

I.R. NO. 98-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST NEW YORK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-70

WEST NEW YORK SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to enter an interim order where the West New York Supervisors Association alleged the terms and conditions of employment of certain supervisory employees were unilaterally altered. The employer asserts the positions of the supervisors were eliminated due to a re-organization and the affected employees were placed in new positions. The Association failed to demonstrate it had a substantial likelihood of success on the facts of this case.

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Appearances:

For the Respondent,  
Scarinci & Hollenbeck, attorneys  
(Allan C. Roth, of counsel)

For the Charging Party,  
Balk, Oxfeld, Mandell, Cohen, attorneys  
(Gail Oxfeld Kanef, of counsel)

INTERLOCUTORY DECISION

On August 20, 1997, the West New York Supervisors Association filed an unfair practice charge which was accompanied by an application for interim relief and order to show cause with the Public Employment Relations Commission. The charge alleges that the West New York Board of Education engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when pursuant

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<sup>1/</sup> 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 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."

to the settlement of a clarification of unit petition filed by the Board of Education, certain supervisors employed by the Board of Education were formed in a separate unit for collective bargaining purposes and was named West New York Supervisors Association. Representatives of the Association and the Board are currently engaged in collective negotiations. Despite the ongoing nature of negotiations, the Board has unilaterally altered the terms and conditions of employment governing these supervisors which were set forth in the collective negotiations agreement between the Board and West New York Education Association, the organization which formerly represented the affected employees. The alteration of the status quo includes but is not limited to a change in the days per year and the hours per day to be worked.

The order was executed and the matter was heard on September 11, 1997. Both parties submitted documents and argued orally.

The Board does not dispute that these employees were formerly in a unit with teachers represented by the West New York Education Association. It argues that the affected employees were not simply transferred into a new supervisors unit. Rather, the Board restructured the departmental supervisors and supervisors of basic skills and bilingual education. Accordingly, it created new supervisory positions which required additional duties and responsibilities along with longer hours and a greater number of work days per school year than the prior positions.

All 13 employees in the old supervisory positions bid on these positions and all were hired into the new positions. In addition, three new supervisors were hired. The supervisors are also being paid a salary different from the salaries they received in their prior positions. These changes in duties, hours and work year were listed in the job descriptions of the new positions and the employees who bid on the new jobs knew of these changes.


The Board's position is that these are newly created positions and they had the right in the first instance to establish the terms and conditions of employment for these positions. It is willing to negotiate new terms and conditions of employment with the Association and such negotiations are now taking place. At the hearing, counsel for the Board acknowledged that certain aspects of the status quo these employees enjoyed before they were removed from the unit, including the use of sick leave and the right to file grievances, are part of their current status quo.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No.

76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Here, there is a conflict on the facts before me as to whether there was a legitimate reorganization when these positions were removed from the Education Association unit. In any event, the Board does acknowledge its obligation to preserve terms and conditions of employment of these employees, other than salaries, hours of work and work year pending the execution of a new contract.

Under these circumstances, I find the Association has not met its heavy burden. Nevertheless, I am retaining jurisdiction in this matter. If, in fact, terms and conditions of employment other than hours of work, salaries and work year are not being maintained by the employer pending negotiations for a successor agreement, the Association may renew its application for interim relief. Except as noted within, the application is denied.

  
Edmund G. Gerber  
Commission Designee

DATED: September 12, 1997  
Trenton, New Jersey