

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-64

LONG BRANCH SCHOOL EMPLOYEES
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission designee failed to restrain the Long Branch Board of Education from prohibiting an NJEA representative from coming on school premises during regular school hours.

It was found that there was contract language which justified the conduct of the Board. The Association claimed there was a past practice which gave the NJEA representative the right to be on the premises. The Commission has long held that express contract language prevails over an alleged, contrary past practice and, accordingly, the Association did not show it had a substantial likelihood of success at a full plenary hearing.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-64

LONG BRANCH SCHOOL EMPLOYEES
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Murray, Granello & Kenney, Esqs.
(Malachi J. Kenney, Esq.)

For the Charging Party
Katzenbach, Gildea & Rudner, Esqs.
(Arnold M. Mellk, Esq.)

INTERLOCUTORY DECISION

On September 21, 1982, the Long Branch School Employees Association (LBSEA) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Long Branch Board of Education (Board or Respondent) denied a representative of the Association access to its school building during regular school hours contrary to the past practice between the parties in violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5). It was claimed that this act, in the context of a current representation election campaign between the LBSEA and the AFT, has "created an atmosphere rendering improbable a free choice by the subject employees."

Along with this Unfair Practice Charge the LBSEA submitted a Show Cause Order seeking to have the Commission grant interim

relief by ordering that, the Respondent be restrained from denying the designated representative of the LBSEA from entering upon the property of the Board and thereby preventing the proper administration of the collective bargaining agreement existing between the Association and the Board.

The Show Cause Order was made returnable on October 4, 1982, at which time the parties were given the opportunity to give testimony, present evidence, argue orally and submit briefs and supporting affidavits.

The New Jersey State Federation of Teachers, an affiliate of the American Federation of Teachers, filed a representation petition with the Commission seeking to represent the employees of the Long Branch Board of Education. In response thereto, Herbert A. Korey, the Board's Superintendent of Schools, sent a memorandum to all employees. The memo acknowledged the impending representation campaign and set down guidelines as to the right of access to Board facilities for the competing organizations. One of the rules imposed in the memo was that

No outside representative of either organization will be permitted entry into the schools during regularly scheduled school hours.

John Molloy, a UniServ Representative of the New Jersey Education Association, testified on behalf of the LBSEA that on September 15, 1982, he appeared at the Long Branch Senior High School to meet with an officer of the LBSEA.

The high school principal ordered him to leave. A police detective was on the scene and Molloy was ordered to leave or face

arrest. Molloy left. Molloy claimed he was there to administer the contract and was not there to campaign. He testified that for a number of years he has been going into the school building of the Board on an average of twice a month and has never been asked to leave.

The contract between the parties provides in Article VI Association Rights, paragraph 4, "No meeting, hearing or conference...shall be held or conducted during normal school hours except in emergency situations by mutual agreement."

Superintendent Korey testified that he was unaware of Molloy's history of visiting the Board's schools during school hours and was not in a position to have acquiesced to such visits.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are quite similar to those applied by the courts when confronted with similar applications. The test is twofold: it must be shown that there is both a substantial likelihood of success on the legal and factual allegations in the final Commission decision, and that the nature of the harm that will occur if the requested relief is not granted is irreparable. Both standards must be satisfied before the requested relief will be granted.

The undersigned is not satisfied that the Charging Party demonstrated substantial likelihood of success at a full plenary hearing.

The language of Article VI raises a substantial question as to whether Molloy's actions were permitted under the contract.

The Commission has consistently held that where the language of the collective negotiations agreement is in conflict with an alleged past practice, the contract language takes precedence. Wharton Bd/Ed, P.E.R.C. No. 83-24, NJPER (1982); Town of Irvington, P.E.R.C. No. 82-63, 8 NJPER 94 (¶13038 1982) and New Brunswick Bd/Ed, P.E.R.C. No. 78-47, 4 NJPER 84 (1978).

A substantial factual question exists as to whether the Board unilaterally altered a term and condition of employment.

It should be noted that the rules promulgated by the Board which are disputed by the Association are in keeping with the Commission's own directives as to equal right of access in a representation campaign. Union Cty. Reg. Bd/Ed, P.E.R.C. No. 76-17, 2 NJPER 50 (1976).

Moreover, the harm here is not of such a dimension that it is irreparable. At worst, Molloy only has to wait until after the close of the school day to visit with the Association representatives to administer the contract. He is not completely barred from the school building. This may constitute an inconvenience but the level of harm is not one which calls for the imposition of an extraordinary remedy. It cannot be forgotten that pursuant to the contract the President of the Association is granted time off during the day to conduct Association business.

Accordingly, the Motion to Restrain the Long Branch Board of Education is denied.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

Dated: October 7, 1982
Trenton, New Jersey