I.R. NO. 2000-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-9

OCEAN CITY EDUCATION ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-10

OCEAN CITY DEPARTMENT SUPERVISORS' ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-11

OCEAN CITY EDUCATIONAL SUPPORTIVE STAFF ASSOCIATION,
Respondent.

SYNOPSIS

The Board filed unfair practice charges alleging that the Associations repudiated the terms of the reopener provision concerning health benefits costs contained in the respective collective agreements. The Commission Designee refused to grant interim relief on the grounds that the Board had not filed for interim relief with sufficient dispatch, interim relief was premature since the Board had not sought the use of the Commission's dispute resolution procedures provided pursuant to Commission Rules and that the reopener language in the agreement was susceptible to multiple interpretations.

I.R. NO. 2000-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-9

OCEAN CITY EDUCATION ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-10

OCEAN CITY DEPARTMENT SUPERVISORS' ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and- Docket No. CE-2000-11

OCEAN CITY EDUCATIONAL SUPPORTIVE STAFF ASSOCIATION,
Respondent.

Appearances:

For the Charging Party,
Cassetta, Taylor, Whalen & Hybbeneth, consultants
(Garry M. Whalen, consultant)

For the Respondents - Education Association and Supportive Staff Association,
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

For the Respondent - Supervisors Association,
Wayne J. Oppito, attorney

INTERLOCUTORY DECISION

On February 18, 2000, the Ocean City Board of Education (Board) filed an unfair practice charge with the Public Employment

Relations Commission (Commission) against the Ocean City Education Association (Association). On February 23, 2000, the Board filed unfair practice charges against the Ocean City Department Supervisors and Ocean City Educational Supportive Staff Associations, respectively.[1/] The Board alleges that the Associations committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4b(3).[2/] The unfair practice charges were accompanied by applications for interim relief. On February 22, 2000, I executed an order to show cause on the charge against the Ocean City Education Association and on February 23, 2000, I executed orders to show cause on the charges against the Ocean City Department Supervisors and Ocean City Educational Supportive Staff Associations, respectively, setting a return date for March 21, 2000. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

1/ Since the underlying issues raised in the Board's charges relate to the same circumstances, I will refer to the respondents collectively as the Associations.

2/ This provision prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

The Board and the Associations are parties to individual negotiated agreements covering the period July 1, 1997 through June 30, 2000. Each agreement contains the following provision:[3/]

> The 1997-98 premium rates shall serve as the initial threshold. Should the premium rates increase by more than 10% over the preceding year, the parties agree to reopen negotiations. These negotiations shall be limited to the costs which exceed the negotiated maximum Board premium costs (MBPC). The purpose of these negotiations will be for the parties to determine collectively how the premium rate will be brought into line with the negotiated MBPC.

On or about April 26, 1999, the Board's health benefits insurance broker advised it that the insurance premium rates for its three insurance plans offered through Blue Cross and Blue Shield would experience a premium increase of 19.58% effective July 1, 1999. On July 30, 1999, the Board advised the Education Association that it would exercise its right under the collective agreement to reopen negotiations since insurance premiums increased in excess of 10%. On September 2, 1999, the Board sent similar letters to the Department Supervisors' and the Supportive Staff Associations seeking to reopen negotiations. The parties engaged in negotiations four times during the fall of 1999.[4/] During those negotiations, the parties were unsuccessful in reaching a negotiated resolution.

3/ In the Education Association's, the Supervisors Association's and the Support Staff Association's agreements, the quoted provision is found at Article 25.A, Article 7.A, and Article 10.B, respectively.

4/ Meetings were held on October 6, October 26, November 30 and December 8, 1999.

The Board contends that the Associations repudiated the clear and unambiguous language of the negotiated reopener provision. The Board notes that the reopener provision states that negotiations "shall be limited to the costs which exceed the negotiated maximum Board premium costs." The Board argues that Associations' proposals which link concessions related to the excess premium costs to demands for improvements in the "Blue Select" plan or to the elimination of certain employee contributions, or to an extension of the revised health insurance package for three years, go beyond the limited scope of the reopener language. The Board claims that the Associations are obligated to merely determine collectively how the premium rate will be brought into line with the negotiated maximum Board premium costs. The Board asserts that the Associations are not entitled to a quid pro quo in the reopener negotiations.

The Associations contend that they interpret the reopener provision differently. The Associations argue that the language of the reopener provision is susceptible to a reasonable interpretation which calls for the parties to reopen negotiations on the health benefits issue and try to agree, however, does not constitute advanced agreement by the Associations to absorb the entire premium rate increase. The Associations assert that they have engaged in good faith collective negotiations pursuant to the reopener provision and remain ready to continue such negotiations.

The Associations contend that the Board's application for interim relief is premature. The Associations assert that only four negotiations sessions have been conducted between the parties and that the Board has not sought implementation of the dispute resolution procedures provided pursuant to Commission Rules.

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. De Gioia, 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).

The Board was notified on or about April 26, 1999, that its health benefits insurance premium would rise by more than 10%. However, the Board did not act to exercise its right under the collective agreement to reopen negotiations with the Education Association until July 30, 1999. It took no steps to reopen negotiations with the other Associations until September 2, 1999. Negotiations on the premium rate increase did not begin until October 6, 1999 and the last session was on December 8, 1999, but these applications were not filed until February 2000. A party

seeking interim relief must not only present a clear case entitling it to such relief but also must move with dispatch to secure it. Nazare v. Board of Embalmers, 4 N.J. Super. 567 (1949). In this case, I find that the Board has not acted with such dispatch to now warrant the imposition of injunctive relief. Rather, the parties should continue their efforts to address the issues in dispute through the collective negotiations process.

It appears that the Board has not exhausted the dispute resolution mechanisms available to it pursuant to Commission rules. See N.J.A.C. 19:12-3 et seq. and N.J.A.C. 19:12-4 et seq. Such procedures are made available to the parties to assist them in achieving voluntary resolutions of their disputes which is preferred by the Act.

The language contained in the collective agreements may be susceptible to multiple interpretations. Both the Board and the Associations rely on precisely the same contract language in support of their respective arguments concerning the nature of negotiations required by the reopener provision. The Commission has refused to issue a complaint on unfair practice charges where the alleged violation is dependent upon the underlying contractual dispute. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

I find that the Board has not demonstrated a likelihood of prevailing in its unfair practice charge. Accordingly, the Board has not established a requisite element for a grant of interim relief. Consequently, these cases will proceed through the normal unfair practice processing mechanism.

ORDER

The Board's application for interim relief is denied.

Stuart Reichman
Commission Designee

DATED: March 24, 2000
Trenton, New Jersey