

I.R. NO. 95-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FORT LEE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-95-54

FORT LEE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Fort Lee Board of Education from excluding certain employees from the State Health Benefits Plan. The Fort Lee Education Association brought an action against the Board alleging that it unilaterally reduced the hours of certain part-time employees from 25 hours per week to 19 1/2 hours per week for the sole purpose of excluding them from the State Health Benefits Plan. The Board introduced evidence to demonstrate that part of the duties of these employees consisted on cafeteria duty. That duty was subcontracted by the Board and the subcontractor hired these employees to do this same work. Subcontracting is non-negotiable and non-arbitrable. IFPTE Local 195 v. State of New Jersey, 88 N.J. 393, 408 (1992).

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Appearances:

For the Respondent,
Savage & Serio, attorneys
(Thomas J. Savage, of counsel)

For the Charging Party,
Springstead & Maurice, attorneys
(Lauren E. McGovern, of counsel)

INTERLOCUTORY DECISION

On August 29, 1994, the Fort Lee Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Fort Lee Board of Education violated N.J.S.A. 34:13A-5.1 et seq.; specifically subsection 5.4(a)(1), (3) and (5)^{1/} when, during the course of contract negotiations the

^{1/} These subsections 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.

Footnote Continued on Next Page

Board refused to negotiate and acted unilaterally by reducing the hours of certain part-time employees from 25 hours per week to 19 1/2 hours per week for the sole purpose of excluding them from the State Health Benefits Plan.

The unfair practice charge was accompanied by an Application for Interim Relief. An Order to Show Cause was executed and made returnable for September 13, 1994. A hearing was held on that date. The parties were given an opportunity to present evidence and argue orally.

The Fort Lee Board of Education does not dispute that the hours of the employees in question were reduced nor do they dispute that the contract between the parties provides that employees who work a minimum of 20 hours per week are entitled to health insurance through the State Health Benefits Plan. It argued and introduced evidence that the Board voluntarily recognized the Association as the exclusive representative of these employees, part-time clerk-typists, in 1993. The parties are still negotiating a benefit package for these employees, although an agreement has been entered into for the rest of the unit. They are assigned to the elementary schools and prior to this year, performed both their clerical

1/ Footnote Continued From Previous Page

(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."

duties, and helped serve lunches to the students. The lunches were prepared at the high school and distributed to the elementary schools. Effective September of this year, the Board subcontracted food services and no longer prepares lunches. It arranged with the subcontractor to employ these same clerk-typists at the elementary schools to serve the lunches that the subcontractor now prepares. These employees receive the same salary as they did when they distributed lunches for the Board of Education.

The Board introduced evidence to show that in the past these employees worked less than 20 hours per week at their clerical duties. Their work as lunch room aides brought these employees up to more than 20 hours per week. Now that they are employed by the subcontractor for lunch duty, they work less than 20 hours per week for the Board. However, their hours of work as clerk-typists have not changed.

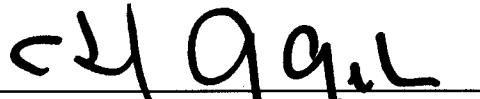
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Here, the evidence before me indicates the Board no longer employs these part-time clerk-typists for cafeteria duty. This change is a direct result of subcontracting and the issue of subcontracting is non-negotiable and non-arbitrable. IFPTE Local 195 v. State of New Jersey, 88 N.J. 393, 408 (1992).

The Association has failed to demonstrate that it has a substantial likelihood of success in prevailing before the Commission on the facts in this matter. The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

DATED: September 28, 1994
Trenton, New Jersey

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).