

I.R. No. 2009-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HARRISON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2008-396

HARRISON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission designee grants an interim relief application filed by the Harrison Education Association with an amended unfair practice charge alleging that the Harrison Board of Education violated the New Jersey Employer-Employee Relations Act when it announced changes in the reporting and dismissal times for teachers for the 2008-2009 school year. The Designee found that the Association had shown that it was substantially likely to prevail on its claim that the Board's action violated N.J.S.A., 34:13A-5.4a(1) and (5). In addition, since the Board and Association were engaged in collective negotiations for a successor agreement, the Designee held that N.J.S.A. 34:13A-33, part of the "School Employees Contract Resolution and Equity Act," prohibited the Board from implementing any changes in existing terms and conditions of employment. The Designee directed that the Board, pending further order of the Commission, refrain from extending, absent agreement of the Association, the dismissal times for teachers beyond the times that were in effect during the 2007-2008 school year.

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Appearances:

For the Respondent, The Murray Law Firm, LLC, attorneys
(Karen Murray, of counsel)

For the Charging Party, Oxfeld, Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On June 24 and August 1, 2008, respectively, the Harrison Education Association (Association) filed an unfair practice charge and an amended unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Harrison Board of Education (Board) violated the New Jersey Employer-Employee Relations Act (Act), specifically N.J.S.A. 34:13A-5.4a(1), (5) and (7) by altering and/or extending, effective at the start of the 2008-2009 school year, the existing work day for teachers represented by the Association.^{1/} The

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the (continued...)"

charge, as amended, alleges that since the parties are in negotiations for a successor agreement, the Board's action also violates N.J.S.A. 34:13A-33, part of the "School Employees Contract Resolution and Equity Act."

The Association filed an application for interim relief with the amended charge seeking an order directing the Board to refrain from changing the length of the teachers' work day or their starting and ending times.

An order to show cause was executed on August 5, 2008 and a return date was scheduled for August 21, and then postponed, at the request of the Board, to August 28. I was assigned, as a Commission designee, to hear the application. The parties submitted briefs, certifications and exhibits in accordance with Commission rules.

On August 28, 2008, both parties appeared on the return date and argued orally. Based upon the parties submissions, the relevant statutes and pertinent Court and Commission precedents, I found that the Association had demonstrated that it was substantially likely to succeed on the merits of its unfair

1/ (...continued)
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."

practice charge and that irreparable harm would result absent an order granting interim relief. Accordingly, I entered an order on the record directing that the Board, pending further order of the Commission or absent the express agreement of the Association, refrain from extending the dismissal times for teachers represented by the Association, beyond the times that existed during the 2007-2008 school year. This decision contains my findings and conclusions.

1. The Association is the majority representative of the Board's teachers.

2. The Board and the Association have not yet agreed upon a collective negotiations agreement to succeed the one that expired on June 30, 2008.^{2/}

3. Article VII.A.2 of the agreement provides that "the total work day shall not consist of more than six and three-quarter (6 3/4) hours at the Washington and Lincoln Schools. Article VII.A.3.b provides that teachers at the Lincoln and Washington Schools will report at 8:30 a.m.

4. On June 17, 2008, Superintendent Anthony R. Comprelli notified the district's principals and administrators that, for the 2008-2009 school year, all teachers would report at 8:15 and leave at 3:15.

^{2/} The parties agreed to extend all terms of their July 1, 2004 to June 30, 2007 written agreement until June 30, 2008.

5. On June 23, 2008, the Association submitted a group grievance on behalf of teachers at the Lincoln School, Lincoln Annex and Washington School alleging that the directive violated Article VII by changing the reporting times of teachers at those facilities and by extending their work day from six and three-quarter hours to seven hours.

6. On June 24, 2008, the Association filed its unfair practice charge.

7. After an exploratory conference was held, the Board agreed that no change would be made in the teachers' existing reporting times as set forth in Article VII.A.3.b of the parties July 1, 2004 to June 30, 2007 collective negotiations agreement.

8. On August 1, 2008 the Association filed an amended charge alleging that the Board had asserted that if the 8:30 a.m. starting times were restored, it had the right to extend the teacher's work day.

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).

