

I.R. NO. 92-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-113

CITY ASSOCIATION OF SUPERVISORS
AND ADMINISTRATORS, LOCAL 20,
A.F.S.A./AFL-CIO,

Charging Party.

SYNOPSIS

Acting on an application for temporary restraints brought by the City Association of Supervisors and Administrators, Local 20, A.F.S.A./AFL-CIO, a Commission designee orders the Newark Board of Education to restore the previous hours of former supervisors effective October 26, 1991. The restraint shall continue in effect until the parties reach agreement or negotiate in good faith to impasse over the terms and conditions of employment of the supervisors, or until November 7, 1991, the return date of an order to show cause issued by the designee.

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Appearances:

For the Respondent, Marvin L. Comick, General Counsel
(Marvin L. Comick and Robin T. McMahon, of counsel)

For the Charging Party, Anthony P. Sciarrillo, Esq.

INTERLOCUTORY DECISION

On October 18, 1991, the City Association of Supervisors and Administrators, Local 20, A.F.S.A./AFL-CIO filed an unfair practice charge against the Newark Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (5) and (7),^{1/} by unilaterally extending

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5)

(Footnote Continued on Next Page)

the workday for supervisors without compensation and by circumventing the Association and negotiating directly with supervisors over their terms and conditions of employment. The Association also sought interim relief and temporary restraints pending the return date on the application for interim relief. It filed certifications and exhibits in support of its application for temporary restraints. The Board filed a letter memorandum, an affidavit and exhibits in opposition. Both parties appeared before me on October 24, 1991 and argued orally. These facts appear.

The Association represents the Board's administrative and supervisory personnel. The parties are in negotiations for an agreement to succeed their July 1, 1988 to June 30, 1991 agreement.

On April 2, 1991, the Deputy Executive Superintendent recommended that the position of supervisor be eliminated to improve the efficiency and effectiveness of the Board's administrative staff. On August 27, the Board formally abolished the supervisor position, effective September 23. The effective date was then postponed until October 18. On October 10, the Board's Acting Executive Director offered the 29 affected employees the opportunity to be employed as central office

1/ (Footnote Continued From Previous Page)

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. (7) Violating any of the rules and regulations established by the commission."

supervisors effective October 21. The new position would have central office hours of 8:30 a.m. to 4:30 p.m., a work schedule that coincides with the school year, and the same salary as the current supervisor position. On October 18, the 26 supervisors who accepted this offer were informed that they were "administratively appointed" as central office supervisors with hours of 8:30 a.m. to 4:30 p.m. They were also told that they were expected to continue functioning in their current job assignments and that they would be promptly notified of any changes in job assignments. On October 21, the supervisors were told that upon completion of their scheduled day (elementary - 2:45 p.m., secondary - 2:30 p.m.), they were to return to the central office to complete their workday.

On October 22, 1991, the Board formally established the position of central office supervisor with the same salary as the former supervisor position, effective November 1, 1991. No job description for the new position has been issued. Vacancies for the new position have not been posted. The Association's chief negotiator/grievance chairman claims that the duties and responsibilities of the new position are identical to those of the former position except for the return to the central office at the end of the day. The Deputy Chief Superintendent claims that the new position will involve much broader administrative functions. He also claims that staff who assume the new title will have direct input in the areas of programmatic reviews, preparation of

Chapter I/Basic Skills applications, district-wide test analysis and Chapter I comparability reports. It does not appear, however, that any new duties have been assigned as yet.

The Association argues that the unilateral uncompensated increase in the supervisors' workday will chill ongoing negotiations. It seeks restoration of the supervisors' previous hours pending negotiations over their terms and conditions of employment.

The Board denies that the duties of the two positions are the same. It asserts, therefore, that contravened facts preclude an interim order restoring the status quo. It also denies that it refused to negotiate in good faith.

The Commission's standards 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 factual and legal allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Stafford Tp., 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); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 36 (1975).

Work hours and compensation are mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). Changing such terms and conditions of employment without negotiations is an unfair practice. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). Further, unilateral changes in terms and conditions of employment during successor contract negotiations have been restrained pending a plenary hearing. State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); see also Galloway at 48-50; NLRB v. Katz, 369 U.S. 736 (1962).

Here, the Association claims that the Board unilaterally increased the workday without additional compensation. It seeks a restoration of the status quo and negotiations should the Board seek to increase the workday. The Board claims that it has a prerogative to abolish one title and to create another. Even if the Board were ultimately to prevail on this claim, it would still be obligated to negotiate over the terms and conditions of employment of that new title.

Based on the limited evidence before me at this juncture, I conclude that the Association has a substantial likelihood of proving that the Board unilaterally increased the hours of supervisors without additional compensation. At this point, the Board has not shown that the supervisors have been assigned any new duties, that a job description for the new position has been issued, or even that a Board resolution creating a new title has gone into effect.

The Association has also met its burden of showing irreparable harm. Twenty-six employees have had their hours increased unilaterally without additional compensation during successor contract negotiations. Absent a restraint, even if the Board were to negotiate now over the change in hours and compensation, the Association would be negotiating with the disadvantage of having the uncompensated increase in hours an accomplished fact.

Under these circumstances and acting pursuant to authority granted to me by the full Commission, I order the Newark Board of Education, effective October 26, 1991, to restore the previous hours of former supervisors. This restraint shall continue in effect until November 7, 1991, the return date of an order to show cause I am also issuing today, or until the parties reach agreement or negotiate in good faith to impasse over the terms and conditions of employment of the supervisors, whichever comes first.

In issuing this restraint, I have considered the relative harm to the parties. My order will not interfere with the Board's ability to carry out its educational mission because no new duties have yet been assigned these employees. At this point, all that has happened is that the employees' hours have been extended and they have been told to report back to the central office at the end of the school day. In addition, these temporary restraints

are effective only for the workweek beginning October 28, 1991. Both parties have represented to me that these employees are not scheduled to work the following week. I encourage the parties to use the days before the return date to negotiate over the supervisors' hours and compensation. Such negotiations could obviate the need for further proceedings.

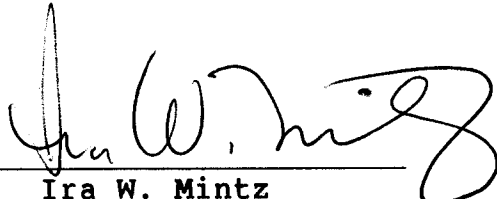
ORDER

The Newark Board of Education shall restore the previous hours of former supervisors represented by the City Association of Supervisors and Administrators, Local 20, A.F.S.A./AFL-CIO, effective October 26, 1991. This restraint shall continue in effect until the parties reach agreement or negotiate in good faith to impasse over the terms and conditions of employment of the supervisors, or until November 7, 1991, the return date of the following order to show cause.

The Board shall show cause before me, at 153 Halsey Street, 5th Floor, Newark, New Jersey, on November 7, 1991 at 10:00 a.m., why an order continuing these temporary restraints should not issue.

The charging party shall file its brief with me and the Board's attorney by 12:00 noon on November 1, 1991. Proof of service shall be filed with me immediately after service on the Board.

The Board shall file its answering brief and any opposing affidavits with me and the Association's attorney by 5:00 p.m. on November 4, 1991. Proof of personal service on the Association's attorney shall be filed with me immediately after service on the Association.



Ira W. Mintz
Commission Designee

DATED: Trenton, New Jersey
October 25, 1991