I.R. NO. 95-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-95-19

OLD BRIDGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee refuses to restrain the Old Bridge Township Board of Education from laying off 20 custodians represented by the Old Bridge Education Association. The work of these employees was subcontracted to a private vendor by the Board of Education. Accordingly, the Board had no obligation to negotiate the lay-offs. IFPTE Local 195 v. State of New Jersey, 88 N.J. 393, 408 (1992). The Association further argued that the Board repudicated the parties collective negotiations agreement when it altered the number of sick days these same employees are entitled to. However, the Board argued that the announced reduction of sick days was in compliance with the terms of the agreement. The dispute concerning the interpretation of the contract's sick leave provision was deferred to arbitration.

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Appearances:

For the Respondent
Wilentz, Goldman & Spitzer, attorneys
(Steven J. Tripp, of counsel)

For the Charging Party
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On July 21, 1994, the Old Bridge Education Association filed an unfair practice charge against the Old Bridge Township Board of Education with the Public Employment Relations Commission. The charge alleges that the Board violated N.J.S.A. 34:13A-1 et seq; specifically, subsection 5.4(a)(5)[1/] when, on June 30, 1994, during the course of negotiations for a successor agreement, the

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1/ This subsection prohibits public employers, their representatives or agents from: "(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."

Board announced it would rescind the contracts of 20 custodial workers effective September 1, 1994. The Board intended to subcontract this work and took this action without any discussions with the Association. Further, the Board unilaterally reduced the number of sick days of these employees from 12 to 2. It was alleged that it did so by implementing a contract provision that was not agreed upon by the Association as to Article XXXIV(e) of the Agreement.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and made returnable for August 4, 1994. At that time, the parties were given an opportunity to present evidence and argue orally. The Application for Interim Relief was denied.

Article XXXIV(e) of the 1991-1994 agreement between the parties entitled sick leave benefits, provides in pertinent part:

> 3. Twelve month employees will receive twelve (12) days sick leave per year. If any such person requires in any school year less than the specified number of days of sick leave with pay allowed, all days of such minimum sick leave not utilized that year shall be accumulated to be used for additional sick leave as needed in subsequent years.
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> 4. Any employee commencing employment after the start of the school year shall receive sick days equal to one day per month or major fraction thereof.

It is undisputed that the Board announced that it would lay-off 20 custodial workers effective September 1, 1994. The Board notified the 20 affected employees that their sick leave benefits

would be pro-rated. Specifically, since the school year began on July 1 and they were to be laid off September 1, the employees would be entitled to two days sick leave.

The Association argues that it was an unfair practice to implement these lay-offs without negotiating with the union and further the employer repudiated the contract provision for sick leave and unilaterally implemented a new provision.

The Board argues that the contract is silent as to subcontracting. Accordingly, it had no obligation to engage in any negotiations; its decision to subcontract is a managerial prerogative. IFPTE Local 195 v. State of New Jersey, 88 N.J. 393, 408 (1992). Further, paragraph 4 of Article XXXIV(e) gives the Board the right to pro rate the sick leave of the employees who were to be laid off. It further argues that pursuant to Section 5.3 of the Act, grievance procedures established by agreement between the parties shall be utilized for any dispute of such agreement. Since this matter is one of contract interpretation, the issue of sick leave should be deferred to arbitration.

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/]

Here, there is no obligation on the part of the Board to negotiate over the lay-offs. IFPTE Local 195. Further, the Association failed to demonstrate it had a substantial likelihood of success before the full Commission in proving that the Board repudiated the express terms of Article XXXIV(e). Rather, the Board's argument raises legitimate issues as to the interpretation of the contract. Such good faith contractual disputes are best left to the contracts own resolution dispute mechanism. Accordingly, the allegation of the unfair practice charge concerning lay-offs arising out of a decision to sub-contract is dismissed and the allegation concerning the interpretation of paragraph XXXIV(e) of the contract (Sick Leave) is deferred to arbitration. N.J. Department of Human Services, P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984).

It is the responsibility of the Charging Party to initiate the contractual grievance/binding arbitration proceedings.

This matter may be reopened upon a proper showing that (a) the dispute has not either been promptly resolved by amicable settlement in the grievance procedure or promptly submitted to arbitration, or (b) the grievance or arbitration procedures have not

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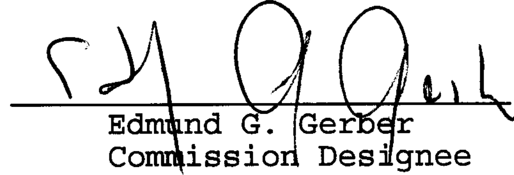
2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: September 2, 1994
Trenton, New Jersey