

I.R. NO. 2025-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKETTSTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2025-013

HACKETTSTOWN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application based on an unfair practice charge filed by the Hackettstown Education Association (Association) against the Hackettstown Board of Education (Board). The charge alleged the Board violated sections 5.4a(1), (3) and (5) of the New Jersey Employer-Employee Relations Act (Act) by unilaterally reducing the weekly working hours of paraprofessionals in retaliation against the Association for filing a grievance concerning health insurance for paraprofessionals. The reduction in hours rendered paraprofessionals ineligible for health insurance benefits under a 2013 Side Bar Agreement. The Designee found that the Association had a substantial likelihood of success on its section 5.4a(3) and (5) claims, but nonetheless denied the Association's request for interim relief because the Association did not establish irreparable harm.

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Appearances:

For the Respondent,
Methfessel & Werbel, LLC, attorneys
(Jeff Merlino, of counsel)

For the Charging Party,
Zazzali, P.C., attorneys
(Richard Friedman and Sheila Murugan, of counsel)

INTERLOCUTORY DECISION

On July 24, 2024, the Hackettstown Education Association (Association or Charging Party) filed an unfair practice charge, accompanied by an application for interim relief, against the Hackettstown Board of Education (Board or Respondent). The charge alleges the Board violated sections 5.4a(1), (3) and (5)^{1/}

^{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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit
(continued...)

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by unilaterally reducing the work hours of paraprofessionals. The Association alleges the reduction in work hours rendered paraprofessionals ineligible for health insurance benefits and was done in retaliation for the Association's filing of a grievance over health insurance benefits for paraprofessionals.

In support of its application for interim relief, the Association submitted a brief and a certification with exhibits from Association President Erin Durkin ("Durkin Cert."). In its proposed Order to Show Cause (OTSC), the Association seeks, in pertinent part, the following interim relief: an order ". . . compelling Respondent to re-employ all paraprofessionals at a thirty (30) hour work week until a final decision is rendered in this matter"

On July 29, 2024, I signed a OTSC setting a return date for oral argument on August 15, 2024.^{2/} The OTSC set a deadline of August 7, 2024 for the Board's response to the OTSC and August 9, 2024 for the Association's reply to the Board's response. On August 7, 2024, the Board submitted a brief and certification

1/ (...continued)
concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ After reviewing the parties' written submissions, I determined oral argument was unnecessary.

from Debra L. Grigoletti ("Grigoletti Cert."), the Superintendent of the Hackettstown Public School District (District). On August 9, 2024 the Association submitted a reply brief.

Based on the parties' submissions, the following facts appear:

The Association is the exclusive majority representative of certain certificated and non-certificated employees, including but not limited to full-time and part-time "Teacher Assistants" (a.k.a. "paraprofessionals").^{3/} The Association and Board are parties to a collective negotiations agreement extending from July 1, 2023 through June 30, 2028 (Agreement).^{4/}

On August 7, 2013, the Board and Association entered into a Sidebar Agreement.^{5/} The Sidebar Agreement, in pertinent part, added part-time "teacher assistants" or paraprofessionals to the Association's unit.^{6/} It also modified Article XVIII, "Insurance Protection" of the 2011-2014 collective negotiations agreement to provide as follows:

Effective January 1, 2014, all Teacher Assistants assigned to a regular work week of 30 hours or more shall be eligible for non-mandatory single-only health care coverage under the lowest cost plan provided through

^{3/} Durkin Cert., Exhibit A.

^{4/} Durkin Cert., Exhibit A.

^{5/} Durkin Cert., Exhibit B.

^{6/} Durkin Cert., Exhibit B.

the district's health benefits program, subject to a 100% employee contribution, which shall be payable through payroll deductions.^{7/}

Since entering into the Side Bar Agreement, paraprofessionals have continuously worked at least thirty (30) hours per week.^{8/} None of the paraprofessionals working 30 hours per week have enrolled in the District's health benefits plan offered under the Side Bar Agreement.^{9/}

According to the Association, P.L. 2020, c. 44 ("Chapter 44") entitles paraprofessionals to health insurance plans equivalent to the New Jersey Educators Health Plan ("NJEHP") or the Garden State Health Plan ("GSHP").^{10/} The Association also contends that Chapter 44 requires eligible employees such as paraprofessionals to pay a portion of their salaries towards the costs of the NJEHP or GSHP, but no more than that -with the Board allegedly obligated to incur the remaining costs of either health plan.^{11/}

^{7/} Durkin Cert., Exhibit B.

^{8/} Durkin Cert., Para. 6.

^{9/} Grigoletti Cert., Para. 5.

^{10/} Durkin Cert., Paras. 8-9.

