

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-080

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it added a ninth teaching period which extended the school day from 3:00 P.M. to 3:55 P.M. and did not allow teachers who were unable to work the ninth period to transfer to other schools. The charge further alleges that disciplinary actions had been taken against teachers who did not stay for the ninth period.

The Designee found that the CNA allowed for the extended school day and that the teachers were allowed to submit transfer requests but the Board was not under an obligation to grant the request if the choices made by the teacher were not available.

The Designee found that the charge alleged a breach of contract, and as such, did not warrant the exercise of the Commission's unfair practice jurisdiction. Additionally, the Designee found that material facts were in dispute, and as a result, this was a fact-intensive exploration that did not readily lend itself to a grant of interim relief.

The Designee found that the Charging Party had not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and denied interim relief.

I.R. NO. 2013-9

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-080

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Charging Party, Feintuch, Porwich & Feintuch,  
attorneys (Philip Feintuch, of counsel)

For the Respondent, Florio Perrucci Steinhardt & Fader,  
attorneys (Lester E. Taylor, III, of counsel)

INTERLOCUTORY DECISION

On October 1, 2012, the Jersey City Education Association ("Association") filed an unfair practice charge against the Jersey City Board of Education ("Board"), which was accompanied by an application for interim relief, certifications from teachers Carolyn Delpiano and Adam Schwartzbard, and a brief. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act") when it added a ninth teaching period which extended the school day from 3:00 P.M. to 3:55 P.M. and did not allow teachers who were unable to work the ninth period to transfer to other schools. The charge further alleges that "various disciplinary

actions have been taken" against teachers who did not stay for the ninth period.

The Association asserts that the Board's conduct allegedly violates 5.4a(1), and (5)<sup>1/</sup> of the Act. The application seeks an Order requiring the Board to return to the status quo ante by not making the ninth period mandatory for all teachers or to grant the affected teachers a transfer. The Board responds that the change in the hours is authorized by the specific language in the CNA and that the transfer request was just that, a request and not guaranteed.

On October 2, an Order to Show Cause was issued setting October 17 as the return date for oral argument via telephone conference call.<sup>2/</sup>

The Board filed an opposition brief, a certification from Ellen Ruane, Associate Superintendent of the Secondary Division of the Jersey City Public School District and exhibits.

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<sup>1/</sup> 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. (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."

<sup>2/</sup> The return date was postponed several times because the parties were in settlement negotiations.

The parties ultimately presented oral argument via telephone conference call on January 14, 2013.

FINDINGS OF FACT

The parties' CNA has a term from September 1, 2010 through August 31, 2013. The Board applied for and was awarded a New Jersey School Improvement Grant ("SIG")<sup>3/</sup> by the New Jersey Department of Education for Henry Snyder High School ("SHS"). A mandated component of the SIG grant is extended learning time for all students and staff. To receive the grant funds, SHS was required to have an additional 300 additional hours of academic instruction as part of an extended day/week/year for all students and teachers. On January 21, 2011, Dr. Charles T. Epps, Jr., Superintendent of Schools, issued a memorandum regarding the extended school year based on the SIG grant. On the same day, Belinda Stokes, Principal of SHS, issued a memorandum entitled "Extended Year Commitment Form." The memorandum had an attached form that allowed teachers to indicate if they wanted to remain at SHS, and if so, what their preference was regarding dates during the summer for working 20 additional days.

At the bottom of the form, it had an option for those teachers who were unable to commit to the extended day/extended

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<sup>3/</sup> The SIG grant will end in August 2013.

year requirement of the SIG grant at SHS:

I am not able to commit to the extended day/extended year requirement of the SIG grant at Henry Snyder High School. Therefore, I will exercise contractual options (request for transfer) based on my decision for 2011-2012. I will submit my transfer to the Human Resources Department no later than March 1, 2011.

The CNA<sup>4/</sup> regarding Voluntary Transfers provides in pertinent part:

16-2 A teacher seeking transfer to another school shall submit a written request to the Superintendent of Schools or his/her designee no later than March 1st of the current year. The teacher shall state the reasons for the request, the school, grade, and/or subject to which the teacher seeks transfer.

Three (3) choices, in order of preference, if there be preference, shall also be stated. If none of the choices is available then the written request shall be deemed withdrawn.

16-2.1 When a request for transfer is not granted, the teacher shall be notified in writing by the office of the Superintendent of Schools.

