

I.R. NO. 89-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANALAPAN-ENGLISHTOWN REGIONAL
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-89-324

TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 225,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief on a request by the TWU to restrain the Board from requiring bus drivers to pay a portion of their health benefit premiums. The Designee found that a dispute existed over a material fact, thus, the TWU did not satisfy the substantial likelihood of success standard, and a full hearing was warranted.

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Appearances:

For the Respondent
Cassetta, Taylor and Whalen
(Raymond A. Cassetta, labor consultant)

For the Charging Party
Michael O'Brien, International Representative

INTERLOCUTORY DECISION

On May 2, 1989, the Transport Workers Union of America, AFL-CIO, Local 225 ("TWU") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Manalapan-Englishtown Regional Board of Education ("Board") alleging that the Board violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} The TWU alleged that the Board violated the Act

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

by changing, during negotiations, the practice of paying the full premium for health benefits. Since May 1, 1989, the Board has deducted a portion of the premium from the employees salaries.

A request for interim relief, accompanied by an Order to Show Cause, together with a brief and supporting affidavit, seeking an order compelling the Board to return to the status quo and reimburse the employees for deductions to date, was filed with the Charge. The Order was signed on May 9 and made returnable for May 22, 1989. On that date, the interim relief hearing was held and the Board submitted a brief in opposition to the request for interim relief.

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

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

For many years prior to 1989, the Board's bus drivers were represented by the United Automobile Workers, District 65 ("UAW"). The last contract between the Board and UAW expired on June 30, 1988. Under that contract, the Board made payments to the UAW for a UAW administered health plan based upon a percentage of an employees earnings. By the fall of 1988, the UAW made no attempt to negotiate a successor agreement and the employees sought recognition from the Board as the Bus Drivers Association ("Association"). The Board recognized the Association as the drivers majority representative on or about December 14, 1988. The Association wanted to separate from the UAW's health plan and asked the Board to provide the drivers with the same health plan provided to all other Board employees, which was the State Health Benefits Plan ("State Plan"). The Board agreed to place the drivers under the State Health Benefits Plan under the same conditions that applied to all of its other employees.

The Board's other employees, separate units of teachers, administrators, custodians, secretaries, and unrepresented employees, are all covered by the State Plan, and each group has a

^{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).

cap on the amount of money the Board is required to pay for the State Plan premiums. The cap is different for each unit or group of employees. It was fixed at the amount of the premium per person at the time that group first entered the State Plan.

The bus drivers were entered into the State Plan effective January 1, 1989 with the full cost of the premium paid by the Board. In April 1989, however, the Board was notified that the Plan premiums were being increased on May 1, 1989, and effective that date the Board applied a cap to the premiums for all its employees. The cap for the bus drivers was fixed at the amount the Board had been paying for premiums prior to May 1, 1989. After that date, the employees were required to pay - through payroll deductions - the difference between their capped amount and the amount of the new premium.

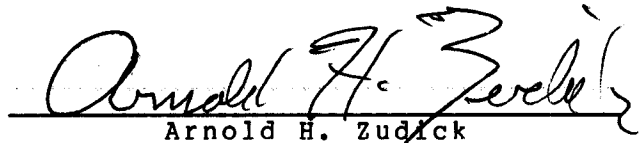
The Association affiliated with the TWU in early January 1989, and the Board recognized the TWU as the drivers majority representative and the parties began negotiations for a new agreement. One of the issues in negotiations was a cap on State Plan premiums. The TWU was not involved in the negotiations and agreement that placed the drivers under the State Plan, and there was no written documents outlining the terms of that agreement.

The TWU contends that the Association had not agreed to a cap on the premiums for the drivers health plan, thus argued that the Board violated the Act by imposing a cap on May 1, during negotiations for a new agreement. The Board contends that the

Association agreed to place the drivers into the State Plan under the same conditions that applied to all other Board employees, and that all other employees had a cap on their premiums. Thus, the Board argued that, by agreement, it had the right to apply a cap.

Although proof of changes in benefits during negotiations satisfies the irreparable harm standard, the TWU failed to satisfy the substantial likelihood of success standard. A material factual issue exists as to whether the Board and Association agreed to a cap on premiums. The facts presented here, at best, only shows that the Board and Association may not have reached a meeting of the minds on the cap issue. The TWU, however, is entitled to present witnesses and more complete evidence on that issue at a full plenary hearing.

Accordingly, the request for interim relief is denied.


Arnold H. Zudick
Commission Designee

DATED: May 24, 1989
Trenton, New Jersey