

I.R. NO. 94-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-320

ATLANTIC CITY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Atlantic City Board of Education from conducting interviews of all high school teachers in its employ who wish to transfer to the new Atlantic City High School, which is due to open in October 1994. The Association objected to being interviewed by members of the community and members of the student body. However, the standards for transfer are not negotiable. Further, to the extent that the transfer procedures under the collective negotiations agreement had not been followed, the preferred method of resolution of such disputes is by the grievance mechanism of the collective negotiations agreement.

I.R. NO. 94-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-320

ATLANTIC CITY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
George G. Frino, attorney

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Edward H. O'Hare, of counsel)

INTERLOCUTORY DECISION

On May 2, 1994, the Atlantic City Education Association filed an unfair practice charge along with an Application for Interim Relief against the Atlantic City Board of Education. It was alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} when it unilaterally imposed procedures for the assignment of teachers without negotiations. Specifically, it was alleged that

^{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 new procedures require teachers "to submit an application and essay, along with references. In addition, teachers must submit to questioning from an 'ACHS Staff Discovery Committee' which includes students, community members, teachers and administrators. This committee will make recommendations regarding the assignment of teachers. The new procedures are degrading and defective. Besides forcing Association members to reapply for assignments to their own jobs, teachers are given only 15 minutes to answer the committee's questions." The Board also "permitted the release of personal and confidential information and has failed to take precautions that teachers' interests are protected." The new procedures were instituted in anticipation of the opening of a new high school in the fall of 1994.

An Order to Show Cause was executed and made returnable for May 13, 1994. A hearing was conducted on that date.

The Board opposes the Application and argues that transfers and reassignments are at the sole discretion of the Board of Education. The Board argues that the collective bargaining agreement at Article 15.4 provides that "all transfers and reassignments shall be made at the sole discretion of the School Board".

Further, N.J.S.A. 34:13A-25 provides: "Transfers of employees by the employer between work sites is not negotiable; except that, no employee shall be transferred for disciplinary reasons." The Board also argues that P.E.R.C. has no jurisdiction

to consider this complaint pertaining to transfers at work sites and cites Ridgefield Park Ed. Ass'n. v. Ridgefield Park Board of Education, 78 N.J. 144, 156 (1978).

The Association argues that Article 15 of the collective bargaining agreement provides that a procedure for teacher transfers and reassignments.

15.1 Normally no later than April 15 of each school year, the Superintendent or his designee shall mail to the Association and have posted in all school buildings a list of the known teaching vacancies which shall occur during the following year.

15.2 Teachers who desire a change in grade and/or subject assignment or who desire to transfer to another building may file a written statement of such desire with the Superintendent with a copy to the principals concerned not later than May 1. Such statement shall include the grade and/or subject to which the teacher desires to be assigned and the school or schools to which he/she desires to be transferred in order of preference.

The Association argues that the Board has not followed the contract procedure.

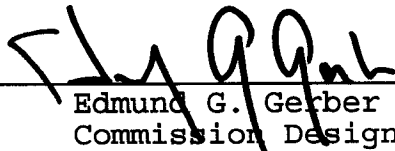
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a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

The Association has failed to meet its heavy burden. Assignments and transfers are not normally negotiable. To this end, the employer's right to appoint students and community people to participate in the evaluation process is not negotiable. To the extent that the transfer procedures under the collective negotiations agreement have not been followed, the preferred method of resolution of such disputes is by the grievance mechanism of the collective negotiations agreement. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). It is noted that the transfers are not effective until October. It would seem that there is sufficient time to use the grievance mechanism to contest this alleged violation of the agreement.

Accordingly, the Application for Interim Relief is denied. This matter shall go forward to a plenary hearing.

BY ORDER OF THE COMMISSION


 Edmund G. Gerber
 Commission Designee

DATED: May 18, 1994
 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).