

I.R. NO. 92-11

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

A Commission designee denies a request of the City Association of Supervisors and Administrators, Local 20, A.F.S.A./AFL-CIO, for interim relief pending final disposition of its unfair practice charge against the Newark Board of Education. The designee finds that there are material facts in dispute which precluded the Association from showing that it has a substantial likelihood of success on the merits.

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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,

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. The Association 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.

On October 25, 1991, I ordered the Board to restore the previous hours of former supervisors until the parties reached agreement or negotiated 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 order to show cause. I.R. No. 92-10, 17 NJPER ____ (¶____ 1991).

No negotiations took place and the parties appeared before me on the return date and argued orally. The also filed

1/ Footnote Continued From Previous Page

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) 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."

briefs, documents and certifications. I incorporate here the facts in I.R. 92-10. I add these facts which appear based on documents and certifications submitted since I issued the temporary restraints.

According to the deputy executive superintendent:

former supervisors assigned to the office of special projects and employment and technology did not perform administrative functions because their time was consumed by supervising other teaching staff members. The central office supervisors will perform administrative functions that the former supervisors did not, such as purchasing equipment, keeping supply inventories, and interfacing with other departments including personnel and staffing and certification matters.

Central office supervisors have also been assigned to the office of child guidance and placement. That office has assumed functions previously handled by the department of pupil personnel services, which was abolished this past summer. The supervisors previously assigned to the department will be working in child guidance and placement in the capacity of central office supervisor. The former supervisors had been assigned discrete functions, such as coordinating the district's allocation of federal funds for handicapped pupils, which left no time for monitoring child study teams in the schools. Central office supervisors will now monitor special education programs and perform administrative functions.

According to the director of the division of special projects, the ten central office supervisors assigned to his division would have been assigned some of their new functions had there not been an restraining order. His certification lists 21 duties for central office supervisors. Five of those 21 duties were performed by the former supervisors.

The Board's chief negotiator is also a labor relations specialist responsible for preparing job descriptions and establishing salary ranges. She indicated to the Association that she would discuss dates for negotiations over terms and conditions of employment for central office supervisors. According to her certification, she prepared a draft job description for the new title but was told that, because of the temporary restraints, the Board would not be carrying out its plans to staff the title until the case is resolved. She also noted that the executive superintendent told the Association's representatives that he was going to recommend abolishment of the former supervisor position unless their working hours were increased. The parties then had informal discussions at which the Association submitted a proposal for pro rata compensation for the additional working hours. The superintendent indicated that the compensation proposal was unacceptable. No further proposals have been made or discussions held.

I stated the Commission's standards for evaluating interim relief requests in I.R. No. 92-10. 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.

I issued a temporary restraint because at that juncture, based on the limited evidence before me, I concluded that the Association had a substantial likelihood of proving that the Board unilaterally increased the hours of supervisors without additional compensation and therefore violated the Act. The Board had not shown that the supervisors had been assigned any new duties, that a job description for the new position had been issued, or even that a Board resolution creating a new title had gone into effect. The Association had also met its burden of showing irreparable harm. Twenty-six employees had had their hours increased unilaterally without additional compensation during successor contract negotiations. My order did not interfere with the Board's ability to carry out its educational mission because no new duties had yet been assigned these employees. At that point, all that had happened was that the employees' hours had been extended and they had been told to report back to the central office at the end of the school day.

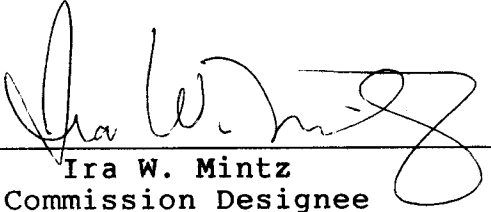
Acting pursuant to authority granted to me by the full Commission, I now deny the Association's request for interim relief pending the final disposition of the proceedings before the Commission. The evidence now before me indicates that there are material facts in dispute from which I conclude that the Association cannot show that it has a substantial likelihood of success on the merits.

The Association claims that the Board unilaterally increased the workday without additional compensation. The Board claims that it abolished one title and created another. The Board has now submitted evidence that new duties would have been assigned had a temporary restraint not issued. It has also formally created a new title and submitted a draft job description. Without a plenary hearing, I cannot weigh the conflicting evidence and determine which party's characterization more accurately describes the Board's action.

I noted in my decision granting temporary restraints that even if the Board were ultimately to prevail on its claim, it would still be obligated to negotiate over terms and conditions of employment for the new title. The Board has indicated a willingness to do that. I again encourage the parties to begin negotiations over those issues while this unfair practice case is being processed. Nothing can be lost by trying to resolve this type of dispute through negotiations rather than through litigation.

ORDER

The Association's request for interim relief pending a final Commission decision is denied.


Ira W. Mintz
Commission Designee

DATED: Trenton, New Jersey
November 8, 1991