I.R. NO. 2002-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEMBERTON BOROUGH BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2002-110

PEMBERTON BOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

Teachers employed by the Pemberton Borough Board of Education were previously allowed to arrive at school at 8:30 a.m. and report to classrooms at 8:40 a.m. For purposes of safety and security, as of the start of the 2001-2002 school year, the Board required students who previously were allowed to use the playground between 8:30 a.m. and 8:40 a.m. to report directly to their classrooms upon arrival at school. Consequently, teachers were likewise required to be in their classrooms by 8:30 a.m. The Pemberton Borough Teachers Association argued that the Board violated the Act by unilaterally implementing this change during on-going successor negotiations. The Commission Designee found that the directive requiring teachers to report to their classrooms by 8:30 a.m. was issued pursuant to the Board's exercise of its managerial prerogative to maintain student safety and security. The Designee denied the Association's application for interim relief.

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Appearances:

For the Respondent,
Barry J. Wendt, attorney
(Barry J. Wendt, of counsel)

For the Charging Party,
Zeller and Bryant, attorneys
(Allen S. Zeller, of counsel)

INTERLOCUTORY DECISION

On October 29, 2001, the Pemberton Borough Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Pemberton Borough Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1) and (5).[1/] The Association alleges that the

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

Borough unilaterally changed terms and conditions of employment during the course of successor negotiations by requiring teachers to report to their classrooms by 8:30 a.m. each school day to supervise students rather than by 8:40 a.m., as had previously been the case.

The unfair practice charge was accompanied by an application for interim relief. On October 30, 2001, an order to show cause was executed and set a return date for November 28, 2001. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The Association serves as the majority representative for all classroom teachers and instructional aides. There are approximately 16 teachers in the unit and 130 students in the district. The school district covers grades kindergarten through eight.

The predecessor collective agreement covered the period July 1, 1998 through June 30, 2001. The parties are currently engaged in successor negotiations. Article VII, A., of the recently expired agreement provides, in relevant part, as follows:

1/ Footnote Continued From Previous Page

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."

> All personnel covered by this Agreement shall be required to be on school property no later than 8:30 a.m. and to be at their assigned classroom or teaching station not later than 8:40 a.m. for the a.m. session and 12:20 p.m. for the p.m. session, exception being on early dismissal days for the p.m. session.

During the course of successor negotiations, the Board presented a proposal to modify Article VII, A., which would require teachers to arrive on school property no later than 8:20 a.m. and report to their assigned teaching stations or classrooms no later than 8:30 a.m. At this time, the parties have not reached an agreement concerning this Board proposal.

As noted above, in accordance with the terms of Article VII, A., of the 1998-2001 collective agreement, teachers arrived on school property no later than 8:30 a.m. and reported to their classrooms or teaching stations no later then 8:40 a.m. Pursuant to the Parent/Student Handbook, parents were instructed to arrange for students to arrive at school not earlier than 8:30 a.m. Students were permitted on the playground after 8:30 a.m. and reported to their classrooms at 8:40 a.m.

On or about September 4, 2001, the start of the 2001-2002 academic year, students were instructed to proceed directly to their respective classrooms immediately upon their arrival at school between 8:30 a.m. and 8:40 a.m. Students were no longer allowed to use the playground before school. Consequently, teachers were directed to be in their classrooms by 8:30 a.m. to receive the students. Thus, many teachers arrived on school property at

approximately 8:20 a.m. to be in their classrooms or teaching stations by 8:30 a.m.

The Board contends that its decision to disallow students to use the playground between 8:30 and 8:40 a.m., as it had in the past, was out of concern for the students' security and safety. The Board argues that there is a great deal of activity during the morning student arrival time which raised concerns about student safety. The Board asserts that students are arriving by bus and being dropped off by parents. Some students are walkers. All of the students arriving during a 10 minute window period creates a certain level of confusion. The Board argues that by directing students off of the playground and immediately into their respective classrooms, student security and safety are enhanced.

The Association argues that the Board's determination has unilaterally changed terms and conditions of employment during the course of collective negotiations. The Board's directive has increased student contact time by 10 minutes daily and increased teacher workload. The Association asserts that the Board's actions violate the predecessor collective agreement and requires bi-lateral negotiations before implementation. The Association contends that the Board's claim that the change was implemented in order to enhance student security and safety is merely a pretext to avoid its negotiations obligation on this issue.

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 re Byram Township Bd. of Ed., 152 NJ Super. 24-25 (App. Div. 1977) holds that "the safety and well-being of the student body and the correlative maintenance of order and efficiency are matters of major educational policy which are management's exclusive prerogative." The Commission has consistently held that a school board has a managerial prerogative to assign teaching staff members to supervise students before and after school and to make assignments relating to student safety, security, and control. See Wood-Ridge Bd. of Ed., P.E.R.C. No. 2000-109, 26 NJPER 317 (¶31128 2000); Bergenfield Bd. of Ed., P.E.R.C. No. 99-100, 25 NJPER 286 (¶30120 1999); Perth Amboy Bd. of Ed., P.E.R.C. No. 98-137, 24 NJPER 271 (¶29129 1998); Florham Park Bd. of Ed., P.E.R.C. No. 93-64, 19 NJPER 117 (¶24056 1993); Hoboken Bd. of Ed., P.E.R.C. No. 93-14, 18 NJPER 444 (¶23199 1992); Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); South Brunswick Tp. Bd. of Ed.,

P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984); Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981). Therefore, although impact issues such as compensation for the additional pupil contact time appear to be negotiable, the underlying determination made by the Board in this case to require teachers to be present in the classroom to supervise students appears to constitute an exercise of the Board's managerial prerogative.2/

Consequently, for the reasons expressed above, I find that the Association has not, at this early stage of the dispute, established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Accordingly, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice mechanism.

ORDER

The Association's application for interim relief is denied.

Stuart Reichman
Commission Designee

DATED: November 30, 2001
Trenton, New Jersey

2/ I make no finding on the Association's contention that the Board's safety claim is pretextual. The determination of that dispute is more properly before a hearing examiner.