

I.R. NO. 2023-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON PUBLIC SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2023-120

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Paterson Education Association (Association or Charging Party) against the Paterson Public School District (Board or Respondent). The charge alleges that the Board violated sections 5.4a(5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when it unilaterally withheld a portion of the payroll deposit of unit employee Marcella Simadiris. The Association does not have a settled legal right, and it did not establish that the recoupment constituted irreparable harm.

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Appearances:

For the Respondent,
Law Office of Karen A. Murray, attorneys
(Karen A. Murray, of counsel)

For the Charging Party
Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

INTERLOCUTORY DECISION

On January 20, 2023, the Paterson Education Association (Association or Charging Party) filed an unfair practice charge against the Paterson Public School District (Board or Respondent). The charge alleges that the Board violated sections 5.4a(5) and (7) ^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when on or about December

1/ These provisions prohibit public employers, their representatives or agents from: "(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; and (7) Violating any of the rules and regulations established by the Commission."

12, 2022, it unilaterally withheld a portion of the payroll deposit of unit employee Marcella Simadiris due to overpayment.^{2/} It also alleges that the Board attempted to negotiate the withholding but the Board refused to do so.

Roughly a month and a half after the initial filing of the charge, on or around March 8, 2023, the Association then filed an application for interim relief and temporary restraints against the Board based on the foregoing conduct. In support of its application for interim relief and temporary restraints, the Association provided a brief, exhibits, and the certification of Marcella Simadiris. (Simadiris cert.)

On March 9, 2023, Board counsel sent an email asserting that the New Jersey Commissioner of Education has jurisdiction over this dispute as it relates to tenure charges. She also attached a March 8, 2023 decision issued by Administrative Law Judge Margaret M. Monaco, which denied the Association's application for interim relief on the basis of the same set of facts. Therefore, later the same day on March 9, the Director of Unfair Practices advised the Association that he would deny its request

^{2/} The charge further alleges that the withholding is in retaliation for Simadiris' active participation in the Association's negotiation team as the parties have been in negotiations for a successor agreement since December 2021. However, the Association failed to specifically identify 5.4a(3) of the Act as having been violated, and it did not address the retaliation claim in its interim relief petition. Therefore, I will not address it here.

for an Order to Show Cause if it did not submit a position statement addressing the scope of the Commission's jurisdiction in the instant dispute by March 13, 2023. On March 10, the Association filed its response, which it characterized as a reply brief.

On March 10, 2023, this matter was assigned to me. Later the same day, I signed the Order to Show Cause (OSC) without temporary restraints and set a return date for oral arguments for March 31, 2023. The OSC set a deadline of March 21, 2023, for the Board's response and March 24, 2023, for the Association's reply.

Pursuant to the OSC, the Board timely filed a brief and certification with exhibits from Karen A. Murray, the Board's attorney. (Murray cert.) The Association declined to file a reply brief, which was confirmed by email on March 29, 2023. After reviewing the parties' submissions, I determined that additional arguments were unnecessary, and adjourned the oral arguments scheduled for March 31, 2023.

Based on the parties' submissions, the following facts appear:

The Association is the majority representative of a unit of that includes teachers employed by the Board.^{3/} The Board is a

^{3/} The parties did not provide a copy of the applicable contract that would presumably clearly define the unit.

public employer within the meaning of the Act. The Association and the Board are parties to a collective negotiations agreement that expired on June 30, 2022.

Marcella Simadiris is a tenured teacher in the Paterson School district and employed on a 10-month basis. (Simadiris and Murray certs.) On or around May 22, 2019, the Board certified tenure charges against Simadiris and suspended her without pay, effective May 23, 2019. (Murray cert. Ex. A) Consequently, the Board deducted her full salary on June 1, 2019, so that she was not paid any salary during June 2019. (Murray cert. Ex. B) Simadiris received no pay during July and August 2019 since she is a 10-month employee, but those days did count towards the suspension. (Murray cert.)

