

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTVILLE TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

Docket No. CO-76-293

-and-

MONTVILLE TOWNSHIP EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman, acting on behalf of the full Commission, issues an interlocutory order in a show cause proceeding based upon a request by a teachers' association for interim relief filed during the pendency of an unfair practice case. The teachers' association charged that the board of education decided to reduce the size of its teaching staff effective as of the end of the 1975-76 school year, but refused to negotiate the impact of the reduction upon employees' terms and conditions of employment. Referring to the rationale recently expressed in a similar matter (In re Union County Regional High School Board of Education, P.E.R.C. No. 76-43, decided June 14, 1976) the Chairman orders the board to commence negotiations forthwith, upon demand, concerning the procedures to be followed in selecting the employees who will not be reemployed, and concerning the impact of the reduction in force upon the terms and conditions of employment of the terminated teachers. The Chairman declines to order interim negotiations on the impact on staff members, stating that the harm of awaiting final Commission disposition is not irreparable.

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Appearances:

For Respondent, Alten W. Read, Esq. (Mr. Michael S. Bubb and Mr. David Brian Rand, of Counsel).

For Charging Party, Goldberg, Simon & Selikoff, Esqs. (Mr. Louis Bucceri and Mr. Gerald M. Goldberg, of Counsel).

INTERLOCUTORY DECISION AND ORDER

On May 6, 1976 the Montville Township Education Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") against the Montville Township Board of Education (the "Board"), alleging that the said Board had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Charge alleges the Board of Education had determined to effectuate a reduction in force (a "RIF") for the 1976-77 school year and that in implementation of that reduction in force the Board notified individual teachers that their employment would be terminated. The Charge further alleged that the Association made demand upon the Board to negotiate concerning the impact on terms and conditions of employment resulting from the Board's decision

not to renew the contracts of the teachers RIFed, and that the Board has refused to negotiate that impact. Finally, the Charge alleges that this refusal to negotiate is an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).<sup>1/</sup>

The Charge was accompanied by an application for an Order requiring the Board to Show Cause why interim relief should not be granted pending the disposition of the unfair practice proceeding, with a supporting brief.<sup>2/</sup> The interim relief requested by the Association consisted of an interlocutory order directing the Board to cease and desist further actions to implement the reduction in force without negotiation and directing the Board to negotiate the impact of the decision to reduce force pending the final administrative determination by the Commission. The alleged impact consisted of the procedures utilized in implementing the RIF and the effects of that decision on the terms and conditions of employment of the

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a)(1) and (5) provides:

a. Employers, their representatives or agents are prohibited 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.

<sup>2/</sup> This application for interim relief was made pursuant to N.J.A.C. 19:14-9.1 et seq. See also Board of Education of the City of Englewood v. Englewood Teachers Association, 135 N.J. Super 120, 1 NJPER 34, 90 LRRM 2074 (App. Div. 1975).

members of the unit represented by the Association.

The undersigned has been delegated the authority to act on such requests on behalf of the Commission and, pursuant to that authority, executed an Order to Show Cause on May 6, 1976 returnable on May 13, 1976. The Order included no temporary restraints. Pursuant to the Order the parties appeared on May 13, 1976. However, following a conference between counsel for both parties and the undersigned, it was agreed that the Order to Show Cause hearing would be adjourned to permit the Board of Education to consider the negotiation demand of the Association at its next scheduled meeting, which was thought to be May 24, 1976. In addition, the parties agreed that the Association would submit an affidavit detailing the factual basis for its claim of a violation of the Act and the Board would submit an affidavit answering in a factual manner the matters raised by the Association. It was also hoped that during this period, and in light of the exchange of information, the parties might be able to resolve the matter. This agreement was entered into the record and the hearing was adjourned.<sup>3/</sup>

Through an exchange of correspondence during the succeeding weeks it became apparent that the matter could not

<sup>3/</sup> At this May 13, 1976 hearing the Board submitted an Answer to the Charge and two Notices of Motion seeking an Order dismissing the Unfair Practice Charge and Vacating the Order to Show Cause. These motions were deemed filed at that point but no action was taken on them at that time.

be resolved and the Association requested that the adjourned Show Cause hearing be rescheduled. This was done and the parties appeared, represented by counsel, before the undersigned on June 29, 1976. Affidavits have been exchanged pursuant to the Agreement reached on May 13, 1976 and at present the factual record consists of the Unfair Practice Charge, certified by the President of the Association; the Answer to the Charge, certified by the Assistant Superintendent of the Montville Township School District; two additional affidavits of the President of the Association; and the responsive affidavit of the same Assistant Superintendent of Schools. Additionally, the current contract between the parties covering the 1975-76 and 1976-77 school years was introduced into the record as was a copy of a letter dated April 6, 1976 from the President of the Association to the Board Secretary requesting a meeting to discuss the rationale for certain reductions in force of which certain staff members had been tentatively notified, and the impact of those reductions on terms and conditions of employment. The letter indicates that any change in terms and conditions would have to be negotiated. This letter was referred to in the affidavit of the Association President. These items were all introduced as Commission exhibits, without objections by the parties, at the opening of the hearing on June 29, 1976. Also introduced into the record at that time were the Order to Show Cause initiating the proceeding, the brief of the Association, the two motions of the Board, a cover letter accompanying the

