I.R. NO. 2014-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLINTON-GLEN GARDNER
SCHOOL DISTRICT,

Respondent,

-and- Docket No. CO-2013-355

CLINTON TOWN PARAPROFESSIONAL
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission designee grants an application for interim relief based upon an unfair practice charge filed by the Clinton Town Paraprofessional Association against the Clinton-Glen Gardner School District. The charge alleges the Board of Education unilaterally reduced the contractual work hours of paraprofessional aides during negotiations for a successor collective negotiations agreement.

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Appearances:

For the Respondent, Clearly, Giacobbe, Alfieri & Jacobs, attorneys (Matthew J. Giacobbe, argued orally and on the brief; Yaacov Brisman, on the brief)

For the Charging Party, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Richard A. Friedman, of counsel and argued orally; Marissa A. McAleer, on the brief and argued orally)

INTERLOCUTORY DECISION

On June 17, 2013, the Clinton Township Paraprofessional Association (Association) filed an unfair practice charge against the Clinton-Glen Gardner Board of Education (Board). The charge alleges that on April 23, 2013, the Board voted to reduced the full-time paraprofessional aides' contractual work hours from 35 hours per week to 28 hours. The charge further alleges that the change was made unilaterally during the parties' negotiations for a successor collective negotiations agreement (CNA). The Association alleges the Board's conduct violates 5.4a(1), (3) and

(5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The charge was accompanied by a proposed Order to Show Cause, a brief, a certification and exhibits. The Association seeks an order directing the Board to return the paraprofessionals' hours to 35 hours per week; requiring the Board to negotiate with the Association over hours of work; reimbursing paraprofessionals for all hours reduced from 35 to 28, retroactive to September 1, 2013; and directing the Board to cease and desist from not complying with its obligations under the Act.

On June 28, 2013, I signed an Order, designating July 3 as the return date for argument and I also directed the Board to file a response by June 24. At the request of the parties, the return date was adjourned to July 11 and conducted via telephone conference call. The following facts appear.

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. ...(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. ...[and](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."

The Association is the majority representative for all instructional and library media paraprofessionals employed by the Board. The Board and Association are parties to a CNA with a duration from July 1, 2010 through June 30, 2013. The parties are currently in negotiations for a successor agreement.

Article X of the parties' agreement provides that "Full-time aides shall work a seven (7) hour day including one half hour for lunch. Aides can leave within 15 minutes after students on conference days."

In February 2013, Association co-Presidents Shannon Mayurnik and Suzanne Stidworthy were informed by Superintendent/Principal Richard Katz that effective September 2013, full-time aides' hours would be reduced from 35 per week to 28 per week in order to save the money it would cost to provide health insurance as will be required by The Patient Protection and Affordable Care Act of 2010.[2/] On April 24, the Association was informed that the Board voted on April 23 to reduce the aides' hours to 4/5ths (or 28 hours per week). Association members are not currently eligible for health benefits under the parties' current agreement.

The Board submits the certification of Katz which details the negotiations history regarding the hours of work and health benefits issue. The parties have exchanged several proposals

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2/ 42 U.S.C.A. §18001 et seq.

beginning March 7, 2013 and continuing to the present that specifically address health benefits, salary, and hours of work in a successor CNA.

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).

The number of hours an employee works and the employee's compensation and fringe benefits are all mandatorily negotiable terms and conditions of employment. If a public employer seeks to change those working conditions, it must do so through negotiations with the majority representative. See 34:13A-5.3; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., 78 N.J. 1 (1978) (reducing full-time secretarial positions to part-time violated employer's obligation to negotiate with majority representative); Boonton Bd. of Ed., P.E.R.C. No. 2006-98, 32

NJPER 239 (¶98 2006) (reduction in number of full-time teaching assistant positions and increase in number of part-time positions, eliminating fringe benefits); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994) (employer did not have managerial prerogative to reduce recreation leaders' work hours from 40 to 20 per week, thereby reducing their salaries and eliminating their health benefits).

The Board does not dispute that effective September 1, 2013, it has reduced the aides work week from 35 to 28 so as to avoid an obligation to provide them with an opportunity to obtain health insurance on January 1, 2014 as required by the ACA.[3/] The Board argues that it had to Act when it did so that it could comply with N.J.S.A. 18A:27-10.2.[4/] The Board asserts the notice

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3/ I take notice that numerous media outlets have reported and the Obama Administration has annouced that the Janaury 1, 2014 implementation date will be extended to 2015. At the oral argument, the parties could not stipulate to this fact as the Internal Revenue Service has not taken formal action.

