

I.R. NO. 97-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WHARTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-404

WHARTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to enter an interim restraint against the Wharton Board of Education. The Wharton Education Association brought this action claiming that the Board altered the terms and conditions of employment of teachers when it promulgated a new school schedule. It appears that the teachers' hours of work, pupil-contact time, workload, and starting and quitting times remain the same under the new schedule. The Association failed to prove it has a substantial likelihood of success before the Commission.

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Appearances:

For the Respondent,  
Friedman Siegelbaum, attorneys  
(Philip E. Stern, of counsel)

For the Charging Party,  
Bucceri & Pincus, attorneys  
(Sheldon H. Pincus, of counsel)

INTERLOCUTORY DECISION

On June 20, 1996, the Wharton Education Association filed an unfair practice charge alleging that the Wharton Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when on or about May 2, 1996, the Board unilaterally approved a school calendar for the 1996-97

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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. (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."

school year which changed teachers' terms and conditions of employment. The charge further alleges that the Board implemented the calendar while the parties were engaged in negotiations for a contract for the current 1995-96 school year as well as the 1996-97 school year.

The Association also filed an order to show cause which was executed and a hearing was conducted on July 9, 1996.

The Board opposed the application for interim relief and alleged that the new school calendar will not alter any terms and conditions of employment.

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 allegations of the charge concern one school in the district. Although the teacher's normal work day of 8 a.m. to 3 p.m. remains the same, the number of school periods was increased from eight to nine.

The Association's charge alleges that the new school calendar will:

- (a) lengthen the full-time teachers' day when after school meetings are held;
- (b) lengthen the teachers' day on Fridays;
- (c) affect student contact time;
- (d) affect teacher preparation time;
- (e) affect passing time between periods;
- (f) reduce teachers' lunch period;
- (g) on information and belief, affect the work day and student contact time on delayed opening and early dismissal days;
- (h) on information and belief, affect the pay rate for additional class coverage when there is loss of planning or unassigned time or coverage of two classes at one time.

At the hearing, the Board introduced evidence that, although the length of the school day for students increased, neither the teachers' pupil contact time nor workload increased and the teachers' duty-free lunch period remains the same length of time. Although the teachers' duty-free time was altered,<sup>2/</sup> they are now to receive a second preparation period so that their total pupil contact time will not increase.

Formerly, the student school day ended at 2:30 p.m. Under the new schedule, the students' day ends at 2:45 p.m. The parties'

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<sup>2/</sup> They now enjoy less duty-free time at the beginning and end of the day. Also, passing time between classes was reduced from three minutes to two.

collective negotiations agreement is silent as to quitting time. Rather, the teachers' 1995-1996 policy book provides for a 8 a.m. to 3 p.m. work day on Monday through Thursday. On Friday afternoons, teachers may leave following the dismissal of children and completion of all responsibilities associated with dismissal. The Association argues that up until now, teachers have been able to leave the building shortly after 2:30 p.m. on Fridays, but under the new school calendar, they will not be able to leave until after 2:45 p.m., the new student quitting time.

Similarly, the contract is silent as to after school meetings. However, the 1995-96 handbook states that meetings are to begin at 2:45 p.m. The Board argues that this practice will remain unchanged.


The Association argues that the substitution of preparation time for duty-free time is a change in terms of conditions of employment. Although, a unilateral increase in pupil contact time or an increase in workload is mandatorily negotiable, (see Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973)) the Commission has never found a qualitative difference between duty-free time and preparation time. I cannot say that the Commission will find a change from preparation time to duty-free time would be a change in terms and conditions of employment.

Moreover, there is a substantial factual dispute as to whether past practice or the teachers' handbook created terms and conditions of employment as to both Friday release time and after

school meetings. Such a dispute can only be resolved after a full hearing.

The Association has failed to show it has a substantial likelihood of success in prevailing on the merits of this charge.<sup>3/</sup>

Accordingly, the application for interim relief is denied. A Complaint and Notice of Hearing will issue on this matter.

  
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Edmund G. Gerber  
Commission Designee

DATED: July 15, 1996  
Trenton, New Jersey

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<sup>3/</sup> There is no evidence in the record which proves the allegation in (f) or (g) above.