

I.R. NO. 2003-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HILLSIDE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-17

HILLSIDE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Hillside Board of Education intends to implement a "block scheduling" program in September 2002, resulting in teachers having to cover six courses rather than five as was the case under the previous schedule. The Hillside Education Association sought an order preventing the Board from implementing the block schedule until it completed negotiations on compensation and other impact issues. The Commission Designee denied the Association's application for interim relief finding that the Board appeared to have a managerial prerogative to institute a block schedule. Consequently, the Association did not establish that it had a likelihood of success to prevail on its claim.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, attorneys
(Richard Bauch, of counsel)

For the Charging Party,
Bucceri and Pincus, attorneys
(Louis P. Bucceri, of counsel)

INTERLOCUTORY DECISION

On July 16, 2002, the Hillside Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Hillside Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The Association alleges that the Board

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

unilaterally altered terms and conditions of employment during the course of successor negotiations by instituting a "block scheduling" system without additional compensation which required unit members in the high school to cover six different class sections instead of the current practice of a maximum of five sections per teacher. The unfair practice charge was accompanied by an application for interim relief. On July 17, 2002, I executed an order to show cause and set a return date for August 14, 2002. Ultimately, by agreement of the parties, the return date was rescheduled to August 19, 2002. The Association seeks an order preventing the Board from implementing the block schedule system and maintaining the current five class schedule in the high school. The parties submitted briefs, affidavits, and exhibits in accordance with Commission rules and argued orally on the scheduled return date. The following facts appear.

The Association is the exclusive representative for purposes of collective negotiations for teachers and other non-supervisory staff employed by the Board. The parties are signatories to a collective negotiations agreement which expired on

1/ Footnote Continued From Previous Page

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."

June 30, 2002. They are currently engaged in negotiations in an effort to reach a successor agreement.

The Board has announced the implementation of a plan whereby in September 2002, the high school will be reconfigured into four "schools within a school." The Board considers each of these schools a "college prep" school because the structure of the program is intended to provide each student with the academic preparation necessary to succeed in higher education. Under the new program, all students in Hillside High School will enroll in either the "open college prep school," which includes an option for a shared-time program at the Union County Vocational Technical School, or apply to one of three specialized schools. The specialized schools are engineering, multimedia, and performing arts. The college prep schools are designed to raise student achievement through small class sizes. The three specialized schools are particularly intended to give their students a competitive edge in higher education. Endemic to the Board's college prep school plan is a block scheduling program.

Under the block scheduling program, students will take eight classes per year, each class meeting every other day in an 80 minute block.^{2/} Each teacher will be required to teach three classes per day, each class meeting every other day for a total of six classes per year. Total student contact time under the block

^{2/} First period, which includes a ten minute homeroom, lasts 90 minutes.

schedule program will remain unchanged at 250 minutes per day. However, instructional time appears to increase under the block schedule by ten minutes per day.

Hillside High School has traditionally operated on a schedule providing students with seven classes per day, 46 minutes per class, along with a 30 minute lunch period. The first period was 66 minutes long, which accommodated a ten minute homeroom and a ten minute "Channel One" class. Under the traditional schedule, it appears that teachers taught five academic periods per day, each lasting 46 minutes (except for first period). Each teacher was scheduled for a 30 minute lunch period, a duty free preparation period and a required duty period.

In April 2002, the Association became aware that the District intended to move ahead with the block schedule program. Between that time and June 27, 2002, the parties conducted approximately five negotiations sessions during many of which the block scheduling program was discussed. The parties were unable to reach an agreement regarding implementation of the block scheduling program. During the negotiations session on May 6, 2002, the Board provided the Association with a written response regarding the prep school issue and stated:

The Board's position is that the decision to create a prep school is a non-negotiable educational policy decision committed to management. However, the Board is prepared to negotiate in good faith over any severable and mandatorily negotiable subjects related to its implementation of the prep school, including but not limited to compensation issues, provided that

such negotiations will not delay the implementation of the prep school. The Board is prepared to negotiate over the issue of retroactivity should the parties reach agreement on any specific compensation issues relating to the prep school. Any implementation of the prep school prior to the parties reaching a final agreement on a successor collective negotiations agreement should not be viewed as a refusal to negotiate further in good faith. In the event that the parties are unable to reach an agreement on a successor contract prior to September 1, the Board intends to implement the prep school and will continue to negotiate in good faith regarding all severable and mandatorily negotiable issues regarding the prep school.

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 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); 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 contends that the Board's determination to require teachers to teach a sixth course over a two day period constitutes a unilateral change in work load and student contact time, mandatorily negotiable issues. See Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976) aff'd 152 N.J. Super. 12 (App. Div. 1977). The Association asserts that such a requirement

will result in teachers having to devote extra worktime for planning, preparation, and grading.

The Board contends that the college prep school plan will reduce class size so as to provide the at-risk students of Hillside the opportunity to select additional classes during the academic year, allow teachers to organize lessons with less wasted time, and allow teachers to employ a variety of teaching strategies to foster in-depth learning. The Board also argues that if it were enjoined from implementing the block schedule, it would require a delay in the opening of schools for the 2002-2003 academic year so that it could develop new student schedules reflective of the five class day which existed during the 2001-2002 academic year.

In Board of Education of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Education Association, 81 N.J. 582 (1980), the New Jersey Supreme Court adopted a balancing test requiring that the "nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives." Id. at 589-591. The Court held, "[w]hen the dominate issue is an educational goal, there is no obligation to negotiate Id. at 591. However, "[i]t is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions." Id. at 593. Thus, "[t]erms and conditions of employment arising as impact issues are . . . mandatorily negotiable unless negotiations

would significantly interfere with the related prerogative."

Piscataway Tp. Education Association v. Piscataway Tp. Bd. of Ed., 307 N.J. Super 263, 275 (1998).

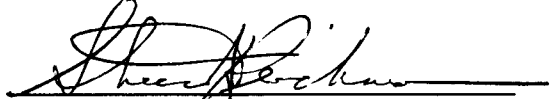
The Commission has held that a school board has a prerogative to determine the structure of the school day and to establish block scheduling. Jersey City School District, P.E.R.C. No. 97-151, 23 NJPER 396 (¶28182 1997); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997). See also State Operated School District of Jersey City, I.R. No. 97-3, 22 NJPER 342 (¶27177 1996). Accordingly, it appears that the Board's determination to implement a block scheduling program constitutes the exercise of an inherent managerial prerogative and may be unilaterally implemented even during the course of on-going successor negotiations. Implementation of a managerial prerogative does not constitute a change in terms and conditions of employment, thus it raises no negotiations obligation or otherwise chills on-going negotiations. See New Jersey Division of State Police, I.R. No. 2001-7, 27 NJPER 155 (¶32053 2001).

In its proposal quoted above, and during oral argument, the Board has acknowledged its on-going obligation to engage in good faith negotiations on impact issues arising from implementation of the block schedule. Negotiations on those issues should continue. However, for all of the reasons expressed above, I find that the Association has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, one of the

requisite elements to obtain interim relief. Consequently, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice process.

ORDER

The Association's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: August 23, 2002
Trenton, New Jersey

