

I.R. NO. 98-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-140

WILLINGBORO EDUCATION ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Commission Designee orders the Willingboro Township Board of Education to implement the terms of a fully ratified collective negotiations agreement between itself and the Willingboro Education Association pending a final Commission decision.

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Appearances:

For the Respondent,  
Hill Wallack, attorneys  
(Joan Kane Josephson, of counsel)

For the Charging Party,  
Selikoff & Cohen, attorneys  
(Steven R. Cohen, of counsel)

INTERLOCUTORY DECISION

On October 29, 1997, the Willingboro Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Willingboro Township Board of Education committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1), (5) and (6)<sup>1/</sup> when it failed to implement a negotiated and ratified agreement.

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<sup>1/</sup> 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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

The unfair practice charge was accompanied by an application for interim relief. An order to show cause was executed and made returnable for October 31, 1997. The parties were given an opportunity to submit evidence and argue orally.

The charge alleges that the Association and Board were engaged in negotiations for a successor agreement and ultimately went to fact-finding. The fact-finder issued his report on August 6, 1997. Subsequently, the parties held a series of negotiations sessions. At each session the Board convened as a whole and recessed to conduct such negotiations. At the September 7, 1997 session, at approximately 2:30 a.m. a tentative agreement was reached. The Board members met separately on the agreement and announced to the parties that "we have a deal." That agreement was memorialized by the fact-finder.

The Board conducted a second vote on the agreement on October 27, 1997 claiming such a vote was a precondition to an agreement. The Board voted 4-3 in favor of the agreement. Nevertheless, the Board refused to implement the September 8, 1997 agreement. The Association claims that such conduct constitutes a violation of the Act and seeks an interim order compelling the Board to implement the terms of the September 8, 1997 memorandum of agreement. It further seeks the Commission order compelling the Board to ratify the September 8, 1997 agreement.

The Board does not dispute that it took a roll call vote on September 8, 1997 voting in favor of the agreement, nor does it

dispute that at the October 27, 1997 meeting its members voted 4-3 in favor of ratification. However, it maintains that it's the Board's policy that it will only act when a majority of the Board members (5) vote in favor of any action, since the 4-3 vote was only a majority of a quorum and not the Board, it has declined to act.

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).

In Matawan Regional Teachers Association vs. Board of Education, 223 N.J. Super. 504 (App. Div. 1988), the Court held that a school board is bound by a vote of a quorum regardless of a board policy that it will act only if a majority of a full board votes in favor of an action.

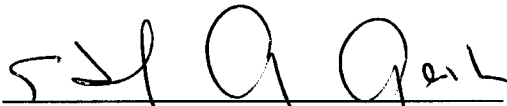
N.J.S.A. 18A:11-1(d) provides that all local school boards shall "perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the

district." N.J.S.A. 18A:11-1(d) is silent with respect to the number of votes necessary to adopt rules and to govern and manage the district. The Court assumed that the Legislature intended the common-law rule to apply; that is, a majority of the members constituting a quorum shall be sufficient to bind a Board of Education.

Here, a majority of the quorum voted in favor of the contract. Accordingly, I find there is a substantial likelihood that the Commission will find it is an unfair practice for the Board to have refused to implement the contract after taking a 4-3 vote. See also Garfield Board of Education, I.R. No. 90-10, 16 NJPER 120 (¶21045 1989).

It is the policy of the New Jersey Employer-Employee Relations Act to provide for labor stability. Given the inherent and serious instability in labor relations in the school district if the parties continue without a contract, I find that there is a substantial likelihood the harm will be irreparable and further the public interest may be harmed due to labor strife if interim relief is not granted. Therefore, the Association has met its heavy burden and I hereby ORDER the Willingboro Township Board of Education to implement the terms of the contract as vote upon on October 27, 1997.

This is an interim order only and this matter shall go before the Commission for a final disposition.

  
Edmund G. Gerber  
Commission Designee

DATED: November 13, 1997  
Trenton, New Jersey