The Association argues that as the length of the workday is a mandatorily negotiable term and condition of employment, the Board is barred from extending it unilaterally. The Association contends that because the parties most recent contract has expired, N.J.S.A. 34:13A-33 bars implementation of any change in terms and conditions absent the agreement of the Association.

The Board asserts that it has a contractual right to change the teachers' dismissal time because the 45 minute duty free lunch enjoyed by the teachers is unpaid time and does not count toward the length of the work day. The Board also argues that because the issue in dispute is specifically addressed in the parties' collective negotiations agreement, the charge can be deferred to binding arbitration and accordingly, interim relief should be denied.^{3/} The Board asserts that it has made proposals to compensate teachers for any changes in reporting times or the length of the work day.

^{3/} The Board asserts that it wanted to move up the teachers' reporting times as a matter of student safety. As the Board no longer seeks to change the teacher's reporting time, that issue is not a factor. In addition, the Board did not explain how conditions that might affect student safety are different from those that existed during prior school years. The contract provides that the existing reporting times were put into effect during the 2001-2002 school year.

Whether the lunch period is deemed to be paid or unpaid time is an issue that does not bear on extending the total teacher work day. Both issues are mandatorily negotiable, but are distinct. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 24-25 (App. Div. 1977); Galloway Tp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978).

N.J.S.A. 34:13A-5.3, as enforced through N.J.S.A. 34:13A-5.4a(5) generally bars public employers from modifying existing rules governing working conditions without prior negotiations. See Galloway Tp. Bd. of Ed v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). In addition, N.J.S.A. 34:13A-33, part of the "School Employees Contract Resolution and Equity Act," provides that where a contract has expired, during ongoing collective negotiations, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete, or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment without specific agreement of the majority representative.

I reject the Board's argument concerning the flexibility the contract allegedly affords it to extend the teacher work day.^{4/}

^{4/} Even assuming that the Board was willing to waive any procedural defenses to arbitration, deferral is an issue
(continued...)

Article VII is specific and provides that the teacher's dismissal time is established by adding, in the case of the Lincoln and Washington schools, 6 and 3/4 clock hours to the daily reporting time of 8:30 a.m. Accordingly, the Association has established that it is substantially likely to prevail on its claim that a unilateral extension of the teachers' work day, during the course of negotiations for a successor agreement, violates N.J.S.A. 34:13A-5.4a(1) and (5).^{5/}

Changing the status quo during negotiations for a successor agreement, has a chilling effect on negotiations and meets the irreparable harm portion of the interim relief standards. See Galloway Tp. Bd. of Ed., supra., 78 N.J. at 48.

The 2003 addition of N.J.S.A. 34:13A-33 is virtually a legislative acknowledgment of the "chilling effect" analysis and is a broad prohibition on the implementation of any changes in working conditions that were not agreed upon by the majority representative. That law is analogous to N.J.S.A. 34:13A-21, prohibiting unilateral changes in working conditions for police or fire fighters during the course of interest arbitration

4/ (...continued)
that must be considered at the time a decision is made on complaint issuance.

5/ The Association has not shown that the Board's action violates any specific Commission regulation. Accordingly, I do not find that it is substantially likely that the Board violated N.J.S.A. 34:13A-5.4a(7).

proceedings. See Lodi Borough, I.R. No. 2006-14, 32 NJPER 65 (¶33 2006) (interim relief granted where employer changed vacation selection policy for police officers during negotiations). Violating either of those statutes constitutes irreparable harm. See Hamburg Boro, I.R. No. 2004-9, 30 NJPER 58 (¶17 2004); New Horizons Community Charter School Board of Trustees, I.R. No. 2006-10, 31 NJPER 380 (¶149 2005).^{6/}

ORDER

The Harrison Board of Education, pending further order of the Commission, is directed to refrain from extending, absent agreement of the Harrison Education Association, the dismissal times for teachers represented by the Association, beyond the times that were in effect during the 2007-2008 school year.



Don Horowitz
Commission Designee

DATED: September 8, 2008
Trenton, New Jersey

^{6/} N.J.S.A. 34:13A-33 makes Pemberton Borough Bd. of Ed., I.R. No. 2002-6, 28 NJPER 90 (¶33033 2001), decided before that law was adopted, distinguishable.