

I.R. NO. 90-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDLAND PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-9

MIDLAND PARK EDUCATIONAL
SECRETARIES ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denied interim relief on a request by the Midland Park Educational Secretaries Association to restrain the Midland Park Board of Education from requiring employees to take their vacations during the Board's two-week shutdown of its facilities. The designee found that a dispute existed over the parties' prior practice, thus the Association did not satisfy the substantial likelihood of success standard.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDLAND PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-9

MIDLAND PARK EDUCATIONAL
SECRETARIES ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Winne, Banta, Rizzi, Hetherington
& Basralian, Esqs. (Robert M. Jacobs, of counsel)

For the Charging Party, Zazzali, Zazzali, Fagella &
Nowak, Esqs. (Tanya E. Pushnack, of counsel)

INTERLOCUTORY DECISION

On July 10, 1989 the Midland Park Educational Secretaries Association (Association) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) against the Midland Park Board of Education (Board) alleging that the Board violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13-1 et seq. (Act).^{1/} The Association alleged that the Board violated the Act

^{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

by requiring employees to take their vacations during the two-week period the Board chose to shut down its facilities. The Association alleged that the Board's actions unilaterally changed the practice of allowing employees to select their vacation time.

A request for interim relief, accompanied by an Order to Show Cause, together with a brief and supporting affidavits, seeking to restrain the Board from requiring employees to use their vacation time, was filed with the Charge. The Order was signed on July 11, 1989 and made returnable for July 26, 1989. On July 20, 1989, the Board filed a brief and affidavit in opposition to the request for interim relief. A hearing was held on the return date.

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

1/ Footnote Continued From Previous Page

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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

On February 15, 1989 the Board notified the Association of its decision to close the school facilities from July 31, 1989-August 11, 1989. The Board required employees to use their vacation time during that period. The Association quickly filed a grievance over the issue and processed it up to arbitration, but withdrew the grievance in June 1989. The Association then filed the Charge and request for interim relief on July 10, 1989.

The parties' collective agreement, effective July 1, 1989-June 30, 1990, provides in Article 4 anywhere from one day per month to four weeks per year vacation for unit members, but does not specify when vacation time must be taken. That agreement also provides in Article 16 that all terms and conditions of employment established by Board policy that were in effect on the date the agreement became effective would continue to be applicable.

In 1983, 1984 and 1987 the Board appears to have done the same thing it did in 1989, it notified the Association of its intent to close the facilities for a two-week period and it required the employees to use vacation time during that period. The Association did not officially oppose those actions. In 1987 the Association

^{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).

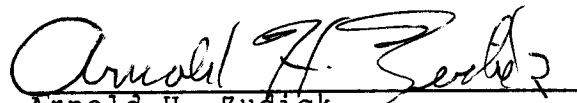
acquiesced to the Board's action but told the Board that any future attempt to schedule vacations in a similar manner would be objected to through a grievance.

In 1985, 1986 and 1988 the Board did not close its facilities in the summer and employees were allowed to select their vacations based upon their own convenience.

The Association argued that the Board's requirement this year that employees use their vacation time during the shutdown was a repudiation of the parties' prior practice. The Board argued that its actions in 1989 were consistent with the practice in 1983, 1984 and 1987. It further argued that the practice in 1987 existed at the time the parties' current agreement became effective.

Based upon the above facts the Association has not satisfied the substantial likelihood of success standard. A material factual issue exists as to whether a prior practice existed regarding the scheduling of vacation during a shutdown, and whether the Board's actions in 1989 were consistent with that practice.

Accordingly, the request for interim relief is denied.


Arnold H. Zudick
Commission Designee

Dated: July 31, 1989
Trenton, New Jersey