

I.R. NO. 2023-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY SPECIAL
SERVICE SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2023-051

GLOUCESTER CTY SPECIAL
SERVICE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon the unfair practice charge filed by the Gloucester County Special Services Education Association (Association or Charging Party) against the Gloucester County Special Services Board of Education (Board or Respondent). The charge alleges that the Board violated sections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by unilaterally changing the compensation schedules of certain paraprofessionals, specifically the recently included unit title of "hourly classroom assistants." The designee concludes that the Association does not have a reasonable likelihood of success on the merits because there are material factual disputes regarding how and when hourly classroom assistants have been paid and whether changed actually occurred, the contract does not clearly afford hourly classroom assistants the right to be paid in 20 equal installments on the 15th and last day of the month regardless of hours actually worked, and the underlying dispute depends on competing, colorable interpretations of the parties' agreements. Alternatively, the Association cannot show irreparable harm. Thus, the Association cannot meet its heavy burden to obtain interim relief.

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Appearances:

For the Respondent,
Brown and Connery, attorneys
(Michael J. DePiero, of counsel
Jose A. Calves, on the Brief)

For the Charging Party,
Selikoff & Cohen, attorneys
(Keith Waldman, of counsel)
(Daniel R. Dowdy, on the brief)

INTERLOCUTORY DECISION

On September 26, 2022, the Gloucester County Special Services Education Association (Association or Charging Party) filed an unfair practice charge, accompanied by an application for interim relief^{1/} against the Gloucester County Special Services Board of Education (Board or Respondent). The charge

^{1/} The Association did not seek a Temporary Restraining Order pending disposition of the interim relief application.

alleges the Board violated sections 5.4a(1) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by unilaterally changing the compensation schedules of certain paraprofessionals, specifically the recently included title of "hourly classroom assistants." The Association alleges that the parties' contract requires these paraprofessionals to have been paid on September 15, 2022, and that the Board has a past practice of paying 10-month Association members in twenty equal installments from September through June on the 15th and last day of each month. It asserts that the Board failed to pay these hourly classroom assistants on September 15, 2022, and refused to pay them in accordance with past practice when the Association made the demand on September 15, 2022 and September 21, 2022. Lastly, it maintains that the alleged unilateral change caused immediate and irreparable harm to these hourly classroom assistants. In support of its application for interim relief, the Association submitted a brief, certifications, and a copy of the sidebar agreement that granted voluntary recognition to hourly classroom assistants.

^{2/} 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; and "(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."

On September 28, 2022, I issued an Order to Show Cause (OSC) as the Commission designee, which set forth the relevant deadlines. The Board, after seeking and obtaining a short extension, filed its brief, a copy of the parties' collective negotiations agreement, exhibits and a supporting certification on October 13, 2022. The Association filed another certification as its reply. Oral arguments were conducted as scheduled on October 28, 2022. Based on the parties' submissions, the following facts appear:

The CNA

The collective negotiations agreement (CNA) between the parties covered the period of July 1, 2018 through June 30, 2021. (Resp. Br. Ex. A) The Recognition clause in Article 1A defines the negotiations unit as follows: "all regularly employed certificated and non-certificated personnel under 10 or 12- month contract working at least three (3) days per week or an approved leave" Article 1C.1 further provides that "[a]ll regularly employed full and part-time classroom assistants/one-to-one aides . . ." are included in the unit, and it lists the various positions that are covered by those titles. Under Article 1C.2, "hourly/per diem employees" are specifically excluded from the unit under the CNA, as originally drafted.

Article 21 of the CNA governs salaries. Paragraph A of that article addresses the timing of payments to certain unit employees. It provides in pertinent part:

Employees employed on a ten (10) month basis shall be paid in twenty (20) semi-monthly installments, payable on the 15th and the last day of each month, except in December when the second salary payment will be made on the last workday prior to the school holiday recess.

The Sidebar Agreement

On or around September 15, 2021, the parties entered into a sidebar agreement (HCA Sidebar) to add the new title of "Hourly Classroom Assistant" to the Association's existing unit. The HCA Sidebar provides:

The District agrees to grant voluntary recognition for a new job category, Hourly Classroom Assistant, to be eligible for membership in the Association, consistent with the Workplace Democracy Enhancement Act.

