

I.R. No. 2009-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2009-030

TRENTON PARAPROFESSIONALS
ASSOCIATION/NJEA,

Charging Party.

SYNOPSIS

A Commission Designee grants a request to restrain the Trenton Board of Education from denying full release time to the President of the Trenton Paraprofessionals Association for the balance of the 2008-2009 school year.

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Appearances:

For the Respondent, Hill Wallack, LLP (Dana M. Lane, of
counsel)

For the Charging Party, Wills, O'Neill and Mellk,
attorneys (Arnold M. Mellk, of counsel)

INTERLOCUTORY DECISION

On July 24, 2008, the Trenton Paraprofessionals
Association/NJEA (Association) filed an unfair practice charge
with the Public Employment Relations Commission (Commission)
alleging that the Trenton Board of Education (Board) violated
5.4a(3) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{1/} These provisions prohibit public employers, their
representatives or agents from: "(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. (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."

Act, N.J.S.A. 34:13A-1 et seq. (Act). The Association alleged that in contravention of the parties' written agreement that provided its president with full release time until the end of the 2008-2009 academic year, the Board assigned Association President Glenn to a classroom effective September 2008.

The unfair practice charge was assigned to a commission staff agent who conducted an exploratory conference on September 15, 2008. N.J.A.C. 19:14-1.6. At that time, it was reported that Ms. Glenn was on extended sick leave and unable to resume full-time duties. The parties, however, could not resolve the charge and the Board continued to insist that Ms. Glenn return to a classroom once her leave ended. On October 14, 2008, the Association filed an application for interim relief seeking to restrain the Board from requiring Ms. Glenn to return to a classroom. An Order to Show Cause was executed on October 17, 2008., scheduling a return date for October 30, 2008. The parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argue orally on the return date.

The Association argued that the Board was repudiating side-bar language that was incorporated into the parties collective agreement. The Board opposed the requested restraint. It argued that although the former superintendent signed the side-bar agreement, it had not been approved by the Board. It further

argued that it only inadvertently failed to reassign the Association President to a classroom for the 2007-2008 school year.

The following facts appear:

The Board and Association were parties to a collective negotiations agreement originally effective from September 1, 2004 - August 31, 2007. A new collective agreement became effective from September 1, 2007 - August 31, 2009. The collective agreement(s) is (are) silent on full-time release for the Association President, but on January 4, 2006 then Board Superintendent James Lytle sent the following memorandum to Association President Glenn:

As President of Trenton Paraprofessional Organization, please be advised that as one part of our recent agreement with the TPO, the President is fully released to provide service to the membership, with the understanding that she is assigned to a school location. This agreement is in effect for the duration of the current contract.

That memorandum was not formally approved by the Board. The collective agreement between the Board and Trenton Education Association - the professional unit of Board employees - specifically includes release time for its association president.

Article IV, the Management Rights clause of the parties' collective agreement provides in pertinent part:

Further, it is the exclusive prerogative of the Board from time to time to modify, change or add to such rules and regulations; to

select and assign all executives, staff, and supervisory personnel; to determine all qualifications of new employees, and the methods by which such qualifications are to be determined; to assign Union members as the Board shall in its exclusive judgment determine proper; to fix all or any assignments as to wages and hours, which need not be uniform.

Betty Glenn has been on full-time release as the Association President since approximately January 2003. The Board intended to assign her to a classroom position for the 2007-2008 school year but failed to do so through its own inadvertence. In July 2008, Glenn was advised that she was being reassigned to a classroom beginning September 2008 despite Lytle's January 2006 memorandum. Since Glenn was on a medical leave, she did not return to work this fall and her leave is extended at least through December 31, 2008.

ANALYSIS

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 Commission has often held that paid release time for representational purposes is mandatorily negotiable. City of Newark, P.E.R.C. No. 90-122, 16 NJPER 394 (¶21164 1990); State of New Jersey, P.E.R.C. No. 86-16, 11 NJPER 497 (¶16177 1985); Haddonfield Bd. Ed., P.E.R.C. No. 80-53, 5 NJPER 488 (¶10250 1979). Thus, the memorandum granting the Association's President release time both confirmed an existing term and condition of employment and continued it as part of the parties' collective agreement.

The Board's argument that it was not bound by the January 2006 memorandum because it had not approved the document suggests that former Superintendent Lytle did not have the authority to bind the Board. Such an argument lacks merit.

The Act provides that the superintendent of schools is a managerial executive, N.J.S.A. 34:13A-5.3, and, as such, an agent for the Board with the apparent authority to bind the Board. See Commercial Tp. Bd. Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982) aff'd 10 NJPER 78 (¶15043 App. Div. 1983). Here Lytle's memorandum confirmed what appears to have been the parties existing practice. The Board did not reject Lytle's memorandum, in fact, Glenn continued to receive release time through the balance of the 2005-2006 school year and throughout the 2006-2007

and 2007-2008 school years even though Lytle ceased serving as superintendent sometime during that two-year period. The Board's continued implementation of Lytle's memorandum maintained what had become the parties practice. The argument that the Board only inadvertently continued the practice during the 2007-2008 school year is not a legitimate basis upon which to discontinue the practice. Similarly, the parties management rights clause is not sufficient to override an existing term and condition of employment absent emergent circumstances. No emergent circumstances were presented here.

Having considered the above facts and law, I find that the Association has a substantial likelihood of success on the merits of its application, and each day Glenn is denied release time would be a day she could not get back, thereby constituting irreparable harm.

In considering the relative hardships to the parties, I find the harm to Glenn and the Association outweighs the potential harm to the Board.

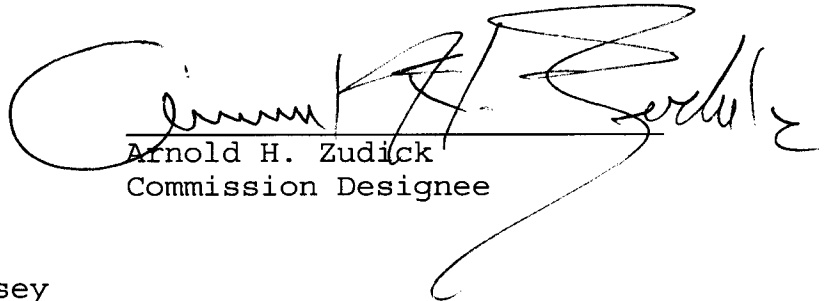
The Association in its brief, conceded that Lytle's memorandum would sunset at the end of the 2008-2009 school year. I agree. Therefore, after considering the facts and law and applying the interim relief standards, I find that the Association is entitled to an Order restraining the Board from

requiring Glenn to return to the classroom before the end of the 2008-2009 school year.

Based upon the above, I issue the following:

ORDER

The Board is restrained from denying full release time to Association President Glenn for the balance of the 2008-2009 school year and may not order her to return to the classroom prior to the expiration of the parties 2007-2009 collective agreement (no later than August 31, 2009).


Arnold H. Zudick
Commission Designee

DATED: December 1, 2008
Trenton, New Jersey