Board's submissions on May 13, 1976 and the brief transcript of the May 13, 1976 hearing. The undersigned has considered all these materials and the arguments of counsel made at the hearings and on the basis of that record makes the following determination.<sup>4/</sup>

The facts which actually constitute the reduction in force are not in dispute to any material degree and can be gathered from the various affidavits. In 1975-76 the staff of the Montville Township Board of Education was two hundred and nineteen (219). The Association says eighty-seven (87) of these were non-tenured teachers (the Board says one hundred eight were non-tenured but this discrepancy is not relevant to this case). On April 26, 1976 the Montville Township Board of Education voted at its public meeting to reduce its staff by approximately ten positions.<sup>5/</sup> At that meeting two hundred six persons were appointed for the 1976-77 school year and the contracts of sixteen persons were not renewed for that upcoming school year.<sup>6/</sup> Of the sixteen non-renewals, six (6) were dismissed for cause and ten (10) teachers were dismissed for reasons

<sup>4/</sup> At the conclusion of the show cause proceeding on June 29, 1976 the undersigned entered an Order with some explanatory comments into the stenographic record. This Interlocutory Decision and Order has been prepared on an expedited basis to provide the parties with a written decision pursuant to their joint request for such a document, and to provide a more formal exposition of the decision and order rendered.

<sup>5/</sup> The exact number is not clear because some of the positions and people were part-time.

<sup>6/</sup> Again the figures do not exactly correspond because some of the persons not renewed were part-time personnel, and some of the appointments might have been new people.

of economy or changes in student enrollment. Of these ten, the one music teacher terminated has since been rehired. Seven of the ten were elementary school teachers and their non-renewal seemed tied to the abolition of six and one half (6½) positions in the elementary schools due to a shifting of student population from the lower to the upper grades. One of the ten was a junior high school guidance counselor and the tenth was the one high school media specialist coordinator and that position was also abolished. The dispute thus involves the nine teachers, the music teacher having been rehired, who have been terminated due to this reduction in force and does not involve the other six who were terminated for cause.<sup>7/</sup>

As stated earlier the Association President avers in her affidavit that she first sent a letter to the Board Secretary relating to this subject on April 6, 1976. In this letter she indicated that several staff members had been tentatively notified of their probable non-renewal due to an approximate 5% reduction in staff for the next school year. She requested, on behalf of the Association, discussions relative to this reduction and its impact on staff and indicated that any changes in terms and conditions would have to be negotiated.

<sup>7/</sup> A dispute also appears to be present as to whether two of these nine are tenured or not, but the parties agree that that question should not be resolved in this forum in this proceeding. They further agree that any dismissal of tenured teachers will be carried out pursuant to the procedures set forth for tenured teachers in Title 18A. See N.J.S.A. 18A:28-9 through 28-14.

The Assistant Superintendent's responsive affidavit indicates that it is his understanding that the Board Secretary did receive this April 6, 1976 letter but that he, the Board Secretary, could not circulate it to the rest of the Board as five Board members were in California at a conference. The Assistant Superintendent's affidavit does state that the Board did consider the Association's April 30th demand as part of the agreement reached at the May 13, 1976 hearing and rejected it as the Board considered these items to be non-negotiable since they involve managerial prerogatives.

On June 14, 1976 the undersigned issued an Interlocutory Decision and Order in two cases consolidated for that interlocutory proceeding. The legal arguments in that decision, In re Union County Regional High School Board of Education and In re Cranford Board of Education, P.E.R.C. No. 76-43 were identical to those in the case herein. The unfair practice charges in those two cases were filed on the same day as this case and were heard on May 13, 1976, the original return date for this case. The discussion of Commission precedent forming the basis for the result in those cases was fully set forth therein and is equally applicable to the case sub judice. Little could be gained by reiterating that discussion here and the parties are referred to that decision for the legal analysis underlying the order to be entered herein. See pages 5-20.

It is sufficient for the purposes of this case to say that the Board has the unilateral authority to determine



that a reduction in force is required and that the Association does not dispute the numerical quantity of that reduction. Nor does the Association contest, nor could it, the unilateral authority of the Board to make educational judgments on policy matters which necessarily result in certain people being terminated. Thus, for example, in this case the Board's decision to eliminate the one position of high school media specialist coordinator necessarily involved the non-renewal of the one person holding that position. Therefore, the Board is not ordered to negotiate, at this time, the impact of the non-renewal of that person or the abolition of that position.

