

I.R. NO. 2011-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2011-098

ELIZABETH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Elizabeth Education Association filed an unfair practice charge accompanied by an application for interim relief claiming that the Elizabeth Board of Education unilaterally reduced the number of weekly preparation periods from 7 to 5 for teachers in grades kindergarten through 8. The Commission Designee denied interim relief finding that language in a Sidebar Agreement was subject to interpretation regarding whether the Board was required to provide 5 or 7 weekly preparation periods for faculty teaching in grades kindergarten through 5, and there was a material factual dispute regarding whether faculty teaching in grades 6 through 8 were receiving 5 or 7 weekly preparation periods. Accordingly, the Commission Designee found that the Association did not establish a likelihood of success on the merits of its unfair practice charge, a requisite element to obtain a grant of interim relief.

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Appearances:

For the Respondent
Karen A. Murray, Labor Counsel
(Nicole S. Morgan, of counsel)

For the Charging Party
Oxford Cohen, attorneys
(Randi Doner April, of counsel)

INTERLOCUTORY DECISION

On September 1, 2010, the Elizabeth Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Elizabeth Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by violating 5.4a(1), (3) and (5).^{1/} The Association alleges that the Board unilaterally

^{1/} 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, (3) Discriminating in (continued...)"

reduced the number of weekly preparation periods from seven to five for elementary school teachers in the grades kindergarten through fifth. The Association's unfair practice charge was accompanied by an unperfected application for interim relief.

On September 8, 2010, an Order to Show Cause was executed setting a return date for September 30. On September 22, the Association filed an amended unfair practice charge alleging that the Board also unilaterally reduced the number of weekly preparation periods for teachers in grades 6 through 8 from seven to five.

On September 28, 2010, the Association perfected its interim relief application by filing a supporting certification. On September 30, in light of the filing of the Association's certification and its amended unfair practice charge, the Board requested additional time to supplement and submit its response. On October 5, 2010, I granted the Board's request. I set oral argument for October 29, 2010. Pursuant to the newly established time schedule for the submission of briefs, affidavits and exhibits, the parties timely submitted all requisite documents.

1/ (...continued)
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, and (5) Refusing to negotiate in good faith with 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 parties argued orally on the newly scheduled return date. The following facts appear.

The Association represents various employees of the Elizabeth Board of Education, including teachers. In December 2008, the Association and the Board entered into a Ratification of Memorandum of Agreement for the period 2009-2012. Effective July 1, 2009, the Agreement established a daily workday schedule for grades kindergarten through 5 which provided for each teacher to have one daily duty-free, teacher-directed preparation period. The five preparation periods are afforded to teachers by assigning other teachers/specialists in the area of physical education, art, music, computer science and media to cover classroom teaching responsibilities and, thereby, relieve the teacher for a preparation period.

In June 2009, the parties entered into a Sidebar Agreement which modified the Ratification of Memorandum of Agreement and provided for two additional preparation periods, thereby bringing the total number of preparation periods to seven per week. The Sidebar Agreement was first implemented in the 2009-2010 school year. The Sidebar provided as follows:

Five (5) days a week each teacher shall have one (1) daily duty-free teacher directed preparation period. On each of two (2) of the five (5) workdays, one additional preparation period shall be provided during the assignment of world language specialists. The total number of preparation periods during a five (5) day week shall be seven

(7). Preparation periods will be provided by the world language, physical education, art, music and computer science and media specialists. The classroom teacher is encouraged to use the two (2) preparation periods provided by the assignment of the world language specialists to plan for language arts literacy across the curriculum and numeracy.

On or about June 10, 2010, the Board was forced to eliminate the world language specialist position based upon a loss of funding, the rejection of the 2010-2011 school budget, and other budgetary reasons. Since the Board was no longer able to assign world language specialists to classrooms for two periods per week, there would no longer be coverage which would allow the classroom teacher to leave during those anticipated preparation periods. In or around August 2010, the Board provided a model schedule to the Association showing the reduction in preparation periods for grades kindergarten through 5 from seven per week to five.

The Sidebar Agreement applicable to grades 6 through 8 provides as follows:

- a. Grade six (6) classroom teachers: Five (5) days a week each teacher shall have one (1) daily duty free-teacher directed preparation period. On each of two (2) of the five (5) workdays, one (1) additional preparation period shall be provided during the assignment of science. The total number of preparation periods during a five (5) day week shall be seven (7). Five (5) preparation periods will be provided by the world language, physical education,

art, music, computer science and media specialists. Two (2) preparation periods will be provided by the science teachers. The classroom teacher is encouraged to use the two (2) preparation periods provided by the assignment of students to science lab to plan for science, language arts literacy across the curriculum and numeracy.

- b. Grade seven (7) and eight (8) classroom teachers: Five (5) days a week each teacher shall have one (1) daily duty free-teacher directed preparation period. On each of two (2) of the five (5) workdays, one (1) additional preparation period shall be provided in place of the team meetings/duties period. The total number of preparation periods during a five (5) day week shall be seven (7). The classroom teacher is encouraged to use the two (2) preparation periods provided in place of team meetings to plan for language arts literacy across the curriculum and numeracy.

The Board asserts that the seven preparation periods for grades 6, 7 and 8 referenced in the Sidebar Agreement were not affected by the reduction in force and the subsequent elimination of the world language specialist and other positions. This assertion was confirmed during oral argument by counsel for the Board.

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 this case, the Association relies upon the specific language contained in the Sidebar Agreement which states that the total number of preparation periods during a five day work week will be seven. The Association contends that this language is unequivocal and requires the Board to provide teachers with seven preparation periods per week. The Association contends that since the Board has unilaterally reduced the number of preparation periods from seven to five per week, it has repudiated the clear language of the Sidebar Agreement in violation of the Act.

While the Board does not dispute that preparation periods have been reduced to five per week for teachers in grades kindergarten through 5, it points out that the language in the Sidebar Agreement calls for the two additional preparation periods to flow from the intended assignment of the world language specialists to cover the release of the classroom teachers. Thus, the Board argues that the language of the Sidebar Agreement contemplates the assignment of the world

language specialists as condition precedent to the classroom teachers' receipt of the additional two preparation periods per week. Since it appears that the operative paragraph contained in the Sidebar Agreement provides a degree of internal inconsistency with respect to the number of weekly preparation periods provided to teachers based upon whether world language specialists are available, it would appear that the ultimate resolution of that dispute would be achieved by obtaining an interpretation of the conflicting language contained in the Sidebar. In cases such as these, the Commission frequently defers such matters to the parties' negotiated grievance procedure. In any event, I find that with respect to whether the Board has unilaterally eliminated two preparation periods for teachers in grades kindergarten through 5, a material factual dispute exists regarding the meaning and proper application of the language in the Sidebar Agreement at issue here. Consequently, the Association has not 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.

With respect to grades 6 through 8, there is a fundamental dispute as to whether teachers are receiving seven preparation periods per week or five. Interim relief is denied in circumstances where disputes of material facts exist. See Union

Cty., I.R. No. 2001-16, 27 NJPER 273 (¶32098 2001); City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001); Tp. of Dover, I.R. No. 94-4, 20 NJPER 6 (¶25004 1993). Again, I find with respect to grades 6 through 8, a substantial likelihood of success has not been established by the Association at this juncture of the proceeding.

Accordingly, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice mechanism, with my recommendation to the Director of Unfair Practices that this matter be deferred to arbitration.

ORDER

The Elizabeth Education Association's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: November 4, 2010
Trenton, New Jersey