

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW PROVIDENCE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-88-257

NEW PROVIDENCE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies a request for an interim order restraining the New Providence Board of Education from continuing a series of writing workshops for teachers. The New Providence Education Association alleges that the Board unilaterally increased the workday and workload of certain teachers when it required them to attend 10 after-school workshops, each of which requires about two hours of preparatory work. The Association argues that the after-school hours workshops interfere with teachers' personal obligations. The Board argues that the parties' current collective negotiations agreement permits it to require teachers to attend up to four professional meetings each month -- during after-school hours. The Association argues that the contract does not permit the Board to schedule a workshop program which requires the completion of work outside school hours.

The Board contends that it discussed the workshops with the Association and made an offer of compensation, which the Association rejected. The Board disputes the Association's claim that the workshops require two hours of preparation time and argues that the professional meetings permitted by the contract routinely require work to be done outside school hours. Finally, the Board contends that the Association will not be irreparably harmed should an interim relief order not issue and that, because the program is half completed, the harm in stopping the workshops now would outweigh any harm resulting from their continuation.

The Commission Designee concluded that the issues in the charge are directly implicated by the parties' contractual dispute -- which is presently before an arbitrator -- about whether the contract allows the workshop program. The parties dispute several relevant facts of the charge and the Association has not shown that irreparable harm will occur in the absence of an interim relief order. Accordingly, the application for interim relief is denied.

I.R. NO. 88-16

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Appearances:

For the Respondent Pachman & Glickman, Esqs.
(Martin R. Pachman, of counsel)

For the Charging Party Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, of counsel)

DECISION

On April 6, 1988, the New Providence Education Association, NJEA ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the New Providence Board of Education ("Board"), alleging that the Board had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, the Association alleged that the Board had violated subsections 5.4(a)(1) and (5) of the Act by unilaterally increasing the workday and workload of

certain teachers, without providing additional compensation.^{1/}

Also on April 6, 1988, the Association filed an Order to Show Cause with temporary restraints with the Commission, asking that the Board be immediately restrained from its actions increasing the teachers' workday and workload.

On April 7, 1988, at approximately 3 p.m., I conducted a hearing on the Association's request for the immediate issuance of temporary restraints against the Board, pending a hearing on the Order to Show Cause. N.J.A.C. 19:14-9.1 et seq. At the conclusion of that hearing, temporary restraints were denied. An Order to Show Cause was entered on the record at the temporary restraints hearing with a return date of April 18, 1988. On that date, I conducted a Show Cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. Both parties submitted affidavits and exhibits and argued orally at the hearing.

* * * *

The Association alleges that the Board unilaterally increased the workday and workload of English, social studies and

^{1/} These subsections 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."

reading teachers when it required those teachers to attend ten after-school writing workshops over a period of four months. The Association alleges that each workshop session requires approximately two hours of preparatory work in addition to the time spent in the workshop itself. The Association alleges that the Board did not offer to negotiate compensation for these workday and workload increases. The Association alleges that the teachers will suffer irreparable harm unless an interim order is issued restraining the Board from conducting these workshops, pending the resolution of the charge by the full Commission. The Association notes that the times when the workshops are scheduled interfere with the teachers' personal/family obligations and the instant charge will not be resolved until after the workshops have been completed. The Association argues that the lost time cannot be remedied by an award of monetary compensation.

In its response, the Board argues that the Association has not demonstrated a likelihood of success on the merits or that immediate and irreparable damage to Charging Party will result if no interim relief order is issued. The Board further notes that the harm which would flow from stopping the workshops now would outweigh any harm resulting from their continuation. Accordingly, the Board argues that the interim relief request should be denied. The Board contends that Article VII D of the parties' current collective negotiations agreement (1988-1992) permits it to require teachers to attend up to four professional meetings per month -- during

after-school hours -- without providing additional compensation to teachers. The Board further alleges that there were discussions and exchanges of correspondence between the Association and the Board about various aspects of the writing workshop program. The Board asserts that it made a compensation offer to the Association and that it was refused. Finally, the Board contests the Association's allegation that each writing workshop requires two hours of preparation. The Board contends that the actual preparation time for the workshops is less than that and that in any event, the "professional meetings" permitted under Article VII D routinely require the completion of related work outside the hours of the meeting itself and outside normal school hours.

The Board further contends that the Association has not demonstrated that it will be irreparably harmed should an interim order not issue. The Board argues that should the Association prevail in its unfair practice charge before the full Commission, a monetary remedy can repair any harm which might have been suffered by the Association. The Board further argues that, inasmuch as the ten-session workshop is now half completed, the harm in stopping the workshop now far outweighs any resulting harm from its continuation. The Board notes that it would not be possible to suspend the workshops now, and then pickup some time later where the instruction left off. If the workshop program is suspended, the Board asserts that the ten-session workshop would have to be fully repeated, thereby having wasted the time and money thus far expended on the present workshop.

The Association responds that Article VII D of the parties' agreement does not cover a workshop program such as this one, with the requirement of substantial outside work by participants. The Association argues that the "other professional meetings" language of Article VII D refers to "faculty meetings, departmental meetings, curriculum meetings or meetings with the Superintendent of Schools." (Association brief at p. 3).

