P.E.R.C. No. 77-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTVILLE TOWNSHIP BOARD
OF EDUCATION,

Respondent,

- and - Docket No. CO-76-293

MONTVILLE TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman issues a supplementary decision clarifying a recent interlocutory decision and order granting interim relief in a school district reduction-in-force unfair practice case.

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EDUCATION ASSOCIATION,

Charging Party.

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).

SUPPLEMENT TO INTERLOCUTORY DECISION AND ORDER

On June 30, 1976 the undersigned issued an Interlocutory Decision and Order in the above-entitled case. Interim relief was ordered on the basis of the record as it existed at the conclusion of a show cause proceeding on June 29, 1976.[1/] At the conclusion of that hearing the undersigned entered an Order along with some explanatory comments. The Interlocutory Decision and Order of June 30, 1976 was prepared on an expedited basis to afford the parties the

1/ This supplement to the Interlocutory Decision and Order will not reiterate the factual background of this case as that is set forth in the decision issued on June 30, 1976.

benefit of a written decision which would provide a more definitive form of the Order and a more thorough exposition of the reasoning behind it.

By letter dated July 1, 1976 the attorney for the Montville Township Education Association requested a clarification of the status of the junior high school guidance counselor who was terminated apparently as a result of the reduction in force instituted by the Montville Township Board of Education for the 1976-77 school year. A review of the said decision indicates that the guidance counselor was mentioned as one of the nine teachers still affected by the Board's action, see page 6, but that the Decision and Order does not indicate whether negotiations are required with regard either to the procedures used or to the impact of the reduction in force on that individual.

The undersigned has reviewed the record as it existed at the close of show cause proceeding on June 29, 1976 and supplements the Interlocutory Decision and Order issued on June 30, 1976 as follows. 2/

In the original decision the undersigned reiterated the conclusions reached in In re Union County Regional High School Board of Education and Cranford Board of Education, P.E.R.C. No. 76-43 that a board of education has the unilateral authority to make educational policy judgments which result in the abolition of certain positions and/or people. If the number of positions eliminated corresponds to the number of non-tenured people who filled these positions in the 1975-76 school year the decision itself will dictate which people will not be renewed for the 1976-77 school year. The Board's

2/ See page 4 for a recitation of the items comprising the record at this stage of the proceeding.

decision in the instant case to eliminate the position of high school media specialist coordinator was an example of such a situation. There was only one such position and the termination of the job title resulted in the termination of the only person holding that position. Thus the undersigned did not order negotiations concerning the procedures or impact of the reduction in force on that particular individual as part of this interim proceeding.[3/]

But when the number of positions eliminated for the 1976-77 school year is less than the total number of such positions which existed in the 1975-76 school year a different situation may be created. Assuming attrition does not result in a sufficient number of people resigning it could develop that the number of non-tenured teachers employed in the 1975-76 school year who are qualified and desirous of holding such positions in the subsequent school year exceeds the reduced number of these positions. The obvious result of such a situation is that a number of these non-tenured teachers will not have their contracts renewed despite the fact that their teaching performance for the 1975-76 school year was deemed satisfactory. In such a case the undersigned found that a board must negotiate with the majority representative of the employees to arrive at procedures to be used for the selection of the specific teachers to be terminated from amongst the pool of qualified non-tenured

3/ A finding by the undersigned in this interim proceeding that negotiations are not required as interlocutory relief is in no way a determination of the merits of the underlying unfair practice charge. It is only a determination that an analysis of the record at this stage of the proceeding does not convince the undersigned that the likelihood of success and the irreparable harm to this individual is so great as to warrant interlocutory relief.

teachers. In the instant matter the record revealed that seven elementary school teaching positions were being eliminated and that the number of qualified non-tenured elementary school teachers was far in excess of that number. The undersigned thus ordered negotiations concerning the procedures utilized to choose the seven people whose contracts would not be renewed.

A review of the record indicates that no evidence was presented by either the Association or the Board concerning the reason for the non-renewal of the junior high school guidance counselor. Nor was any evidence produced as to the number of junior high school guidance counselors employed by the Board for the 1975-76 school year, or whether there were any other non-tenured guidance counselors who might have been selected instead of the person terminated. It is thus impossible for the undersigned to determine, on the basis of the facts elicited in this interim proceeding, whether the guidance counselor's situation is one which would require negotiations or not.

While it may be true that evidence of the reason for the abolition of the junior high school guidance counselor position may be in the particular knowledge of the Board and thus the burden for producing such evidence might not be fairly placed upon the Association, the same is not true with regard to evidence of the potential number of people from whom a selection could be made. Before the undersigned would order negotiations on the procedures used to select the said individual it must be shown that that individual was one of a pool of qualified non-tenured people filling a similar position.

If no such pool exists the exercise of the Board's managerial prerogative to abolish one junior high school guidance position would result in the termination of the one person filling that position. If only one non-tenured person holds that position there is no procedure to negotiate since that person is the one whose contract would not be renewed.

Similarly in the absence of evidence in the record which indicates that the said guidance counselor was wrongfully discharged the undersigned cannot be convinced that negotiations should be ordered concerning the impact of the discharge upon that person. Since the record does not establish why this individual was discharged, or whether there is any likelihood of his position being reestablished, or whether there are others who might be eligible for reemployment, there is no indication that significant irreparable harm will occur to the guidance counselor if a determination of this aspect of the case awaits a final Commission decision. There was no evidence presented which differentiates the impact of the discharge upon this individual from the impact upon those individuals conceded to be discharged for good cause unrelated to the reduction in force. In the absence of facts which relate the nature of the harm to the alleged violation of the Act the undersigned is unwilling to order negotiations.

Given the above discussion the undersigned determines that no additional interlocutory relief need be ordered with regard to the said junior high school guidance counselor and the Order previously

issued in this case will not be changed.

Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
July 12 , 1976