During the 2011-2012 school year, the teaching of a ninth period from 3:10 p.m. until 3:55 p.m. was optional and there was

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<sup>4/</sup> N.J.S.A. 34:13A-8.2 provides that "public employers shall file with the Commission a copy of any contracts negotiated with public employee representatives following consummation of negotiations." This requirement applies to all public sector employers. In the instant case, neither party provided the CNA as an exhibit. However, the CNA was filed with the Commission and the two articles cited in this decision were referenced in the certifications.

a 10% differential paid to teachers for teaching the ninth period.<sup>5/6/</sup>

Article 21-3 of the CNA provides in pertinent part:

[I]f the Superintendent deems it necessary school hours shall be flexible but shall not begin before 7:50 a.m. nor end later than 4:30 p.m. However, before any action is taken in this regard the Jersey City Education Association shall be consulted. There shall be no increase in time that any teacher is required to be in the school building nor shall there be any additional teaching time. The teacher's duty time shall be consecutive without interruption except for lunch period. The foregoing restriction concerning school hours shall not apply to programs/services currently implemented by the District.

The two teachers that provided certifications requested transfers and it is not disputed that the transfers were not granted. Additionally, the Delpiano certification states that she has been receiving disciplinary notices for not teaching the ninth period but there is no evidence in the record that she ever received discipline. Similarly, the Schwartzbard certification

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<sup>5/</sup> The Association issued an "Internal Union Memo" on October 19, 2011, that stated in pertinent part:

"This memo is to inform you of ongoing successful negotiations between the Jersey City Education Association and Jersey City Public Schools. These negotiations focus on extending the school day until 3:55, and eliminating the summer session. The JCEA has successfully fought for a 10% raise for all teachers that teach until this time."

<sup>6/</sup> Both teacher certifications state that the Association was consulted on the issue, but the Association only agreed to the ninth period if the teachers who could not stay for that period could apply for a transfer.

states that after he refused to teach the ninth period for personal reasons, he received a letter on September 11, 2012, stating that he was expected to stay for the ninth period and that his pay would be docked; there is no evidence in the record if his pay was actually docked and/or whether the potential pay docking referred to the 10% raise negotiated by the Association for those teachers that taught the ninth period or some greater amount.

Both teachers also assert that the Board hired in excess of sixty new teachers for the 2012-2013 school year:

Even though there are other teachers who are available to teach the ninth period and do not have after-school conflicts, the Respondent still scheduled the teachers who had applied for transfers to teach the ninth period. Due to the after-school obligations of these teachers, the students are often left without a teacher for the ninth period.

The Ruane certification asserts that "[A] student's ninth (9th) period class may be one in which a certificated staff member must be teaching." There is no evidence in the record that the newly hired teachers have the required certification(s) to teach the necessary classes to cover for the teachers that requested a transfer.

#### CONCLUSIONS OF LAW

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<sup>7/</sup> 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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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 Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

In this case, the CNA between the parties allows for a work day from 7:50 a.m. to 4:30 p.m. Before the hours are changed,

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<sup>7/</sup> Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.



the Board is required to consult with the association. In this case, the Board consulted with the Association as set forth in the internal union memo from October 19, 2011.

The Commission has held that "allegations setting forth 'at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction.' Contract disputes must be resolved through negotiated grievance procedures."

Camden Cty Pros. P.E.R.C. No. 2012-42, 38 NJPER 289 (¶102 2012) citing, State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Finally, as set forth in the teacher certifications, the Board and Association agreed that teachers who could not stay for the ninth period could apply for a transfer. Nothing in the record or the CNA indicates that requests for transfers must be granted by the Board.<sup>8/</sup> However, if this issue is a legitimate dispute between the parties, this is a fact-intensive exploration that does not readily lend itself to a grant of interim relief. Similarly, the issue of whether the newly hired teachers could cover the ninth period for the teachers that requested a transfer

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<sup>8/</sup> The Ruane certification states "Teachers at SHS have always had the opportunity to submit a transfer request to Human Resources by March 1, per Article 16 of the parties' agreement. Transfers can only be considered, however, when there is an opening at another school for the position in question."

is also a fact-intensive matter. Rather, this matter should proceed to a hearing.

Based on the above, I find that 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 interim relief.<sup>2/</sup> The application for interim relief must be denied. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



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David N. Gambert  
Commission Designee

DATED: January 30, 2013  
Trenton, New Jersey

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<sup>2/</sup> As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.