

I.R. NO. 2018-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTHAMPTON BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-2018-269

SOUTHAMPTON TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Southampton Education Association (Association), alleging that the Southampton Board of Education declined to negotiate over the 2018/2019 school calendar. Specifically, the Association asserts that the scheduling of teacher work days and the impact of the school calendar on teachers' terms and conditions of employment are mandatorily negotiable issues. The Designee finds that the Charging Party has not established a substantial likelihood of prevailing in a final Commission decision or irreparable harm, and that the other requirements for granting interim relief were not satisfied. The unfair practice charge was transferred to the Director of Unfair Practices for further processing.

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Appearances:

For the Respondent Capehart Scatchard (Robert Muccilli,
of counsel and on the brief)

For the Charging Party, Oxfeld Cohen, P.C. (Sanford R.
Oxfeld, of counsel and on the brief)

INTERLOCUTORY ORDER
DENYING APPLICATION FOR INTERIM RELIEF

This interlocutory order is issued pursuant to N.J.A.C.
19:14-9.5(b)2.^{1/} The Southampton Township Education Association
(Association) filed an unfair practice charge on May 21, 2018
requesting interim relief, alleging that the Southampton Board of
Education (Board) violated the New Jersey Employer-Employee

^{1/} This regulation provides that an interim relief decision
dismissing an application may be made by "an order, issued
at the end of the proceedings on the return date, containing
a brief statement of reasons for denying the application."

Relations Act, specifically N.J.S.A. 34:13A-5.4a (1) and (5),^{2/} when it declined to negotiate the start date of the teacher work year (i.e. the days in which teachers report to work when students are not present) and the impact of the student calendar on staff.

The Association's application for interim relief was supported by a brief, exhibits, and the certification of its President.

On May 22, 2018, I issued an Order to Show Cause with a return date for June 7. The Board filed an opposition brief on May 31, supported by exhibits and the certification of the Southampton School District's (District) Superintendent. The Association filed a reply on June 4. Today, on the return date, I conducted a telephone conference in which the parties argued orally with regard to the Association's application. I have reviewed the briefs, exhibits, certifications and relevant case law.

The essential facts are as follows. The Board and the

^{2/} These sections prohibit public employers, their representatives and agents from: (1) Interfering with, restraining, or coercing employees in the exercise of 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. . . .

Association are parties to a collective negotiations agreement with a term of July 1, 2015 through June 30, 2018. On March 26, 2018, the Board adopted a calendar for the 2018/2019 school year. Pursuant to the adopted calendar, teacher orientation occurs on Wednesday, August 29, teacher in-service occurs on Thursday, August 30, and students start school on Tuesday, September 5, the day after Labor Day. This decision was made unilaterally by the Board without negotiating with the Association.

The District's Superintendent certifies that in adopting the 2018/2019 calendar, "the District seeks to achieve the educational goal of providing students with an immediate, continuous and intensive instructional focus during the first week of September." The Superintendent further certifies that "the District believes that such a focus will be more productive from an educational standpoint than a situation in which the number of instructional days is diminished by the scheduling of multiple teacher orientation and professional development days during that week." Finally, the Superintendent attests that "implementation of a school calendar which starts the school year prior to September 1st permits the District to achieve this important pedagogic objective."

The Association's President certifies that requiring teachers to report to work on August 29 and 30 would interfere with teachers' summer employment, child care plans, and/or

vacation plans. The Association does not contest that there has been no change to the number of teacher work days per year or teachers' annual rate of pay in regard to the number of days worked.

The Association argues that while the Board has a managerial prerogative to determine the school calendar (i.e. when school is open for students), the scheduling of the teachers' work year and any impact on teachers' terms and conditions of employment from the school calendar are mandatorily negotiable.

The Board responds that the school calendar and any resulting impact is not mandatorily negotiable because the educational goal of having consistency for students in the first week of school is the predominant objective.

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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009) (citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999))

(federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe)); 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).

At this early stage, the Association has failed to satisfy the Crowe factors. With regard to whether the Association has a substantial likelihood of prevailing in a final Commission decision, Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2014-47, 40 NJPER 337 (¶123 2014), aff'd, 42 NJPER 71 (¶18 App. Div. 2015) is instructive. In Bethlehem, the majority representative alleged that the Board violated the Act by unilaterally setting the 2011-2012 school year to start for students on August 25 and teachers on August 24 in order to match the schedule of the regional high school. The Commission dismissed the complaint, finding that the Board had a non-negotiable managerial prerogative to set the school calendar. The Appellate Division affirmed, finding that the Board's dominant reason for changing the start of the school year was to achieve the educational goal of mitigating the hardship endured by families who have children in two separate districts. The court further found that due to the Board's stated educational goal, it had the exclusive managerial prerogative to determine unilaterally "the dates, between which the schools of the district shall be open, in accordance with the law." N.J.S.A. 18A:36-2.

The court highlighted that changing the start date of the school year was not tied to the relationship of the annual rate of pay to the number of days worked.

Bethlehem states that when an educational goal is the predominant objective, a Board may determine the dates in which the District shall be "open." The Bethlehem court, at least implicitly, found that schools are open on the dates that teachers report to work when students are not present. Here, the Superintendent has certified that in adopting the 2018/2019 calendar, the Board sought to achieve the educational goal of providing consistency and a solid start to the school year for students by having four consecutive days of learning in the first week of school as opposed to only one or two days. It is uncontested that the 2018/2019 calendar does not change the number of teacher work days per year or teachers' annual rate of pay in regard to the number of days worked.

With regard to irreparable harm, on this record, there is no factual support for such harm from this planned calendar change. The remaining Crowe factors do no support the granting of interim relief.

ORDER

The application for interim relief is denied. The charge will be transferred to the Director of Unfair Practices for further processing in accordance with Commission rules.

Christine Lucarelli-Carneiro
Commission Designee

DATED: June 7, 2018

Trenton, New Jersey