The position of Hourly Classroom Assistant shall receive all of the same benefits and privileges as all other bargaining unit members. The terms and conditions of this position shall be identical to those of Classroom Assistant with the following exceptions:

1. Hourly Classroom Assistants shall work no longer than 6 hours daily, with a daily unpaid lunch period identical to all regular classroom assistants.
2. Hourly Classroom Assistants shall not be eligible for health benefits coverage.
3. The salary for Hourly Classroom Assistants shall not be a salary guide, but rather a minimum rate of \$25 per hour for the 2021-2022 school year, subject to future increases in a successor

agreement.

4. The District shall not remove or attrition any full-time classroom assistant positions with hourly classroom assistants. The vacant positions of any full-time classroom assistants that transfer to an hourly position shall be filled.

The parties agree to amend ARTICLE 1-RECOGNITION, item C1, Included, to read the following, to include the bolded addition text below:

All regularly employed full, part-time, **and hourly** classroom assistants/one-to-one aides including certified occupational therapy assistants, certified school nurse assistants, certified physical therapy assistants, teacher assistants and, specialized program assistants, and enterprise managers employed by the Gloucester County Special Services School District.
(Emphasis in original.)

The parties agree to amend ARTICLE 1- RECOGNITION, item C2, Excluded to read the following, to remove the bolded, strikethrough text below:

Managerial executives, confidential employee and supervisors within the meaning of the Act; craft employees, police employees, ~~hourly/per diem~~ employees and all other employees of the Gloucester County Special Services School District.

The District and the Association agree that these terms be recommended for approval by the Board and for ratification by the membership of the Association to amend the Agreement between the parties. The parties will revisit this sidebar in collective negotiations for a successor agreement.

The HCA Sidebar appears to have been signed by Assistant Superintendent for the Gloucester Special Services School

District, Amy Capriotti, and Association President Danielle Davis.

Following the inclusion of the new title into the unit, the Board hired additional hourly classroom assistants. As will be discussed in further detail below, both parties rely on past practice regarding compensation methods and schedules in support of their respective positions. It appears that hourly employees have historically been paid for hours actually worked, and their first pay check would not issue until the pay period after their start date. It also appears that regularly employed ten-month employees historically have been paid their negotiated salary in twenty equal installments on the 15th and last day of the month from September to June, regardless of the hours actually worked. This dispute centers on whether the recently included title of hourly classroom assistants should be paid like hourly employees or employees employed on a ten month basis.

The Certifications

Respondent provided the certification of Assistant Superintendent for the Gloucester Special Services School District, Amy Capriotti. (Resp. Br. Ex. C) She certifies that she has served in that position for approximately the past five years, during which she has had responsibility for Respondent's policies, procedures and practices regarding payroll. Capriotti certifies that "hourly employees have consistently been paid on

the scheduled pay date following the relevant pay period ending (i.e. an employee is paid at the end of the month for the pay period lasting from the 1st through the 15th).” She explains that this practice enables the Respondent to pay hourly employees for hours actually worked. Capriotti contrasts this payment practice for hourly employees with the payment practice for contracted salaried employees, where the contracted salary is divided into twenty equal payments regardless of the hours worked in a given pay period. She further certifies that Respondent’s pay policy is provided in a memorandum that is available on its employee portal, and that the memorandum is also given to new employees in their welcome packet. Respondent provided a copy of its annual Pay Date Memorandums from 2018-19, 2019-20, and 2022-23. (Resp. Ex. D, E).

Respondent also provided a September 15, 2022, email exchange between an Association member and Capriotti regarding the different payment practices. (Resp. Ex. M) The email’s subject is entitled “pay date for hourly employees.” The Association member asked Capriotti for clarification regarding why hourly employees and contracted employees had different pay dates. Capriotti provided the following explanation in her email response:

Contracted 10-month employees that receive a set annual salary get equal semi-monthly paychecks on the 15th and 30th of each month. For example, if a 10-month contracted

employee makes a salary of \$15,000, then that is divided by 20 pays and they would get \$750 each pay.

For hourly employees, they can only get paid for the hours actually worked. Therefore, for the 1st-15th of each month, that gets paid on the following pay. We cannot pay hourly employees today on the 15th since the pay period hasn't even ended yet. This has always been the practice on how to pay hourly employees. They always get paid a pay period behind.

