

I.R. NO. 97-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT OF
JERSEY CITY,

Respondent,

-and-

Docket No. CO-97-37

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Jersey City Education Association applied for interim relief alleging that the State-Operated School District of Jersey City unilaterally implemented a schedule change resulting in increased student contact time. The Association sought a cease and desist order enjoining implementation of the schedule change pending completion of collective negotiations concerning compensation. The Commission Designee denied interim relief on the basis that the Association did not establish that it had a substantial likelihood of success or that it would suffer irreparable harm. Also, the balance of the relative hardships of the parties in granting or denying relief weighs in favor of the District not being prevented from opening the high schools on time.

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Appearances:

For the Respondent, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party, Feintuch, Porwich & Feintuch,
attorneys
(Alan S. Porwich, of counsel)

INTERLOCUTORY DECISION

On July 31, 1996, the Jersey City Education Association ("Association") filed an unfair practice charge against the State-Operated School District of Jersey City ("District") alleging that the District has engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically sections 5.4(a)(1), (2), (5) and (7).^{1/} The Association alleges that the District violated the

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Act by implementing a new schedule for high school instructional staff commencing in the 1996-1997 school year.

On August 6, 1996, the Association filed an application for interim relief, with supporting documents, requesting that the District be ordered to refrain from unilaterally implementing the work schedule until the parties have concluded negotiations over compensation. A show cause hearing on the application was held on August 26, 1996, at which the parties argued orally.

During the 1994-1995 school year, Frank Sinatra, Acting State District Superintendent, became concerned about low test scores, low student attendance levels and high drop out rates at the Jersey City high schools. Mr. Sinatra directed Charles Smith, State Assistant Superintendent in Jersey City, to research and develop a plan to ameliorate these deficiencies. Mr. Smith identified the Copernican Plan as a program to address the identified deficiencies. The Copernican Plan, reduces the number of periods a high school student attends on a daily basis, but lengthens each remaining period. The plan is also known as intensified block

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. (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."

scheduling. The Copernican Plan was part of the strategic plan which the District submitted to the Department of Education and which was approved by the Commissioner of Education on January 12, 1996.

Under the Copernican Plan, most Jersey City high school teachers will teach three periods of 80 minutes each, in a two semester school year. The parties current collective agreement provides for a school work day of 5 hours and 45 minutes exclusive of a 45 minute duty-free lunch period. Under the Copernican Plan, the 5 hour and 45 minute school day remains unchanged. Also, teachers will continue to receive a 45 minute duty-free lunch period, a 45 minute preparation period and a duty period reduced to 35 minutes from the previous 45 minutes. The pre-Copernican Plan school day was divided into eight 45 minute periods. Under the Copernican Plan, total instructional time will increase between 15 and 40 minutes.^{2/}

The Association aided the District in the study and possible implementation of the Copernican Plan. The Association stated that at all times during the plan's study period, the District represented to the Association that affected teachers would be appropriately compensated if the plan were implemented. The District argued that it has no obligation to provide additional compensation to teachers who are affected by the Plan's

^{2/} There is a dispute between the parties concerning the number of minutes instructional time will be increased.

implementation. The Association seeks to enjoin the District from implementing the Copernican Plan pending the conclusion of negotiations regarding additional teacher compensation.

The standards that have been developed by the Commission 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 legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered. Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stratford, 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); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Association has failed to establish that it has a substantial likelihood of success on the merits in the instant matter. Where a change in a term or condition of employment is made pursuant to an educational policy, the Commission has held such changes to be non-negotiable. In Hoboken Board of Education, P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992), the Commission held that a decision to advance the school starting and finishing times for certain personnel advanced the Board's educational policy of increasing student access to educational resources. The Association

here does not dispute that there may be a problem concerning low test scores, low student attendance and high drop out rates at the Jersey City high schools. There is no argument that the Copernican Plan does not constitute an available methodology to address such deficiencies. Accordingly, the institution of the Copernican Plan may constitute a matter of educational policy and, thus, represent the exercise of an inherent managerial prerogative.

Both sides argue the applicability of various provisions contained in their collective agreement. The District alleges that it has a contractual right to change the length of the teaching periods and increase pupil contact time in accordance with the collective agreement. The Commission has held that a unilateral increase in pupil contact time that is consistent with the terms of a collective agreement does not violate the Act. See Carlstadt Board of Education, P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991); Glen Ridge Board of Education, P.E.R.C. No. 90-33, 15 NJPER 619 (¶20258 1989); Bound Brook Board of Education, P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982).

The issuance of interim relief is an extraordinary action. The burden falls on the applicant, here the Association, to clearly establish that it has a substantial likelihood of success on the merits of the charge. Cases such as Carlstadt Bd. of Ed., Glen Ridge Bd. of Ed. and Bound Brook Bd. of Ed. undermine the Association's establishment of a likelihood of success on the merits of the charge. Further, the Association has filed a grievance

seeking arbitration on allegations of contract violations resulting from the implementation of the Copernican Plan. The Commission has refused to issue a complaint on unfair practice charges where the alleged violation is dependent upon the underlying contractual dispute. New Jersey Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Thus, the unfair practice charge may essentially be a contract dispute which is properly resolved through the grievance arbitration procedures included in the current collective agreement and not through the unfair practice mechanism.

The final test in considering the granting of interim relief is the relative hardship which the parties may suffer in granting or denying relief. The Association seeks an order preventing the District from implementing the Copernican Plan until such time as the parties have completed negotiations concerning compensation for the change in the work schedule. A matter which may be remediable through a grant of compensation does not constitute irreparable harm. Additionally, the Board has asserted that if it were enjoined from instituting the Copernican Plan in September, 1996, a substantial period of time would be needed to reschedule students into an 8 period day resulting in a significant delay in the opening of the District's high schools. The Association does not clearly articulate the hardship it will suffer resulting from the denial of its application for interim relief. However, I assume the Association would contend that teachers would

be required to provide additional instructional time to students without agreement as to compensation. I find that the balancing of relative hardships weighs in favor of the District not being prevented from opening the high schools on time.

Consequently, in light of the factors set forth above, the Association's application for interim relief is denied.



Stuart Reichman
Commission Designee

DATED: August 29, 1996
Trenton, New Jersey