

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BETHLEHEM TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-2011-458

BETHLEHEM TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge filed by the Bethlehem Township Education Association against the Bethlehem Township Board of Education. The charge alleged that the Board voted to begin the 2011-2012 school year prior to September 1, 2011, thereby unilaterally changing a term and condition of employment. The Board's conduct allegedly violated 5.4a(1) and (5) of the New Jersey Employer-Employer Relations Act, N.J.S.A. 34:13A-1 et seq.

The Designee determined that the precise date of the Board's adoption was in dispute, which is important in view of the six-month time limitation for filing unfair practice charges pursuant to N.J.S.A. 34:13A-5.4(c). However, the designee found that assuming, arguendo, that the charge was timely filed, there was no substantial likelihood of the Association prevailing on the merits since a board of education has the managerial prerogative to establish a school calendar.

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Appearances:

For the Respondent, Schenck, Price, Smith & King, LLP
(Marc H. Zitomer, of counsel)

For the Charging Party, Oxfeld Cohen, P.C. (Randi Doner
April, of counsel)

INTERLOCUTORY DECISION

On June 3, 2011 the Bethlehem Township Education Association(Association) filed an unfair practice charge against the Bethlehem Township Board of Education(Board)together with an application for interim relief, an affidavit and supporting documentation. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5)^{1/}, by unilaterally changing a

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

term and condition of employment when it voted to begin the 2011-2012 school year with a teacher start date of August 24, 2011. Concurrent with the instant unfair practice charge, the Association also filed an Order to Show Cause with interim relief before the Commissioner of Education.^{2/}

The Association seeks an Order which declares that the Board has engaged in unfair practices, requires the Board to cease and desist from committing unfair practices, and also to post a notice which acknowledges that the Board has committed unfair practices. In addition, the Association asks that the Board be ordered to begin the 2011-2012 school year after September 1, 2011 and to negotiate any further calendar changes.

An Order to Respond was signed on June 9, 2011 setting a June 23, 2011 date for the Board to file with the Commission any opposing papers. The Board submitted a brief and certification, together with exhibits.

On June 27, 2011 an Order to Show Cause was signed setting a date of July 6, 2011 for oral argument by the parties; that oral

1/ (...continued)
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."

2/ The Acting Commissioner of Education issued a Decision on July 8, 2011 denying the Association's application for emergent relief, adopting the Order of ALJ James-Beavers issued on June 10, 2011.

argument took place as scheduled. The Association alleged that the Board violated the Act by adopting a school calendar with a teacher start date of August 24, 2011. The Board argued that the charge was beyond the six-month statute of limitations pursuant to N.J.S.A. 34:13A-5.4(c), and was therefore time barred. In the alternative, the Board asserted that the Association had not met the standard for interim relief, and that no order should issue.

The following pertinent facts appear:

The Board and the Association are parties to a collective negotiations agreement which is in effect from July 1, 2008 through June 30, 2011. Article 8, "Work Year, Work Day and Assignment" provides in pertinent part at paragraph 1a that "[t]he school calendar shall be established by the Board of Education upon the recommendation of the Superintendent after his/her consultation with the representatives of the Association."

Elizabeth A. Harper, current president of the Association, states in her affidavit that she has been employed by the Bethlehem Township School District for nine years, and that to the best of her knowledge, and certainly during her tenure with the district, the school year has never started before September 1. Harper states that the district unilaterally changed the start date for the school year, and made no attempt to negotiate either the start date or the impact of the change on the teaching

staff represented by the Association. Ms. Harper's affidavit also questions how the district can extend the beginning of the school year into the month of August when all teachers in the district are ten month employees.

Dr. Nancy Lubarsky, Superintendent of the Bethlehem School District, provided a certification explaining that the district serves children in kindergarten through Grade 8. Bethlehem students in grades 9 through 12 attend North Hunterdon High School for their secondary education. Dr. Lubarsky states that the two districts have generally operated independently, with different school year calendars, including differing first and last days of school, and different school vacations. A number of families residing in Bethlehem Township have children in both the Bethlehem School District, and the North Hunterdon School District. Prior to establishing the 2011-2012 school year calendar, many of these families requested that the Bethlehem Board examine whether it could match its calendar with that of North Hunterdon to eliminate or reduce the hardship the differing districts' calendars were producing for families with pupils in both districts.

Dr. Lubarsky states that the North Hunterdon Board of Education began development of its school calendar for the 2011-2012 school year in or about September 2010. The North Hunterdon draft calendar established the first day of school for staff on

August 22, 2011 and the first student day on August 25, 2011. The last day of school at North Hunterdon was scheduled for June 8, 2012. In response to the concerns of families with student in both school districts, the Bethlehem Board discussed the 2011-2012 school year calendar at its September 21, 2011 public meeting. The agenda for the meeting listed the calendar issue for discussion under the topic "Old Business." The agenda item also made reference to "Att #30," a proposal for the Bethlehem school calendar for the 2011-2012 school year. The first option of Attachment 30 raised the issue of aligning the calendar of the Bethlehem School District with that of North Hunterdon; the attachment made specific reference to North Hunterdon's first and last days of school for students and staff during the 2011-2012 school year.