The member thanked Capriotti for the information, and Capriotti forwarded the email to Danielle Davis, the Association president, in case she received the same question from a member.

Association President Danielle Davis has worked for the Respondent for twenty (20) years as a full-time paraprofessional. She submitted two certifications, one of which served as the Association's reply to the Respondent's submissions. In her first certification, Davis represents that the Respondent has had a past practicing of paying "all 10-month Association members" in 20 paychecks per year on the 15th and final day of each month where each paycheck is "1/20th of their earnings based upon their scheduled work . . ." However, Davis' first certification does not address how hourly classroom assistants have been paid in the past, either before or after their inclusion in the unit pursuant to the HCA Sidebar that was signed roughly a year before this charge was filed. Instead, Davis asserts that "[b]ased on this

past practice, all paraprofessionals had expected to be paid for 1/20 of their scheduled work on September 15, 2022.”

Her certification also cites the language in the HCA Sidebar providing that the hourly classroom assistants “shall receive all of the same benefits and privileges as all other bargaining unit members” in support of her contention that the hourly classroom assistant should be paid in the same manner as the other paraprofessionals. Relying on the CNA, Davis also contends that Article 21, which addresses the timing of payments for “[e]mployees employed on a ten (10) month basis,” requires the Respondent to pay the hourly classroom assistants on September 15, 2022.

Davis attached as an exhibit^{3/} an August 2022 personnel report from the Board, which identifies how many days per week the hourly classroom assistants work from September 1, 2022 to June 30, 2023 and the hourly pay rate. The attached report is entitled “Department of Human Resources Gloucester County Special Services School District Personnel-August 17, 2022.” It covers a number of subjects, such as leave, resignations, retirements, and appointments. Section 4, which appears to be the section Davis references in her certification, contains the heading “Appointment Not Eligible for Tenure Positions,” and then has

^{3/} Davis’ certification identifies this report as Exhibit C, but the attachments do not appear to be labeled or otherwise identified.

columns listing personnel information such as employee names, positions, salary/step, and effective date. For most of the employees listed, the position is identified as "Classroom Hourly Assistant" with a pay rate of "\$25/hour." Most of the effective dates begin September 1, although one "Classroom Assistant Hourly" appointment spans a little more than eleven months, from July 26, 2022 through June 30, 2023. While the number of hours per week is not identified for these employees in this section of the report, it does identify the number of days, which ranges from three to five days per week for the listed hourly classroom assistants.

When the hourly classroom assistants^{4/} had not been paid on September 15, 2022, Davis certifies that she spoke with Capriotti and insisted that the hourly classroom assistants be paid "in accordance with past practice." Davis certifies that Capriotti

^{4/} In her certification, Davis characterizes these employees as "part-time paraprofessionals." However, during oral arguments, I asked the parties to confirm that the only unit employees who were impacted by the alleged change were the hourly classroom assistants. Both parties agreed that those employees were the only paraprofessionals at issue in the dispute. Accordingly, for accuracy and clarity, I am referring to the impacted unit employees by the title of hourly classroom assistant. This is not a title that I chose for the unit employees; this is a title that was specifically created by the express terms of the parties' HCA Sidebar as part of the voluntary recognition. It is also the particular title that appears repeatedly in the documentary evidence submitted by both sides.

denied the request. Davis certifies that she made the same demand at a September 21, 2022 Board meeting, which was refused.

Haley Valente, Brittany Willis, and Kelly Van Mater are all hourly classroom assistants^{5/} and current members of the Association. They provided certifications in support of the Association's application. Their certifications are substantially similar. They characterize their hourly classroom assistant title as part-time, 10-month positions. Valente and Willis certify that they work 5 days per week for 5.5 hours per day, while Van Mater does not specify the numbers of days per week she works or the number of hours per week she works in her certification. All three employees certify that they "expected" to be paid 1/20 of their "scheduled pay" on September 15, 2022. They also all characterize the Respondent's payment method as a change, and certify that the first time they learned about the Respondent's payment method was on September 15, 2022 when they did not receive any pay. They all certify that by being paid for hours worked rather than in twenty equal installments, they cannot pay their bills and are suffering severe financial hardship. Moreover, by paying for hours worked, these employees certify they will have less money for pay periods where they work

^{5/} In their certifications, these employees identify their title as "part-time" paraprofessionals. For the same reasons identified in footnote 4, I am referring to their positions by the agreed-upon title of hourly classroom assistants.

fewer days. Only Van Mater asserts in her certification that during last school year, while working for the Respondent, she was paid 1/20th of her "scheduled pay" over 20 paychecks on the 15th and final day of the month.