Shortly after the Board certified her tenure charges, Simadiris filed an action in Superior Court that sought to invalidate the charges on the basis of a procedural dispute involving RICE notices, which prompted the Department of Education's Office of Controversies and Disputes to hold the tenure charges in abeyance pending the court proceedings. (Murray cert. Ex. C and Ex. D) Simadiris was initially successful as the trial court judge voided the tenure charges and the unpaid suspension on or around August 21, 2019. While the Board appealed the trial court's order, it placed Simadiris on a paid suspension and refunded the June 2019 salary that had been

withheld due to her suspension. (Murray cert. Exs. F, G) On January 21, 2021, the Appellate Division reversed the trial court order and reinstated the Board's tenure charges and suspension against Simadiris. (Murray Ex. H) The New Jersey Supreme Court denied Simadiris' petition for certification on September 9, 2021. (Murray cert. Ex. I)

After litigation concluded, the Commissioner of Education assigned an arbitrator to hear the tenure charges. However, the tenure hearing was delayed again because Simadiris filed a motion to bar the Board from using potential evidence at the tenure hearing. (Murray cert.)

During these years of litigation regarding Simadiris' tenure charges and suspension, Simadiris sought and obtained from the Board three perfect attendance stipends for the 2019-2020, 2020-2021, and 2021-2022 school years, even though she was on paid suspension through that time period. (Murray cert.) The incentive is provided pursuant to the parties' CNA, and is \$1,000 for each school year. (Murray cert.)

The Board concedes that the unpaid suspension should have been implemented once again after the New Jersey Supreme Court denied certification in September 2021. However, Simadiris continued to be suspended with pay. (Murray cert.) The Board also maintains that it erroneously paid the perfect attendance awards to Simadiris. (Murray cert.) Board Counsel Murray

certifies that she discovered both of these errors while preparing for the tenure hearing, which was scheduled for December 2022 at that time.^{4/}

By letter dated December 12, 2022, Murray advised Simadiris and Association counsel of the erroneous payments. She explained that starting in January 2023, her salary would be reduced by \$2,000 gross per paycheck. (Ex. A to charge; Ex. J) In reaching its calculations, the Board used the dates of the original suspension instead of the date of the New Jersey Supreme Court's decision, which coincided in part with the summer break. Since it used the original dates rather than the date on which the New Jersey Supreme Court denied certification, the Charging Party's unpaid suspension was 41 days rather than 120 days. (Murray Cert. Ex. K) In a January 11, 2023 email, Board counsel advised Association Counsel that the Business Office calculated that \$19,643.54 was owed; \$3,000 of that total was from the three years of perfect attendance incentives. (Murray Cert. Ex. K) There is no dispute that there were no negotiations prior to the deductions being made to effectuate the suspension and recoup the perfect attendance monies received while on paid suspension.

Simadiris then filed a Petition with the Commissioner of Education seeking emergent relief arising from the same set of

^{4/} These dates were adjourned at the request of Simadiris due to illness. (Murray cert.)

facts underlying the instant dispute. The Administrative Law Judge issued her decision denying interim relief on March 8, 2023, and the instant petition was filed here.

Simadiris' certification is dated January 25, 2023,^{5/} and is directed to the Commissioner of Education. She represents that she seeks to "contest the manner in which [the Board] has attempted to enforce N.J.S.A. 18A:6-14 and N.J.A.C. 6A:3" and claims that regardless of the merit of any claim for repayment, the reduction in salary is "arbitrary, capricious and unreasonable . . ." (Simadiris cert.) She certifies that as a result of the withholding, she will be unable to pay her bills and support her family. In addition to an unspecified amount of food and personal expenses, Simadiris certifies that her expenses are as follows: monthly mortgage is \$2887.71, car expenses are \$400, tv, internet and phone expenses are \$250, PSEG expenses are \$250; and a tuition loan is \$375. She certifies that it is impossible to meet her obligations with this income reduction. As of the date of the Association's March 10 submission, the Association estimates that Simadiris had already paid roughly half.

^{5/} The Association did not submit a more recent certification to support this interim relief filing, and instead relies on the certification submitted to the Commissioner of Education.

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).

The Association asserts that the instant dispute is within the Commission’s jurisdiction. It claims that the Board waived the right to recoup the monies when it failed to do so after the

120 calendar day period following the certification of tenure charges, but maintains that this waiver is not an issue before the Commission. Instead, the Association characterizes the relevant issue as an overpayment, and it claims that under the Act, the Board cannot unilaterally determine the manner of collection of the monies claimed due from an employee without negotiations. It contends that the Board's recovery plan should be set aside by the Commission because it is clearly inequitable and constitutes irreparable harm. In support of this proposition, it cited and attached to its submissions education and Commission interim relief cases. (Association March 10 Br. Ex. A-C) Specifically, it relies on the interim relief determinations in State of New Jersey (Dept. Of Law and Public Safety), I.R. No. 2020-15, 46 NJPER 459 (§104 2020) where a designee explained that recoupments involving a larger deduction over a shorter period of time would constitute irreparable harm and Passaic Cty. Sheriff's Office, I.R. No. 2020-11, 46 NJPER 381 (§93 2020) where a designee concluded that the reduction of an employee's pay by one third constituted irreparable harm for interim relief purposes.