^{11/} Durkin Cert., Para. 10. I do not and need not decide the question of whether the Association's interpretation of Chapter 44 is valid. That question is presently before a grievance arbitrator.

Notwithstanding the availability of NJEHP and GSHP to paraprofessionals, the “. . . District has refused to permit paraprofessionals to enroll in the District’s NJEHP or GSHP plans at the statutory cost-sharing amount.”^{12/} In response to the Board’s refusal to offer either plan to paraprofessionals, the Association filed a grievance during the 2023-2024 school year contending the Board violated Chapter 44.^{13/} That grievance is presently before an arbitrator for decision.^{14/}

On April 30, 2024, the Board and Association met to discuss the grievance.^{15/} At the meeting, Board counsel advised the Association that its “. . . only option was to withdraw the grievance” and agree to paraprofessionals enrollment in a healthcare plan “with 100% of the cost to be borne by” the paraprofessionals.^{16/} The Board also informed the Association at the meeting that “if the Association did not withdraw the

^{12/} Durkin Cert., Para. 11. Grigoletti disputes this assertion, but does not deny that the District’s position on health benefits for paraprofessionals remained constant: no health benefits for paraprofessionals at the statutory shared cost rates under Chapter 44. Grigoletti Cert., Paras. 10 and 12.

^{13/} Durkin Cert., Para. 12. The Association did not provide a copy of the grievance, nor did it specify the exact date it was filed.

^{14/} The parties agreed upon a Joint Stipulation of Facts at the arbitration and have fully briefed the matter.

^{15/} Durkin Cert., Para. 13.

^{16/} Durkin Cert., Para. 13.

grievance, then the District would reduce the paraprofessionals working hours to less than thirty (30) hours per week."^{17/}

Following the April 30 meeting, the Association notified the Board they would, in fact, pursue the grievance.^{18/}

On May 13, 2024, the District issued non-renewal letters to all paraprofessionals.^{19/} That same day, the District notified paraprofessionals that their weekly work hours would be reduced for the 2024-2025 school year from 30 hours to 29.95 hours.^{20/} The District "did not provide the Association with notice or negotiate this change prior to making this decision."^{21/} As a consequence of the work hours reduction, paraprofessionals were no longer eligible for health insurance benefits.^{22/}

^{17/} Durkin Cert., Para. 13.

^{18/} Durkin Cert., Para. 14.

^{19/} Durkin Cert., Para. 15. The District's Superintendent emailed paraprofessionals on May 15, 2024, explaining that the decision to non-renew paraprofessionals was motivated by the "financial implications" that would flow from an arbitrator sustaining the Association's Chapter 44 grievance.

^{20/} Grigoletti Cert., Para. 3; Durkin Cert., Para. 16. Paraprofessionals would, however, continue to be paid, inclusive of breaks, the same number of hours (35). Grigoletti Cert., Para. 3.

^{21/} Durkin Cert., Para. 16.

^{22/} Grigoletti Cert., Para. 4.

On July 17, 2024, the District re-appointed fifty (50) part-time teacher assistants for the 2024-2025 school year at 29.95 work hours per week.^{23/}

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); Whitmeyer 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).

I find the Association has a substantial likelihood of success on its claim that the Board violated sections 5.4a(3) and (a)(5) of the Act by unilaterally reducing paraprofessionals' weekly working hours-and concomitantly denying their access to health insurance coverage through the Board- in retaliation against the Association for filing a grievance concerning health insurance for paraprofessionals. However, I also find that the Association has not established by "clear and convincing

^{23/} Grigoletti Cert., Para. 2.

evidence" that irreparable harm will occur if interim relief is denied. Garden State Equality v. Dow, 216 N.J. 314 (2013); Rutgers University, P.E.R.C. No. 2023-23, 49 NJPER 309 (¶73 2022). Since irreparable harm is an essential element of an interim relief claim, I am constrained to deny, without prejudice, the Association's interim relief application. The Association may re-file an interim relief application if and when it can establish, by "clear and convincing evidence", irreparable harm. Id., see also State of New Jersey (OER), I.R. No. 87-31, 13 NJPER 569 (¶18208 1987) (Commission Designee denies interim relief despite finding substantial likelihood of success because the record as to irreparable harm was unclear).^{24/}

Section 5.4a(5) Claim

Health insurance benefits are mandatorily negotiable. Essex County, P.E.R.C. No. 2023-60, 50 NJPER 43 (¶15 2023), aff'd 51 NJPER 15 (¶5 App. Div. 2024). As are working hours.^{25/} Galloway

^{24/} The interim relief application in this case was denied on June 23, 1987. After a complaint and notice of hearing issued on the charge, the Commission granted the Charging Party's request for relief in a final Commission decision on September 23, 1987. See State of New Jersey (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988).