However, Respondent points out that since all three of these hourly classroom assistants were employed during the prior school year, it has payroll records showing that they were all paid a pay period behind for hours actually worked rather than in equal installments. (Resp. Ex. F & G) The Start Date Reports provided show that both Willis and Van Mater began employment in November 2021, while Valente started at the end of March 2022. (Resp. Ex. F) Respondent notes that while Willis started work on November 17, 2021, her first check was not issued on November 30, 2021, but instead on December 15, 2021. (Ex. F & Ex. G) Similarly, Van Mater started November 22, 2021 and her first payment was not issued on November 30, but instead on December 15, 2021. This record conflicts with Van Mater's certification regarding how she was paid last school year. Lastly, Valente started on March 28, 2022, and her first paycheck was not issued on March 31, 2022, but instead on April 14, 2022. The Start Date Reports also show their titles as "classroom assistant hourly." (Ex. F) Thus, Respondent asserts that the payroll records establish that, even after their inclusion in the Association's unit pursuant to the HCA Sidebar, these employees were not paid on the first pay day

after employment began, but instead they had to wait for the following pay date to receive their first paycheck for hours actually worked in the preceding pay period. Thus, Respondent maintains that the payment method and schedule for hourly classroom assistants has not changed, as they were paid on September 30, 2022 for hours worked during the prior pay period, and they will continue to receive bi-monthly payments for hours worked in the preceding pay period.

Respondent also provided copies of the employees' signed renewal letters in further support of its view that they are hourly employees. (Resp. Ex. H) Willis, Van Mater and Valente all received letters dated May 12, 2022, advising them that the Board approved their employment "as an Hourly Classroom Assistant for the 2022-23 school year" at its May 11, 2022 meeting. (Ex. H) The letters further advise that they will "be maintained at their 21-22 hourly rate" until a new agreement with the Association is reached. The letters also ask the employees to sign, date and identify whether they commit to working 3, 4 or 5 days for the 2022-23 school year by circling their selection. All three employees signed the letters in mid-May 2022 and committed to working 5 days for the then-upcoming school year. The letters do not address the number of hours per week these employees would work.

Respondent also provided documentary evidence regarding other hourly employees to demonstrate that it has consistently used the same payment method and schedule over the years. (Resp. Ex. I, J, K, & L) Together these records appear to show that hourly employees in 2018 and 2019 were not paid on the first pay date after they started, but instead had to wait for the next pay date. (Ex. J, L)

Davis' second certification serves as the Association's reply. She characterizes the hourly classroom assistants as "contracted" employees since they are subject to the parties' CNA. Davis references the August 2022 Personnel Report provided in her initial certification, and asserts that since the assignments for the hourly classroom assistants were approved for September 1, 2022 through June 30, 2023, and since the number of days per week were identified (3, 4 or 5), the hourly classroom assistants are "clearly 10-month employees" that should have been paid on September 15, 2022. Notably, Davis does not dispute in her certification that the hourly classroom assistants who provided certifications for the Association were paid for hours worked like other hourly employees during the 2021-2022 school year. However, she counters that since those three hourly classroom assistants were hired mid-school year, they could not have been approved for a full 10-month schedule, and therefore, they were not full 10-month employees for the 2021-2022 school

year. Consequently, Davis concludes that they were not subject to the pay schedule for 10-month employees. Since the hourly classroom assistants' 10-month schedules were approved in advance of this school year, Davis contends that they must be paid using the pay schedule for 10-month employees. Davis submits that because the Board approved their schedules for a 10-month period and knew the number of days per week that the hourly classroom assistants would work, Respondent "was fully able to pay them according to their scheduled work."

Davis asserts that the pay memorandums provided by Respondent are inapplicable because they pertain to employees who fill out time sheets, and the hourly classroom assistants do not complete time sheets. Davis contends that Respondent's remaining exhibits are irrelevant as they either pertain to payments made before the HCA Sidebar was executed or pertain to employees who are not included in the Association's unit.

