

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-69

JERSEY CITY EDUCATION ASSOCIATION
and LOUIS T. SCIALLI, PRESIDENT,

Charging Party.

SYNOPSIS

The Commission's designee declines to restrain the Jersey City Board of Education from issuing a work assignment to one of its employees whose work assignments were the subject of an arbitration proceeding. It was held that the Superior Court is a proper forum to enforce an arbitrator's decision. It was further found that the fact that the collective negotiations agreement between the parties had expired did not alter the proper venue for this matter.

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Appearances:

For the Respondent
Arsenio Silvestri, Secretary
Jersey City Board of Education

For the Charging Parties
Philip Feintuch, Esq.

INTERLOCUTORY DECISION

On September 22, 1982 the Jersey City Education Association and Louis Scialli, individually, filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Jersey City Board of Education committed an unfair practice in violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5).

An Order to Show Cause seeking interim restraints was submitted with the Unfair Practice Charge. The Order was signed and made returnable on October 8, 1982. On that date the undersigned conducted a hearing on said application.

The facts are not in dispute. The parties are signatories to a collective negotiations agreement which by its terms expired

on August 3, 1982.

A grievance was filed on behalf of Mr. Scialli, president of the Association, alleging that Mr. Scialli was assigned duties which were in violation of a provision of the contract which limited the duties of the Association president.

The arbitrator ruled that this assignment was illegal since by the terms of the contract Scialli was permitted to attend to Association affairs "100% of the time." The arbitrator's award held that the Board did not have the right to make the assignment in question.

The award was rendered at the end of the school year in late June. On September 13 the Board assigned new duties to Scialli. At the time these new duties were assigned the Board and Association were in negotiations for a successor agreement.

The Charging Parties have alleged that the Board's action is in contravention of the arbitrator's ruling and constitutes a unilateral modification of an existing rule governing working conditions. It is significant to note that both parties have brought actions concerning the arbitration in Superior Court, the Respondent to vacate the award and the Charging Parties seek to enforce it.

The Commission has established a twofold test, both parties of which must be satisfied.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are similar to those applied by the courts when confronted with similar applications: the substantial likelihood of success on the legal and factual allegations in the final Commission decision and the

irreparable nature of the harm that will occur if the requested relief is not granted. ^{1/}

The undersigned does not believe that the Charging Parties have a substantial likelihood of success before the full Commission in this matter.

In Ridgefield Park, 78 N.J. 144 (1978), the New Jersey Supreme Court stated the Superior Court is the appropriate forum to seek to have an arbitrator's decision enforced. The Charging Parties attempt to distinguish this matter on two grounds: one, the contract which the arbitrator had interpreted has expired and, two, it was believed by the Charging Parties that if a court were to enforce the arbitrator's decision the court would only enforce the specific award and not address the Board's most recent work assignment to Scialli.

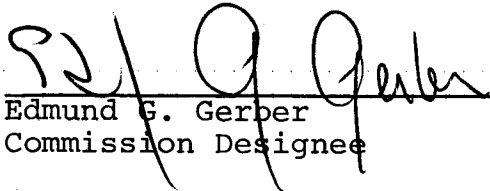
However, in Galloway Twp. Bd/Ed, 78 N.J. 25 (1978), the New Jersey Supreme Court acknowledged that the terms and conditions of employment of an expired collective negotiations agreement continues in force and effect until a new agreement is reached. See, also, Nolde Bros. Inc. v. Bakery and Confectionery Workers Local 358, 430 U.S. 243, 94 LRRM 2753 (1977) where the U. S. Supreme Court held that the parties' obligation under an arbitration clause survives the contract's termination. ^{2/} Accordingly, the law does not recognize that the expiration of the contract changes the respective

^{1/} See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

^{2/} In Lullo v. Int'l Assn of Fire Fighters, 55 N.J. 409, the New Jersey Supreme Court held that the "experience and adjudication" under the federal act may act as an appropriate guide to the interpretation of the provisions of the Act.

rights of the parties. As to the question of the extensiveness of any order enforcing the arbitrator's award which would be gotten from the courts, this is a matter of pure speculation. Suffice it to say the courts have jurisdiction here and I do believe that the Commission here, pursuant to Ridgefield Park, supra, will defer to that jurisdiction. Accordingly, the application for interim relief is denied.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

Dated: October 15, 1982
Trenton, New Jersey