^{25/} In some cases, an employer's work scheduling change may be non-negotiable when it serves a public employer's "particularized need to preserve or change a schedule to protect a governmental policy determination." Borough of Chester, I.R. No. 2002-8, 28 NJPER 162,164 (¶33058 2002),
(continued...)

Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., 78 N.J.

1(1978).^{26/} When a public employer unilaterally changes working hours in order to render unit employees ineligible for health benefits, the employer violates section 5.4a(5) of the Act.

Warren Hills Reg. Bd. of Ed., P.E.R.C. No. 2020-17, 46 NJPER 175 (¶43 2019); Clinton-Glen Gardner School District, I.R. No. 2014-1, 40 NJPER 121 (¶46 2013).^{27/}

In Clinton-Glen Gardener School District, a Commission Designee granted an interim relief application based on an unfair

^{25/} (...continued)
recon. den. P.E.R.C. No. 2002-59, 28 NJPER 220 (¶33076 2002). That is not the case here. Instead, the Board changed paraprofessionals' work hours to avoid potential health insurance costs. Under our Act, the laudable objective of saving taxpayer dollars by avoiding costs must be achieved through the collective negotiations process. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

^{26/} See also Boonton Bd. of Ed., P.E.R.C. No. 2006-98, 32 NJPER 239 (¶98 2006); 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).

^{27/} See also 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); Butler Board of Education, I.R. No. 2011-24, 36 NJPER 464 (¶181 2010) (reduction in hours making employees ineligible for health insurance provided grounds for injunctive relief)

practice charge filed by a unit of paraprofessionals alleging the board of education (board) reduced paraprofessionals' work hours from 35 to 28 per week. 40 NJPER at 123. The board reduced their weekly work hours ". . . in order to save the money it would cost to provide health insurance [to paraprofessionals] as will be required by The Patient Protections and Affordable Care Act of 2010." 40 NJPER at 122. The Designee found the paraprofessionals unit established a substantial likelihood of success on the merits of its charge, concluding that working hours and threshold hourly limits for health benefits eligibility are mandatorily negotiable subjects. Id.

Here, like the board in Clinton-Gardner School District, the Board unilaterally reduced paraprofessionals' hours to save the money it could potentially cost to provide health insurance benefits to paraprofessionals should the Association prevail on its Chapter 44 grievance. The number of hours paraprofessionals work, and concomitantly, the conditions of eligibility for health insurance, are mandatorily negotiable subjects. 40 NJPER at 122. As such, the Board's unilateral reduction of paraprofessionals' work hours from 30 to 29.95 a week -which reduction rendered part-time paraprofessionals ineligible for health insurance from the Board - was a violation of section 5.4a(5) of the Act.

For these reasons, I find the Association has established a substantial likelihood of success on its section 5.4a(5) claim.

Section 5.4a(3) Claim

I also find the Association has established a substantial likelihood of success on its section 5.4a(3) allegation.

In Bridgewater Tp. v. Bridgewater Public Works Association, 95 N.J. 235 (1984), the New Jersey Supreme Court set the standard for determining whether a public employer's action violates section 5.4a(3) of the Act. Under Bridgewater, a charging party must prove that the protected conduct was a substantial or motivating factor in the employer's adverse action. This may be done by direct or circumstantial evidence showing that the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. 95 N.J. at 246. The employer, however, may defeat such a finding by demonstrating that the same action would have been taken even in the absence of protected activity. Id.

Claims of retaliation for protected activity in violation of 5.4a(3) do not normally lend themselves to interim relief since there is rarely direct, uncontroverted evidence of the employer's motives. However, when an employer directly links or refers to protected activity as the basis for an adverse action, we have granted interim relief on a section 5.4a(3) claim. Borough of Chester, I.R. No. 2002-8, 28 NJPER 162 (¶33058 2002), recon. den. P.E.R.C. No. 2002-59, 28 NJPER 220 (¶33076 2002).

In Chester Borough, a Commission Designee granted an interim relief application on a charge alleging the borough retaliated against the union for filing a grievance. 28 NJPER at 165. The grievance was filed by a unit member over special duty assignments for police officers. 28 NJPER at 163. In response to the grievance, the borough's police chief issued a memorandum to officers threatening to implement a scheduling change if the grievance was not withdrawn. Id. The Commission Designee found that the union established a substantial likelihood of success on its section 5.4a(3) claim, noting that the borough did not establish it would have taken the same action absent the filing of the special duty grievance. Id. at 164.

