P.E.R.C. NO. 2014-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROBBINSVILLE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2010-484

WASHINGTON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Robbinsville Township Board of Education's motion for summary judgment in an unfair practice case filed by the Washington Township Education Association. The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it imposed three furlough days on staff without negotiations and the Superintendent dealt directly with Association members. The Commission holds that the Board's decision to implement the furlough days was an exercise of its managerial prerogative. The Commission further holds that the Superintendent's alleged communication to unit members was nothing more than a notice to employees of the action taken by the Board, as there was no evidence that it tended to interfere with the existence of the Association, and it did not lack a legitimate and substantial business purpose.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Cleary, Giacobbe, Alfieri, Jacobs LLC (Robin T. McMahon, of counsel)

For the Charging Party, Selikoff & Cohen, P.A. (Keith Waldman, of counsel)

DECISION

This case comes to us by way of cross motions for summary judgment in an unfair practice charge filed by the Washington Township Education Association. The charge alleges that the Robbinsville Township Board of Education violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a (1), (2) and (5)[1/], when it unilaterally imposed three

1/ These provisions 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to negotiate in good faith with a majority representative of employees in an (continued...)

furlough days without negotiations and when the Superintendent dealt directly with Association members in a May 13, 2010 e-mail in which he informed faculty about the furlough days. We grant the Board's motion for summary judgment and dismiss the charges.

The Association filed its charge on June 11, 2010. On August 19, a Complaint and Notice of Hearing was issued. The parties filed their cross-motions for summary judgment simultaneously on December 16, 2010 and opposition briefs on January 5, 2011. The parties mutually requested that the cross-motions for summary judgment be referred to the Commission N.J.A.C. 19:14-4.8. The parties also mutually sought a stay of the scheduled evidentiary hearing which was granted by the Chair on December 20, 2010.

This case was initially considered by us at our November 2012 meeting. A draft was presented finding that the Board did not have a duty to negotiate before implementing the furlough days. That draft was rejected by a majority of the Commissioners, and was returned to staff for revision in accordance with the determination of the Commission.

At that time there were pending before the Appellate Division of the Superior Court appeals of the Commission

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1/ (...continued)
appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

decisions in Belmar, P.E.R.C. No. 2011-34, 36 NJPER 405 (¶157 2010) and Mount Laurel, P.E.R.C. No. 2011-25, 36 NJPER 409 (¶158 2010) wherein we had found that there was a negotiations obligation before an employer could impose a temporary reduction in employees' work schedules.

On February 26, 2013, the Appellate Division of the Superior Court reversed Belmar and Mount Laurel, finding that "the decision to furlough and demote employees were non-negotiable policy determinations" Borough of Belmar and CWA, AFL-CIO, P.E.R.C. No. 2011-34, 36 NJPER 405 (¶157 2010), rev'd 39 NJPER 315 (¶108 App. Div. 2013), certif. pending, Tp. of Mt. Laurel and Communications Workers of America AFL-CIO and AFSCME Council 71, P.E.R.C. No. 2011-35, 36 NJPER 409 (¶158 2010), rev'd 39 NJPER 315 (¶108 App. Div. 2013), certif. pending. In light of these recent determinations of the Appellate Division, we find that the decision of the Robbinsville Township Board of Education to implement three furlough days during the 2010-2011 school year was an exercise of its non-negotiable policy determination and therefore dismiss the unfair practice charges brought by the Association in this regard.

As to the charge that the Board violated N.J.S.A. 34:13a-5.4a(2) when the Superintendent e-mailed the staff, we find that the Superintendent's communication was nothing more than a notice to employees of the action taken by the Board at its meeting of

the previous evening. No evidence was present in this record that the email tended to interfere with the existence of the Association. Nor did the content lack a legitimate and substantial business purpose. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982) aff'd 10 NJPER 78 (¶15843 App. Div. 1983). Therefore, the Board's motion for summary judgment is granted as to this aspect of the charge, as well.

ORDER

The Robbinsville Township Board of Education's motion for summary judgment is granted, and the Washington Township Education Association's motion for summary judgment is denied, and the unfair practice charges are dismissed in their entirety.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Voos voted against this decision. Commissioners Bonanni and Jones were not present.

ISSUED: November 21, 2013

Trenton, New Jersey