APPLICABLE LEGAL STANDARDS

A charging party may obtain interim relief only under narrow and limited circumstances. To obtain relief, the moving party must demonstrate both that it has a reasonable probability of prevailing on the merits and that irreparable harm will occur if the requested relief is not granted. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). Relief should not be granted where the underlying legal right is unsettled. Id. at 133 ("[T]emporary

relief should be withheld when the legal right underlying plaintiff's claim is unsettled."). See also Waste Mgmt. v. Union County Utils. Auth., 399 N.J. Super. 508, 528 (App. Div. 2008) ("The time-honored approach in ascertaining whether a party has demonstrated a reasonable likelihood of success requires a determination of whether the material facts are in dispute and whether the applicable law is settled.") Additionally, 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. Id. See also Whitmeyer 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).

Section 5.3 of the Act provides:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

To prove a violation of this section, a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J. 322 (1989); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978). A public employer may violate section 5.4a(5) of the Act if it modifies terms and conditions of employment without first negotiating in good faith to impasse or having a managerial prerogative or contractual right to make the

change. State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985).

ANALYSIS

The Association's request for interim relief is denied. As will be explained further below, the Association has not established that it has a reasonable likelihood of success of prevailing on the merits as there are material factual disputes. Alternatively, the hourly classroom assistants have not suffered irreparable harm. Therefore, in accordance with the fundamental principles articulated in Crowe, supra, interim relief cannot be granted.

"Compensation schedules and methods of compensating unit employees are mandatorily negotiable subjects. The when and how a unit employee is compensated must be negotiated with that employee's majority representative before it is established or changed by the employer." Deptford Tp. Bd. of Ed., I.R. No. 2023-2, 49 NJPER 197 (¶47 2002) (additional citations omitted).

The Association does not have a reasonable likelihood of success on the merits because there are critical, material factual disputes regarding what the past practice was for hourly classroom assistants. Both parties claim that the established past practice regarding compensation schedules and methods supports their position. Importantly, Respondent has produced

certifications and documentary evidence, including last school year's payroll records for the hourly classroom assistants who provided certifications in support of the charge, that appear to establish that it continued to pay hourly classroom assistants as they historically have been paid for many years, and therefore, no changed occurred. Rather than refute this critical factual representation regarding past practice, Association president Davis' certification counters with legal argument regarding why the Respondent's approval of a ten-month schedule for most of the hourly classroom assistants should mean that they are paid in a different manner for the current school year. Virtually^{6/} no facts show that the hourly classroom assistants had been paid in equal installments for scheduled work on the 15th and last day of the month. Instead, the Association is relying on the past practice of how a group of other employees in the unit have been paid. Thus, the Association does not have a reasonable likelihood of success on the merits because the Respondent does not appear to have a past practice of paying the hourly classroom assistants in that manner, or otherwise changed the how and when it paid these employees.

6/ The sole exception is Van Mater's certification claiming that last school year she was paid in equal installments on 15th and last day of month. However, the records provided by Respondent appear to undercut that assertion. Either way, this factual dispute underscores that this matter is inappropriate for interim relief.

The Association also does not have a reasonable likelihood of success on the merits because the CNA and HCA Sidebar do not clearly afford hourly classroom assistants the right to be paid in twenty equal installments regardless of hours worked. The Association is essentially seeking a determination that "employees employed on a ten (10) month basis" under Article 21 of the CNA should be interpreted to include hourly classroom assistants. To arrive at this interpretation, it first notes that in the August 17, 2022 Personnel Report that it attached to the charge as an exhibit, the Board approved most of the hourly classroom assistants for appointments effective from the start of September 2022 to the end of June 2023. Second, it points to the language in the HCA Sidebar that provides that the terms and conditions of employment for the hourly classroom assistants "shall be identical to those of Classroom Assistant" subject to four exceptions. Weaving together the Respondent's approval of ten-month schedules for most of the hourly classroom assistants, the HCA Sidebar language, the CNA language regarding the timing of the semimonthly payments, and the Respondent's past practice of paying ten-month employees in twenty equal installments based on their salaries, the Association concludes that the Respondent also had to pay hourly classroom assistants in twenty equal installments based on their scheduled work.

