate the issue of compensation. After two negotiations sessions, when the Association refused to negotiate over the matter of compensation, the Board filed a Notice of Impasse with the Commission on that single issue. Negotiations have continued over all other issues. The Board asserts that it has taken this action since the Sussex County Board of School Estimate directed the Board to maintain the school budget for the coming year at the same level as the 1992-1993 school year. Because of this financial emergency, it made the decision to reduce the 12-month employees to 10-month employees.

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/}

^{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).

A public employer may not unilaterally alter terms and conditions of employment during the course of negotiations. Any such alteration made during negotiations has an impermissible chilling effect on negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 52 (1978); Union Cty. Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson Cty. Bd.Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

The length of a work year is mandatorily negotiable.

There cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year***, and without prior negotiations with the employees affected, is in violation of both the text and the spirit of the Employer-Employee Relations Act.

Piscataway Township Board of Education, 164 N.J. Super. 98, 101 (App. Div. 1978); Board of Education of Essex County Vocational Schools, H.E. No. 81-24, 7 NJPER 112 (¶12045 1981), aff'd P.E.R.C. No. 81-102, 7 NJPER 144 (¶12064 1981); Hackettstown Education Association, P.E.R.C. No. 80-139, 6 NJPER 263 (¶1124 1980).


Although the Board claims it has no obligation to negotiate because its action constitutes a reduction in force, no reduction in the work force has taken place. Rather the Board has simply reduced the work year of its 12-month employees. Essex.

The length of the work year is mandatorily negotiable. The Board has an obligation to negotiate the work year of these employees. The promulgation of the resolution reducing the work year, prior to the conclusion of negotiations, constitutes, an impermissible interference with the negotiation process.

Accordingly, I hereby ORDER the Board of Education of the Vocational School in the County of Sussex to rescind its resolution reducing the length of the work year of the 12-month employees pending the good-faith resolution of negotiations.

This is an interim order only and this matter shall go forward to a full hearing.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

DATED: May 21, 1993
Trenton, New Jersey