According to Dr. Lubarsky, after discussion at its September 21, 2010 meeting, the Board passed a resolution by a 6-0 vote "to align the first day of school with the North Hunterdon Regional High School schedule." The Board voted to adopt this resolution in a public session, and the minutes of the meeting which reflected this vote and the adoption of the resolution were placed on the district's website. Additionally, the Board directed Lubarsky to issue a survey to the community to gauge the level of interest in following North Hunterdon's calendar. The survey was posted on the district's website, and Dr. Lubarsky

requested on the website that staff members, including teachers, respond with their input on the calendar. Of the 108 responses which she received, the majority agreed with the Board's decision to align Bethlehem's schedule with North Hunterdon. Dr. Lubarsky states that no staff members responded to the survey; she further states that no staff members expressed concern to her regarding the proposed first day of school at any time during the development of the 2011-2012 school year calendar.

During September 2010 and at multiple time thereafter, Lubarsky states that she consulted with the Association prior to the development of the 2011-2012 school year calendar, and informed the Association of the possibility that the first day of school during that year could be prior to September 1, 2011. She states that in her capacity as Superintendent, she developed the 2011-2012 school year calendar to match as closely as possible with that of North Hunterdon, and in so doing, she recommended to the Board that the first day of school for teachers be August 24, 2011 and the first day for students be August 25, 2011, the same as for students attending North Hunterdon High School.

ANALYSIS

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). Interim relief is extraordinary relief, and all prongs of the standard must be met in order for such relief to be granted.

Respondent argues that the Association's unfair practice charge is untimely, since it was not filed within six months of the occurrence giving rise to the violation. N.J.S.A. 34:13A-5.4 (c) provides, in relevant part, the following:

. . . no complaint shall issue upon any unfair practice charge occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented.

The Legislature included a six-month statute of limitations in the Act to prompt charging parties to file expeditiously and to prevent the litigation of stale claims. The sole exception to the six-month limit is available when a party is prevented from filing a charge. City of Margate, P.E.R.C. No. 94-40, 19 NJPER 572 (¶24270 1993). There is no allegation that the Association was prevented from filing a charge prior to June 3, 2011.

It is undisputed that on September 21, 2010, at a properly noticed public meeting, the Bethlehem Township School Board discussed, voted on, and passed a resolution "to align the first day of school with the North Hunterdon Regional High School Schedule." As of that date, the Bethlehem school community was on notice that the 2011-2012 school calendar for the Bethlehem School District would match that of North Hunterdon High School, and that North Hunterdon intended to begin the 2011-2012 school year in August of 2011.^{3/}

If the Board's action in formally adopting a calendar with a start date of August 25, 2011 did not occur until December 16, 2011, this charge was filed within the six-month limitation of N.J.S.A. 34:13A-5.4(c). However, even assuming arguendo that the charge was timely filed, I cannot conclude that the Association has demonstrated a substantial likelihood of success on the

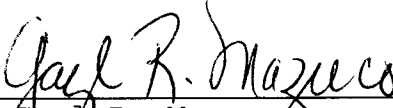
^{3/} By letter of June 29, 2011, prior to oral argument in this matter, the Association provided a copy of a letter dated February 18, 2011, on Bethlehem Township School District letterhead, signed by Superintendent Lubarsky, and addressed to parents/guardian of children attending the district's schools. In addition to other calendar issues which are unrelated to this matter, the letter states that at the February 17, 2011 Board meeting, the full calendar for the 2011-2012 school year was adopted. Although the letter indicates that a copy of the full calendar appears on the reverse, the copy provided is blank on the reverse side. The letter also asks the reader to note that the Board approved the alignment of the Bethlehem school district calendar with that of North Hunterdon/Voorhees at the August 19, 2010 board meeting, and further approved the August 25, 2011 start date at their December 16, 2010 meeting. There is no accompanying certification for the document.

merits since it is well settled that the setting of a school calendar in terms of when school begins and ends is a matter of managerial prerogative. Woodstown-Pilesgrrove Reg. School Dist.v. Woodstown-Pilesgrrove Reg. Ed. Assn., 81 N.J. 582, 592-93 (1980); Piscataway Twp. Educ. Ass'n. v.Piscataway Twp. Bd. Of Educ., 307 N.J. Super. 263, 265 (App. Div. 1998); Orange Twp. Bd. of Ed. and Orange Educational Secretaries Assn., 12 NJPER 448 (¶17168 1986); Hunterdon Central High School Bd. of Ed. and Hunterdon Central High School Ed. Assn, P.E.R.C. No. 87-33, 13 NJPER 78 (¶18036 1986); Somerville Bd. of Ed. and Somerville Supervisors Assn. et al., H.E. No. 87-48, 13 NJPER 173 (¶18077 1987). Having reached this conclusion, analysis of the remaining Crowe prongs is unnecessary.

Based upon the above findings and analysis, the Charging Party's application for interim relief is denied.

ORDER

The application for interim relief is denied.



Gayle R. Mazuco
Commission Designee

DATED: July 18, 2011
Trenton, New Jersey