Here, like the borough in Chester, the Board's unilateral reduction of paraprofessionals' working hours to 29.95 per week was substantially motivated by and in direct response to the Association's filing of the Chapter 44 grievance. The initiation and processing of a grievance is protected activity under the Act. Old Bridge Tp., P.E.R.C. No. 90-102, 16 NJPER 307 (¶21127 1990), aff'd NJPER Supp.2d 283 (¶28 App. Div. 1992). The Association engaged in protected activity when it filed the Chapter 44 grievance.^{28/} In direct response to that grievance,

^{28/} Chapter 44's terms, like other statutory terms and conditions of employment, were "...effectively incorporated as terms" of the 2023-2028 Agreement. State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 80 (1978).

the Board – to insure they would not be obligated to pay for health insurance for paraprofessionals should they lose the Chapter 44 grievance- reduced paraprofessionals' work hours below the 30 hour threshold for health benefits eligibility under the 2013 Sidebar Agreement. Moreover, had the Chapter 44 grievance not been filed, the Board would not have reduced paraprofessionals' 30 hour work week.

For these reasons, I also find the Association has established a substantial likelihood of success on its section 5.4a(3) claim.

Irreparable Harm

Interim relief is an extraordinary remedy that should not be granted in advance of a hearing or more fully developed record "except in the most clear and compelling circumstances." Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37,38 (1975). To obtain interim, injunctive relief, a Charging Party must establish through clear and convincing evidence that it's unit employee(s)' suffered "substantial, immediate and irreparable harm." Subcarrier Communications v. Day, 299 N.J.Super. 634, 638 (App. Div. 1997); Rutgers, 49 NJPER 309. Where the record is unclear as to what irreparable harm would result from a denial of interim relief, we have declined to grant interim relief. State of New Jersey (OER), I.R. No. 87-31, 13 NJPER 569 (¶18208 1987).

Here, it is unclear what harm, if any, would result from a denial of interim relief. The reduction in work hours to 29.95 did not diminish or alter paraprofessionals' wages: they continue to be paid for the same number of hours (35-inclusive of breaks) that they were paid prior to the work hour reduction. The change did not have a "chilling effect" on negotiations since it was implemented during the term of a collective Agreement extending through 2028. Critically, none of the affected paraprofessionals were enrolled in a District health benefits plan at the time of the work hour reduction.^{29/} One cannot lose or forgo what one never had.

The denial of interim relief would also not affect the Association's ability to represent paraprofessionals and its unit. The parties have submitted to arbitration and await a decision on what health benefits Chapter 44 affords paraprofessionals. While the Association is correct in asserting that as long as paraprofessionals work 29.95 hours per week, they will not be eligible for any health insurance per the 2013 Side Bar Agreement, a final decision from the Commission restoring their weekly work hours to 30 would ameliorate any effect the work hours reduction had on paraprofessionals' eligibility for health benefits. All that is lost in denying interim relief is,

^{29/} The Association acknowledges this point in its reply brief. See Association Reply Brief, pp. 2-3.

during some period of time (likely short given the relative merits of this case) for the processing of this charge to a final decision, paraprofessionals will not receive health benefits.^{30/} That delay, by itself, cannot constitute "irreparable harm." State of New Jersey (OER), I.R. No. 87-31, 13 NJPER 569 (¶18208 1987) (delay in getting relevant information for a grievance should interim relief be denied did not constitute irreparable harm).

The Association, in support of its argument that irreparable harm occurred here, cites Butler Board of Education, I.R. No. 2011-24, 36 NJPER 464 (¶181 2010). The Association's reliance on Butler is misplaced. There, a group of paraprofessionals enjoyed single and family health coverage for a period of years pursuant to a Board policy. 36 NJPER at 465 The Board then reduced the paraprofessionals work hours in order strip them of those same benefits. 36 NJPER at 466. Here, the paraprofessionals did not lose or suffer a diminution of health benefits. They simply never had them. Moreover, the Association has not certified or

^{30/} Even if I restored the 30 hour work week for paraprofessionals immediately, it is unclear on this record whether paraprofessionals would be able to enroll in a District health plan immediately. Health plans typically have a "open enrollment period", or a window of time during which employees can become a health plan member. It is unclear on this record whether NJEHP or the GSHP would allow enrollment outside an open enrollment period. Moreover, if the Association loses the Chapter 44 grievance, the number of hours paraprofessionals work will become a moot point.

represented that any paraprofessionals are seeking to enroll in a District health benefits plan.

For these reasons, I find the Association has not established by "clear and convincing evidence" irreparable harm.^{31/}

ORDER

The Association's application for interim relief is DENIED, without prejudice.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Commission Designee

DATE: August 19, 2024
Trenton, New Jersey

^{31/} Since I find the Association has not established irreparable harm, an essential element of an interim relief claim, I do not need to conduct an analysis of the other elements of the interim relief standard. See, e.g., Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019), Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018), Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017), and New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012).