The Board contends that the instant dispute is not within the Commission's jurisdiction as N.J.S.A. 18A:6-9 grants the Commissioner of Education primary and exclusive jurisdiction for all dispute arising under school laws, and N.J.S.A. 18A:6-14

specifically authorizes a board of education to suspend a tenured teacher without pay up to 120 days with the certification of tenure charge. Assuming the Commission has authority, the Board contends that the Association fails to meet the stringent standards for interim relief. It contends that none of the cases relied upon by the Association involve a tenure suspension, that the Board could have withheld the entire paycheck to implement the unpaid suspension, that there is no obligation to negotiate the terms of an unpaid suspension for employees facing tenure charges, and that Crowe has recognized that pecuniary damages do not generally constitute irreparable harm.

ANALYSIS

This dispute involves the Board's efforts to withhold monies in connection with an unpaid suspension and the perfect attendance incentives. I conclude the Association cannot meet the stringent standards for interim relief.^{6/} The Association does not have a settled legal right to negotiate the manner and schedule for the unpaid suspension, and it did not establish that the recoupment of the perfect attendance monies constitute irreparable harm.

6/ Since I have determined that the Association cannot meet the requirements for interim relief, I need not address the jurisdictional question raised by the Board. However, the existence of a jurisdictional question certainly weighs in favor of concluding that the Association does not have a reasonable likelihood of success on the merits.

Recoupment for Unpaid Suspension

While a public employer's unilateral recoupment of overpayments in compensation has been found to violate Section 5.4a(5) and (1) of the Act, none of the cases relied upon by the Association establish that it has a settled right to negotiate the manner and schedule of recoupment under the factual circumstances here. See State of New Jersey (Dept. of Law and Public Safety), supra (employee placed on the incorrect step of the contractual guide); Passaic Cty. Sheriff's Office, supra (several employees were overcompensated and subject to automatic wage withholding and step reductions following the ratification of the memorandum of agreement). The Association does not cite to any cases where the recoupment at issue was the effectuation of a managerial prerogative like discipline. Whether the recoupment in the instant matter is better understood under Commission caselaw as an overpayment of compensation or as the implementation of an unpaid discipline is a crucial legal question that is inappropriate for an interim relief proceeding. Therefore, interim relief should not be granted because the underlying legal right is not settled. Crowe v. De Gioia, 90 N.J. at 133. Since one of the pre-requisites for interim relief has not been satisfied, no further analysis is warranted under the remaining factors. Id. 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).

Perfect Attendance Incentives

While the Board's recoupment of the perfect attendance monies more closely aligns with existing caselaw because no issue concerning the implementation of discipline is involved, the Association's claim for interim relief nonetheless fails since it has not established irreparable harm. In cases where a change in the amount or manner of compensation has been found to constitute irreparable harm, the employees demonstrated that there was a clear reliance interest at stake. Compare Atlantic City Bd. of Ed., I.R. No. 2003-14, 29 NJPER 305 (¶94 2003) (irreparable harm found where there was unilateral change to clearly established biweekly payroll schedule) and Deptford Tp. Bd. of Ed., I.R. No. 2023-2, 49 NJPER 197 (¶47 2022) (irreparable harm where unilateral change to decades-long payment schedule) with Gloucester Cty. Special Service School District, I.R. No. 2023-7, 49 NJPER 278 (¶65 2022) (no irreparable harm since facts failed to show long-term reliance on allegedly unilaterally changed payment schedule). Crucially, Simadiris offers no facts explaining why she believed she was entitled to the perfect attendance

incentives while out on paid suspension, and thus had an expectation to rely on those monies in making financial determinations as she would for other forms of compensation like salary. This is particularly true where the compensation at issue is highly dependent on unpredictable variables such as health and continued employment status in a given year.

Therefore, assuming there was a settled legal right regarding the manner and schedule of recoupment for this type of compensation, the Association has not shown irreparable harm based on the certification provided. Since one of the pre-requisites for interim relief has not been satisfied, no further analysis is warranted under the remaining factors. Crowe, supra.

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: April 5, 2023
Trenton, New Jersey