I.R. NO. 91-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEANSBURG BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-91-280

KEANSBURG TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

In an action brought by the Keansburg Teachers Association, a Commission Designee declines to restrain the Keansburg Board of Education from unilaterally implementing a fact-finder's recommended settlement. The Board maintained a legitimate impasse existed in negotiations. Such an impasse must exist before an employer may unilaterally implement its last best offer negotiations. The Association failed to show it has a substantial likelihood of success in proving that a genuine impasse did not exist between it and the Association.

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Appearances:

For the Respondent
Cassetta, Taylor and Whalen, consultants
(Garry M. Whalen, consultant)

For the Charging Party
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On April 18, 1991, the Keansburg Teachers Association ("Association") filed an unfair practice charge against the Keansburg Board of Education alleging that the Board ("Board") engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).[1/]

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. (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."

The Association is the majority representative of teaching personnel employed by the Board. The most recent agreement between them expired on June 30, 1990. Negotiations for a successor agreement began in September 1989 but after mediation and fact-finding, no agreement was reached between the parties.

On March 7, 1991, the negotiator for the Board announced that it was going to accept and implement the fact-finders recommendations as its last, best offer and in April 1991, the board paid salaries in accordance with the fact-finder's recommendation. The Association alleges this was an unfair practice for there is a dispute as to the meaning of the workday recommendation of the fact-finder and no genuine impasse existed when the Board unilaterally imposed new terms and conditions of employment.

The Association's charge was accompanied by a request for interim relief and an Order to Show Cause was made returnable for May 10, 1991.[2/]

It is not disputed that after the parties could not reach an agreement and mediation was unsuccessful, they agreed to enter fact-finding. Two major areas of dispute before the fact-finder were salary increases and the length of the workday. The Board sought to increase the length of the school day of elementary teachers to the same seven hour day as high school teachers. The fact-finder issued his report on November 26, 1990. He recommended

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2/ The parties argued orally, submitted affidavits and other evidence and submitted briefs.

that the teachers receive a 8.5% salary increase and, effective in 1991-1992 elementary teachers work a seven hour day. He also recommended a two year agreement with a salary reopener for the 1991-1992 school year. The Board voted to accept the fact-finder report. However, the Association rejected the fact-finder's report. The parties met two more times without an agreement. They met a third time with a conciliator on March 18, 1991. The Board, by way of affidavit of Joseph Caruso, states the conciliator could not get the Association to move toward a settlement. No further sessions with the conciliator were requested or scheduled. On March 19, 1991, the Association made a written proposal accepting the seven hour day if the Board would agree to an additional paid personal day.

On March 21, 1991, the Board rejected the proposal and voted to implement the "Fair and Final Offer".

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.[3/]

> A public employer cannot normally alter terms and conditions of employment during collective negotiations with the majority representative. But when the employer and representative exhaust dispute resolution procedures and a genuine impasse exists, the employer may act without committing an unfair practice.
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> Bayonne Bd. of Ed., H.E. No. 90-32, 16 NJPER 84 (¶21034 1990), affirmed in Bayonne Bd. of Ed., P.E.R.C. No. 91-3, 16 NJPER 433 (¶21184 1990)

Although the Association argues that a genuine impasse did not exist because of the Association's March 19, 1991 proposal and the parties were about to commence negotiations on the re-opener for 1991-1992. It is not clear that submitting this new proposal forstalled an impasse in negotiations, nor is the commencement of negotiations on the re-opener relevant. The Association has not established a substantial likelihood of success on the facts. This case must be decided on the totality of the circumstances, Bayonne and I cannot say whether or not a genuine impasse exists.[4/]

The Association's Application for Interim Relief is denied.

Edmund G. Gerber
Commission Designee

DATED: May 17, 1991
Trenton, New Jersey

3/ 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).

4/ Although the Association charged there is a dispute as to the meaning of the fact-finder's workday recommendation, this issue was not addressed at the hearing.