4/ N.J.S.A. 18A:27-10.2 provides, in part:

> b. On or before May 15 in each year, a paraprofessional continuously employed since the preceding September 30 in a school district that receives funding under Title I of the federal Elementary and Secondary Education Act of 1965 *(20 U.S.C. § 6301* et seq.) shall receive either:
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> (1) a written offer of a contract for employment from the board of education for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education; or

(continued...)

it provided in no way served to delay or obstruct the negotiations with the Association and stresses that the parties continue to negotiate a successor agreement. I am not persuaded that this statute absolves the Board from its negotiations obligation under the Act.

I find that the Association has established it has a substantial likelihood of success on the merits of its charge. The Board concedes that its action on April 23, 2013 reduced the unit members' hours of work, a mandatorily negotiable term and condition of employment, effective September 1, 2013. The motivation for its action was to render them ineligible for health insurance benefits as will be required by the ACA. The charge is not asserting a contractual right to health benefits; rather, it concerns the aides' negotiated work hours. Even if the effective date of the ACA remains January 1, 2014, the parties had ample opportunity to negotiate to impasse.

I also find that the Association has demonstrated irreparable harm. The Board relies on Camden County Bd. of Chosen Freeholders, I.R. No. 2011-38, 37 NJPER 119 (¶34 2011). In Camden, the majority representative filed an application for interim relief seeking to restrain the County from reducing unit employees' work schedules and rescinding unilaterally imposed

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4/ (...continued)

(2) a written notice from the chief school administrator that employment will not be offered

furloughs. The designee denied interim relief finding no irreparable harm because a monetary remedy would make the employees whole if successful.

This case is distinguishable from Camden because the parties are currently in active negotiations. Any unilateral change in a term and condition of employment during negotiations has a chilling effect and undermines labor stability. Rutgers, the State University and Rutgers University Coll. Teachers Ass'n, et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp. 2d 96 (¶79 App. Div. 1981). The repudiation of a contractual term and condition of employment that upsets the status quo, during negotiations, so adversely affects the ability of the majority representative to represent the unit that a traditional remedy at the conclusion of a case will not remedy a violation of the Act. Evesham Tp. Bd. of Ed., I.R. 95-10, 21 NJPER 3 (¶26001 1994). I find the irreparable harm here to be significant as the parties were proceeding with forward-moving negotiations to resolve the work hours issue when the Board unilaterally resolved the reduction in work hours. This action extinguished the Association's negotiations position.

I find that the public interest supports a granting of the Association's application. It is a core policy of the Act to require parties to engage in collective negotiations prior to changing terms and conditions of employment. Adhering to the

collective negotiations process results in labor stability and promotes the public interest. The public interest favors the impasse procedures outlined in the Act. The Board has not availed itself of this comprehensive process that concludes with super conciliation prior to unilaterally changing the work hours during negotiations.

Finally, I find that the relative hardship to the parties weighs in favor of the Association as they have a duty to negotiate on behalf of their members. The conduct of the Board renders the Association unable to perform its duty. The Katz certification details that the parties were moving toward a mutual agreement when the Board unilaterally acted. If the hours of work are not restored and the parties are not sent back to the table to resolve this dispute on an even playing field, the effectiveness of the Association will be harmed. The Board has other options to achieve its goal, as outlined in its brief. The Board also has time to reach a mutual agreement with the Association. I do not find that the Board will be harmed by my order.

Having granted the Association's application, I commend the parties for their continued efforts to negotiate while this application was pending. I encourage the parties to continue meeting to resolve this issue and to take advantage of the

Commission's impasse procedures, if necessary, to avoid potential negative employment actions.

ORDER

The Board shall rescind its action of April 23, 2013 and restore the contractual work hours for the unit members. The Board shall continue to negotiate with the Association regarding work hours for paraprofessional aides.

The Order shall remain in effect until the underlying dispute is resolved.

Mary E. Hennessy-Shotter
Commission Designee

DATED: July 12, 2013

Trenton, New Jersey