

I.R. NO. 82-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-67

SALEM TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

On an application for interim relief brought by the Petitioner, a designee of the Public Employment Relations Commission denies a request for a restraint of arbitration of a dispute involving whether or not school nurses may leave the school premises for their duty-free lunch. The Petitioner failed to meet the "substantial likelihood of success" standard since there is no Commission or Court precedent on the side of the Petitioner.

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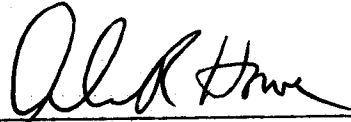
INTERLOCUTORY DECISION AND ORDER

The above matter having been opened to the Public Employment Relations Commission on March 24, 1982 by William C. Horner, Esq., attorney for the above Petitioner, and the Commission's named designee, Alan R. Howe, having read the certified Petition for Scope of Negotiations Determination, the Petitioner's Brief, Affidavits and other supporting materials in support of its request for temporary restraint of arbitration proceedings scheduled before the American Arbitration Association wherein the issue is whether the Superintendent of the Petitioner may order three school nurses, members of the bargaining unit, to remain on school grounds during their duty-free lunch period; and Joel S. Selikoff, Esq. of Selikoff and Cohen, P.A., attorneys for the Respondent in opposition to the grant of temporary restraint of arbitration, having filed a Brief and Affidavits in support of Respondent's position; and the undersigned having read the Respondent's submissions and having heard and considered the arguments of the parties by their attorneys on March 24, 1982 and having read the Petitioner's Reply Brief; and it appearing to the undersigned that the Petitioner has failed to satisfy one of the two standards for the grant interim relief, namely, the "substantial likelihood of success on the merits" standard for the reason that there exists no applicable Commission or Court precedent, which would indicate to the undersigned that the Superintendent's directive of October 7, 1981 does not involve a mandatorily negotiatble term and condition of employment, to the contrary: Freehold Regional

High School Board of Education, P.E.R.C. No. 81-58, 6 NJPER 548 (1980); Wanaque Borough District Board of Education, P.E.R.C. No. 82-54, 8 NJPER 26 (1981); City of Bayonne Board of Education, P.E.R.C. No. 80-58, 5 NJPER 499 (1979), aff'd. App. Div. Docket No. A-945-79 (1980); and Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977); it is

HEREBY ORDERED that the Petitioner's request to restrain arbitration by the Respondent be and same as hereby DENIED.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Alan R. Howe
Hearing Examiner

Date: April 1, 1982
Trenton, New Jersey