

I.R. NO. 93-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BARNEGAT TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-419

BARNEGAT FEDERATION OF TEACHERS, LOCAL 3751  
NJSFT, AFT, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Barnegat Township Board of Education from certain alleged conduct pending negotiations. The alleged conduct included distribution of a memo to unit members which explained the Board's position in bargaining; the denial of a classroom to hold a union meeting; and the Board's change of insurance carrier.

However, the Board also allegedly recruited unit members to make public statements in opposition to the unions negotiations position. The Commission Designee initially signed a temporary restraint prohibiting the Board from further solicitation of employees. Counsel for the Board filed a statement saying that all such conduct has ceased and all Board employees were instructed to refrain from such activity.

Given the Board's assurances that the improper conduct has ceased and the lack of any other allegation of irreparable harm, the temporary restraint was lifted.

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Appearances:

For the Respondent  
Cassetta, Taylor & Whalen  
(Garry M. Whalen, Consultant)

For the Charging Party  
Dwyer & Canellis, attorneys  
(George W. Canellis, of counsel)

INTERLOCUTORY DECISION

On May 26, 1993, the Barnegat Federation of Teachers, Local 3751, NJSFT, AFT, AFL-CIO filed an unfair practice charge with the Public Employment Relations Commission alleging that the Barnegat Township Board of Education committed unfair practices within the meaning of N.J.S.A. 34:13A-1 et seq.; specifically 5.4(a)(1), (2), (3), (4), (5) and (7).<sup>1/</sup> It was filed with an Application for

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<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of

Interim Relief and for temporary restraints. The Application for temporary restraints was heard the day the charge was filed. The Board was temporarily restrained from polling, questioning or taking any other action by which individual employees are solicited to publicly state their position on Board issues. A return date on the Application for Interim Relief was set. After several delays, the Application was heard on June 18, 1993. At that time, the parties were given an opportunity to present evidence, argue orally and file briefs.

The allegations of the charge which form the basis of the Application for Interim Relief are as follows:

1. The Union claims that on March 18, 1993, the Board distributed a bulletin to union members which it claims threatened or interfered with the rights of employees. That document was an explanation of the Board's position in bargaining. Specifically, it states that there will be no subcontracting in 1993-94, and if it

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1/ Footnote Continued From Previous Page

any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

"can control costs there my be no reductions in force" for teachers. The Board will pay 100% of insurance premimum, but the cost of health insurance increased 40% last year and the Board expects a 10% increase next year. "Salaries will remain the same for jutst the one year coming up," all jobs are protected from subcontracting for at least the next year and teacher layoffs may be avoided. The bulletin goes to state:

Finally, it has come to our attention that some members of the staff have said that the threat of people losing their jobs through R.I.F.'s or outside contracting is just a bluff or a scare tactic on the Board's part.

To set the record straight, the Board does not and will not play games with your livelihood. To insinuate this is not only underhanded and self-serving, it is also disgusting.

It is the Board's sincere desire to save jobs, not eliminate them. The position that has been submitted will keep our people off the unemployment line.

As stated before, if our position is adopted, we will be looking to you our staff, the people doing the job every day, to show us how we can be more efficient. You can become part of the solution to control the escalating costs of our day-to-day operation.

DON'T BE FOOLED BY FALSE BRAVADO

VOTE WITH YOUR HEAD

VOTE TO KEEP EVERYONE WORKING

2. On May 7, 1993, the Union received approval as per a contract provision to hold a union meeting in a school building. Approval was first granted, but when the Board learned that the public was invited to the meeting, the approval was rescinded. The meeting was ultimately held at Town hall.

3. On May 10, 1993, the Board voted to change the insurance carrier without notice. No information has been provided to the Union about this plan despite requests for same.

4. The Board its agents have approached and intimidated members of the Union in order to obtain signatures in support of its "statement of position." (Item 1).

5. On May 20, 1993, the Board conducted a public meeting to discuss privatization proposals. At the meeting, a bus driver who claimed to be a representative of the union, claimed he spoke on behalf of all drivers, cafeteria workers and custodians. He read the Board's "statement of position" (paragraph 1) and stated all of the employees urged its acceptance. At the meeting, the Board members urged the Union to engage in immediate negotiations.

6. The Board engaged in reprisal against union members opposed to signing the Board's "statement of position."

The Board opposed the granting of interim restraint. It notes that it immediately complied with the temporary restraint. It sent a notice of the restraint to its supervisory employees and directed employees to restrain from soliciting unit members.

The Board argues that the temporary restraint has been complied with and argues there is no longer grounds for an interim order. The Board argues that none of the remaining allegations of the union charge, even if true, constitute a harm which warrants the granting of an extraordinary remedy.

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.<sup>2/</sup>

If the bulletin promulgated by the Board was in violation of the Act at all, it is not so offensive as to warrant the issuance of an extraordinary remedy. An employer has the right to advise employees of the conduct of negotiation if the communication is not coercive. Cty. of Mercer, P.E.R.C. No. 86-33, 11 NJPER 589 (¶16207 1985); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981).

The denial of the use of school facilities for union meetings does not warrant the issuance of a restraint. The meeting was held at Town hall. If this action were illegal, the harm was not irreparable.

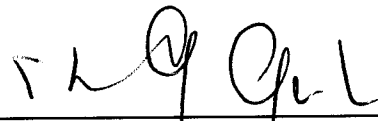
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<sup>2/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

The employer has a non-negotiable right to change insurance carriers. The employer has an obligation to provide the union sufficient information to ensure that the level of benefits enjoyed by the unit member remain unchanged, but the record here does not support the allegation that the employer refused to supply this information.

As discussed above, an order has already been entered restraining the Board from polling employees or soliciting employees to have them publicly state their position on Board issues. Given the Board's representation that it has complied with the interim order, I am inclined to rescind the order at this time. However, I will retain jurisdiction over the interim relief aspects of this case and the Union is free to renew its application for a restraint if it believes that employee polling or the solicitation of position takes place again.

The application for interim relief is denied. This matter shall go forward to a full hearing.



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Edmund G. Gerber  
Commission Designee

DATED: June 23, 1993  
Trenton, New Jersey