However, as indicated in the Union County and Cranford decision, when a decision to reduce force is made the educational rationale for that determination may not dictate which specific individuals will be selected to correspond to the number of positions abolished. In some instances normal attrition through retirements, resignations, and the like may mean no one will have to be terminated to effectuate a reduction in staff for the following year. Unfortunately that situation did not exist herein. Seven non-tenured elementary teachers had to be terminated to implement the reduction of six and one half elementary school teaching positions. While it was not established exactly how many non-tenured elementary teachers existed, the Board attorney did represent at the hearing that the Assistant Superintendent stated that there were many more than seven.

The Board herein did not offer any educational policy reason for the selection of the particular seven persons noticed of non-renewal. It justified the abolition of the positions themselves, as due to changes in student population, which justification was not disputed, but it offered no educational reasons for distinguishing the seven selected from the other non-tenured teachers. Given this situation the undersigned determines, as was the case in the Union County and Cranford decision, that the Board must negotiate with the Association the procedures for the selection of the specific teachers to be terminated from among this pool of qualified non-tenured teachers.

The undersigned determines further that the Board must negotiate the impact of their termination on the terms and conditions of employment of the seven persons ultimately selected for non-renewal. As indicated in the Union County and Cranford decision this impact could include recall rights, preferential hiring lists, severance pay, fringe benefits and various other terms and conditions of employment which might be proposed by the parties.<sup>8/</sup>

The undersigned does not, however, order negotiations on the impact of the reduction in force on the terms and conditions

<sup>8/</sup> It is, of course, true in this situation as in all others, that the obligation to negotiate does not carry with it any obligation to agree. Hard bargaining is not inconsistent with good faith negotiations. See State of New Jersey and Council of New Jersey State College Locals, E.D. No. 79, 1 NJPER 29, affirmed P.E.R.C. No. 76-8, affirmed for the reasons stated in the Executive Director's decision, Appellate Division Docket No. A-531-75, decided May 17, 1976.

of employment of the remaining staff members. Again, as indicated in the Union County and Cranford decision, while there is little doubt that changes in workload and other similar effects of the reduction do impact on terms and conditions of employment, the potential harm, if any, is not so great or so irreparable that it could not be remedied at the end of the case in the final Commission ruling.<sup>9/</sup>

Certain other procedural aspects of this interim proceeding remain. First, the motion of the Board to dismiss the Charge is denied. The undersigned does not consider this to be the appropriate procedural juncture for such a motion given the rules of the Commission. See N.J.A.C. 19:14-1 et seq. Additionally, what has been said to this point in this decision would seem to make it clear that the Charge is sufficiently meritorious to withstand such a motion based on the record as developed to date.

Second, the Board's motion to vacate the Order to Show Cause is disposed of in accordance with this Decision and Order.

Finally, at the conclusion of the hearing on June 29, 1976, the undersigned stated orally for the record the essence of the decision and order herein and indicated that this written

<sup>9/</sup> This is especially true herein where the Board's alleged reason for the reduction is loss of student population in the elementary schools. No increase in workload or other detrimental effect might result. The Association neither alleged or established any facts which indicate that an impact on remaining staff has occurred.

statement of the determination would be prepared for the benefit of the parties as quickly as possible. Counsel for the Board then moved for a 10-day stay of the Order to facilitate the Board's review and analysis of its ramifications and of the Board's response to its mandates. That motion for a stay was and is denied. This matter has been delayed already, due in part, admittedly, to the parties' efforts at settlement. However, for all the reasons which make the potential harm irreparable, it should not be delayed any longer, if at all possible. The time lag in issuing this written decision and in the Association's analysis of its conduct in light of the Order should provide sufficient time for the Board to consider its alternatives.

IT IS THEREFORE ORDERED pursuant to N.J.A.C. 19:14-9.4(a) that within the limitations set forth in the above decision and the decision In re Union County Regional High School Board of Education and In re Cranford Board of Education, P.E.R.C. No. 76-43, the Montville Township Board of Education, upon demand of the Montville Township Education Association, forthwith commence negotiations concerning the procedures to be followed in selecting those unit employees who will not be reemployed for the 1976-77 school year as a result of the said Board's decision to reduce its staff, and

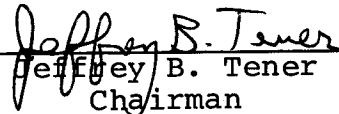
IT IS FURTHER ORDERED that the Montville Township Board of Education, upon demand of the Montville Township Education Association, forthwith commence negotiations concerning the impact of the said Board's decision to reduce its staff

upon the terms and conditions of employment of the teachers terminated as a result of that decision, and

IT IS ALSO HEREBY ORDERED that the Motion of the Montville Township Board of Education to dismiss the within Unfair Practice Charge is denied and that the said Board's Motion to Vacate the within Order to Show Cause is determined in accordance with the above Decision and Order and that the said Board's Motion to stay this Order for 10 days is hereby denied.

This Order shall remain in effect until further order of the Commission.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
June 30, 1976