* * * *

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

In Fall 1987, the Board explored the possibility of running a program to improve methods of teaching writing for those teachers who taught classes in which writing was a major component -- English, reading and social studies classes. Discussions were held

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

in departmental meetings about conducting a teachers' writing workshop and a workshop proposal was assembled in October 1987. The ultimate goal of the workshop program is to improve students' writing skills through the improvement of teachers' writing skills and the methods of writing instruction. The Board initially scheduled the workshops on ten dates from January through May 1988, from 2:30 p.m. to 4:30 p.m. (Lachenauer and Hayes affidavits; Attachment A).

In November 1987, the Association objected to the hours during which the workshops were scheduled (2:30 p.m. to 4:30 p.m.) and made several alternate scheduling suggestions. The Board responded negatively to those suggestions and on November 25, 1987, the Association filed a grievance (Attachment D) concerning the increased workday and workload resulting from the workshops. During the processing of this grievance, Association scheduling alternatives were again discussed and responded to by the Board. The workshop program was pended and the Superintendent agreed to consider the Association's concerns. In a letter to teachers dated January 27, 1988, the Superintendent announced the implementation of the writing program. In the letter, he reviewed the scheduling alternatives explored and why they had been rejected. He further indicated that the workshops would be conducted in the after-school timeslot, from 2:30 p.m. to 4:30 p.m.

On February 4, 1988, the Association filed a second grievance (Attachment G) contending that the scheduling of the

after-school workshops violated the parties' collective negotiations agreement. In a letter dated February 4, 1988, the Superintendent denied the grievance; he noted that although other scheduling alternatives were explored, none proved suitable. Further, the Superintendent contended that Article VII D of the parties' agreement (Exhibit R-1) permits the scheduling of the workshops in the 2:30 p.m. to 4:30 p.m. timeslot. Several further exchanges of correspondence occurred between the parties, but no agreements concerning this matter were reached. An arbitration hearing has been scheduled on the grievances for June 9, 1988.

Five of the ten writing workshops have already taken place -- on February 24, 1988, March 2, 14 and 28, 1988 and April 11, 1988. Five sessions remain, the first of which is scheduled on April 25, 1988. Each workshop is between one and one-and-one-half hours in length and requires some amount of preparation by participants. (Spitz affidavit, para. 4; Hayes affidavit). On several occasions during this dispute, the Board offered to pay teachers at a \$15 per hour rate for workshop participation. The Association rejected the offer and, based upon the material in this record, did not make a counter-offer concerning monetary compensation. (Lachenauer affidavit, Spitz affidavit; Attachments E, H).

Article VII D of the parties' 1988-92 collective negotiations agreement states, in part:

Teachers may not be required to remain after the end of the regular work day, without

additional compensation, for the purpose of attending faculty meetings or other professional meetings called by the Administration, more than four (4) days per month....In addition to these four (4) meetings, teachers will continue the practice of meeting with parents, members of the child study team, guidance counselors, principals and other contacts, as per past practice....For any meetings beyond the limits set forth above, the Board agrees to compensate at the rate of \$15 per hour.

The dispute in this matter concerns an employer's decision to require additional education for employees and how the employees' terms and conditions of employment were affected by the implementation of the educational program. A public employer has the managerial prerogative to mandate continuing educational or training programs for its employees. Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); and Tp. of Mine Hill, P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). However, severable procedural aspects of such programs and compensation issues are mandatorily negotiable. Tp. of Bridgewater, P.E.R.C. No. 84-63, 10 NJPER 16 (¶15010 1983) (procedural aspects of police physical fitness test, such as notice and scheduling, were mandatorily negotiable); Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-90, 9 NJPER 670 (¶14292 1983) and Tp. of Franklin. Thus, although the Board is able to mandate and provide for an in-service educational program for teachers, severable issues of scheduling and compensation are mandatorily negotiable. However, the Board contends that the parties' agreement (Article VII D) permits it to schedule up to four after-school hours meetings per month and that it did not exceed

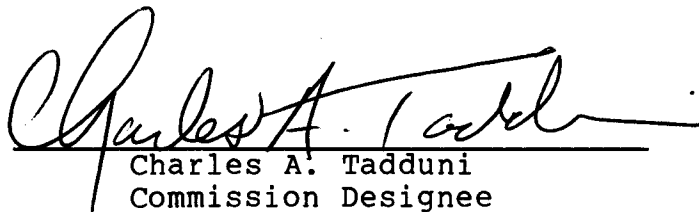
that limitation here. The Association disputes the Board's interpretation of Article VII D and the parties are now in arbitration over the disputed contractual provision. The increased workhours, workload and compensation issues raised in the unfair practice charge are all directly implicated by this contractual dispute -- the arbitrator's determination of the meaning of Article VII D will affect the unfair practice charge. Further, there are several material facts in dispute concerning the scheduling determination and the workload and compensation issues.

Finally, the record herein does not support the contention that teachers will suffer irreparable harm if an interim order is not granted at this time. There has been no demonstration that a satisfactory monetary remedy could not be fashioned at the end of a successful litigation by the Association which would make whole those teachers who were adversely affected by the Board's actions.

In the instant matter, there are disputed issues of fact and law (Contract Article VII D). Thus, I am unable to conclude that the Association has demonstrated a substantial likelihood of success on the merits of this case. Further, there is no demonstration in the record that an appropriate monetary remedy could not be fashioned to adequately repair the damages effected by the Board's actions herein.

Accordingly, because Charging Party has failed to

demonstrate that it has substantial likelihood of prevailing on the merits in this matter or that it would be irreparably harmed if an interim relief order failed to issue in this matter, the request for interim relief is hereby denied.



Charles A. Tadduni
Commission Designee

DATED: April 21, 1988
Trenton, New Jersey