While the Association's interpretation is possible, the Respondent has a compelling, competing interpretation that "employees employed on a ten (10) month basis" does not include hourly classroom assistants. After all, the word "hourly" is just as much a part of both the CNA and HCA Sidebar as the language the Association cites in its favor. Both the CNA and the HCA Sidebar recognize hourly classroom assistants as its own position separate from part-time and full-time classroom assistants that were already included in the negotiations unit. The HCA Sidebar plainly sets forth an hourly pay rate of \$25 per hour for the hourly classroom assistants. Even the August 2022 personnel report that the Association relies upon identifies the position as an "hourly" one. And although the report specifies that number of days that will be worked, it does not identify the number of hours that hourly classroom assistants would work each day or cumulatively for the week. The CNA and the HCA Sidebar do not expressly provide for a minimum number of hours that an hourly classroom assistant is guaranteed to receive. Instead, the HCA Sidebar only identifies a ceiling on the number of hours the hourly classroom assistants can work each day.

In short, both parties have competing interpretations of how their agreements should be read. What meaning and weight should be granted to the particular language that the parties included in their agreements are inquires that far exceed the proper

limitations of an interim relief proceeding. We have previously denied requests for interim relief where the resolution of the unfair practice charge depends upon competing, colorable interpretations of the parties' contract language. See e.g. City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001), recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001) (Commission designee, in concluding that dispute regarding new uniform purchases was contractual and should be resolved through the parties' grievance procedure, explained that interim relief applications have been denied where "the underlying dispute is dependent upon the resolution of specific language contained in the collective negotiations agreement.")

While the Association relies upon Deptford Tp. Bd. of Ed., supra, the foregoing analysis establishes that such reliance is misplaced. In Deptford Tp. Bd. of Ed., the Commission designee granted interim relief where the Board changed its method of compensating bus drivers and aides from twenty (20) equal installments September through June to compensating only for hours actually worked during a given pay period. There was no dispute that the group of employees impacted by the unilateral change had been paid in twenty equal installments for decades. The Board did not contest either the existence of the decades-long practice or the fact that the change occurred. In short, the status quo payment method for the drives and aides impacted

by the unilateral change was crystal clear. These facts stand in stark contrast to the instant matter, in which a recently included title was historically paid in a different manner than other employees in the unit, the employer disputes that the payment method for the recently included title actually changed, and there are competing, colorable interpretations regarding whether certain contract language applies to the recently included title. Thus, Deptford Tp. Bd. of Ed., surpa, militates against concluding that the Association has a reasonable likelihood of success on the merits.

Under the particular circumstances in the instant matter, the Association cannot establish a reasonable likelihood of success on the merits, and therefore, interim relief must be denied. No further analysis on the remaining factors is necessary. Crowe, supra (explaining substantial likelihood of success is a prerequisite for obtaining interim relief). See also, Paterson State Operated School District, I.R. No. 2021-25, 47 NJPER 510 (¶120 2021) (citing Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019)); Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018); Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017); New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012).

Nonetheless, although it is not necessary to the disposition of this application, I will note that employees' reliance

interests that gave rise to claims of irreparable harm in our other interim relief cases regarding payment methods and schedules are not the same as those in the instant matter. While hourly classroom assistants certified that they expected or were otherwise under the impression that they would be paid in twenty equal installments for all hours they were scheduled to work rather than actually worked, there are no specific facts that explain why they held such a belief or expectation. This is particularly true where their pay records from earlier this year appear to indicate that they were paid for hours actually worked a pay period behind. The significant factual disputes regarding the compensation methods and schedules for hourly classroom assistants distinguishes this matter from interim relief proceedings where irreparable harm was found. See e.g., Atlantic City Bd. of Ed., I.R. No. 2003-14, 29 NJPER 305 (¶94 2003) (irreparable harm found where there was no dispute that the employer changed the biweekly payroll schedule). Thus, without specific facts showing that hourly classroom assistants have long-relied on payments on the 15th and last day of the month in equal installments for their scheduled work, the Association cannot demonstrate irreparable harm.

ORDER

Under these circumstances, I find that the Association has not sustained the heavy burden required for interim relief under the Crowe factors and deny the application pursuant to N.J.A.C. 19:14-9.5(b)(3). This case will be transferred to the Director of Unfair Practices for further processing.

/s/ Christina Gubitosa
Christina Gubitosa
Commission Designee

DATED: November 22, 2022
Trenton, New Jersey