

I.R. NO. 97-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAZLET BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-73

HAZLET TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain arbitration brought by the Hazlet Teachers Association against the Hazlet Board of Education. The Board notified certain members of the unit represented by the Teachers Association of the number of sick days they took during the school year. The notices stated the number of sick day absences an employee took the day before or after a weekend or holiday and included the comment "this is an area that needs improvement." Although sick leave verification and a neutral notification of the use of sick leave is a non-negotiable managerial prerogative, discipline for the abuse of sick leave is negotiable. The Board of Education failed to demonstrate it has a substantial likelihood of success in prevailing before the Commission in its contention that the notices to employees were neutral in tone and not disciplinary.

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Appearances:

For the Petitioner,
Kenney & Gross, attorneys
(Mark S. Tabenkin, of counsel)

For the Respondent,
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On January 27, 1997, the Hazlet Board of Education filed a scope of negotiations petition with the Public Employment Relations Commission accompanied by an application for an interim restraint of arbitration against the Hazlet Teachers Association.

The Association seeks to arbitrate the Board's distribution of letters issued to 29 teachers in the District. The Association claims the letters constituted reprimands to these teachers.

The Board claims that the letters were informational only and were issued as part of its sick leave verification policy. No discipline was intended or exercised by the letters.

A show cause order was executed and a hearing by telephone was conducted on April 11, 1997.

It is not disputed that some 29 employees received the same form letter with the appropriate information for the individual employee filled in. The letter states:

This is to confirm our meeting of September ____, 1995.

Our records indicate that you were absent a total of ____ sick days during the 1994-1995 school year.

Of those days, ____ sick day absences took place on a Monday or Friday, or the day before or after a holiday.

You are an important and vital part of our district's educational program. Your presence is needed every day to insure a sound and consistent educational program and delivery system.

Your attendance is an area that needs improvement during the 1995-1996 school year.

The Board argues that it had a managerial prerogative to issue these letters since they were informational only and were neutral in tone. It relies on County of Hudson, I.R. No. 91-3, 16 NJPER 463 (¶21200 1990) and No. Plainfield Bd. of Ed., P.E.R.C. No. 89-94, 15 NJPER 252 (¶20102 1989). In No. Plainfield, a teacher evaluation contained the sentence, "As of this date, Mrs. Johnson has been absent five times, of which four are due to a death in the family." The Commission held:

We find that the comments on Johnson's evaluation are predominantly informational. They are neutral in tone, not pejorative. In fact the comments explain that four out of five days of absence were due to a death in the family. The evaluation does not reprimand Johnson or even

state that her attendance needs to improve. There is no allegation that any adverse action was taken based on her attendance record. Under these circumstances, these evaluative comments are not disciplinary.

The Board also cites two cases where the Commission held that informational letters were not disciplinary. Town of Kearny, P.E.R.C. No. 92-40, 17 NJPER 481 (¶22233 1991); Township of Franklin, P.E.R.C. No. 94-96, 20 NJPER 193 (¶25090 1994).

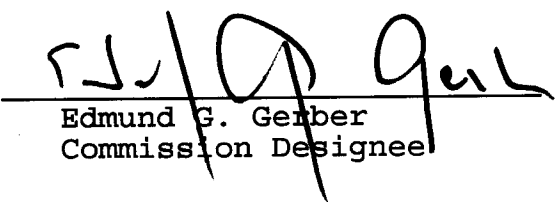
The Association contends that the notice here is not neutral in tone. Since note is taken of sick days taken the day before or after a weekend or holiday there is an implication that these sick days were improperly utilized. The Association argues that where improper behavior by an employee is the subject of responsive action by the Board of Education, the matter should be deemed disciplinary. It cites Holland Tp. Bd. of Ed. and Holland Tp. Ed. Ass'n, P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd NJPER Supp.2d 183 (¶161 App. Div. 1987) [App. Div. Dkt. No. A-2053-86T8 (10/23/87)]; Washington Township Board of Education, P.E.R.C. No. 90-109, 16 NJPER 326 (¶21134 1990) and Shrewsbury Board of Education, P.E.R.C. No. 94-73, 20 NJPER 65 (¶25027 1994).

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, the Board of Education has not met its heavy burden. While the Board has the managerial prerogative to keep track of sick leave, verify its legitimate use and notify its employees of such use, the added observation that sick day absences took place on a Monday or Friday, or the day before or after a holiday has no value other than to imply that sick leave was improperly taken. The Commission may find this implication to be disciplinary in nature. I cannot say that the Board has a substantial likelihood of success of convincing the Commission these letters were neutral in tone and therefore not disciplinary.

Accordingly, the application for restrain of arbitration is denied.


Edmund G. Gerber
Commission Designee

DATED: April 17, 1997
Trenton, New Jersey