

I.R. No. 2006-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHATHAM BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2006-010

ASSOCIATION OF CHATHAM TEACHERS  
AND SECRETARIES,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Association of Chatham Teachers and Secretaries alleging the Chatham Board of Education unlawfully denied an employee use of sick days for contractual child bearing leave. The Designee found that the standards for a grant of interim relief were not met.

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Appearances:

For the Respondent, Schwartz, Simon, Edelstein, Celso & Kessler, LLP (Nicholas Celso, of counsel)

For the Charging Party, Oxfeld Cohen, P.C. (Nancy Oxfeld, of counsel; Sasha A. Wolf, on the brief)

INTERLOCUTORY DECISION

On July 8, 2005, the Association of Chatham Teachers and Secretaries (Association) filed an unfair practice charge with the Public Employment Relations Commission which was amended on July 13, 2005, alleging that the Chatham Board of Education (Board) violated 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The

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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."

Association alleged that the Board unilaterally changed the parties practice regarding the use of up to 40 accumulated sick leave days for child-bearing leave.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on July 13, 2005, scheduling a return date for August 11, 2005. The parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argued orally on the return date.

The Association seeks to restrain the Board from denying employee Rebecca Murphy the opportunity to use some of her 40 day sick leave time more than thirty calendar days beyond her due date of October 25, 2005. The Association argues that the parties have had a practice of allowing employees to use any part of the 40 day child bearing leave before or after the due date. The Board argues that there is a legal presumption of disability thirty calendar days after a due date during which time any amount of the 40 child bearing leave days may be used. But argues that beyond the thirty days after the due date (in reality the birth date) an employee would need a doctors written determination that an employee is still disabled in order to use sick time beyond the presumptive thirty days.

The following pertinent facts appear:

On April 27, 2004, Murphy requested to use her 40 contractual sick days for child bearing leave from October 17 to approximately December 14, 2005, then use 12 weeks of Family Medical Leave followed by the balance of the school year on unpaid contractual leave time. That request was denied on May 24, 2005 because Murphy had not established her due date. Her doctor established her due date of October 25 by letter of May 31, 2005, on which date Murphy also submitted a new request to use her 40 child bearing leave days from October 11, 2005 to approximately December 11, 2005. That request was also denied because it extended beyond thirty calendar days from October 25, Murphy's scheduled due date.

Consequently, by letter of June 3, 2005, Murphy requested to use her 40 child bearing leave days from September 26 through November 28, 2005, followed by her 12 weeks of Family Medical Leave and the remainder of the 2005-2006 school year on unpaid contractual leave. That request, presumably, was approved.

#### ANALYSIS

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 Charging Party argued it met the standards for interim relief suggesting that the parties practice supported the substantial likelihood of success standard, and that the irreparable harm standard was met because if Murphy is denied use of her sick leave into December it may result in her not taking as much time off as she had intended.

The Board, relying on Hynes v. Bloomfield Tp. Educ. Bd., 190 N.J. Super. 36 (App. Div. 1983), and Hackensack Bd. of Ed. v. Hackensack Ed. Ass'n, 184 N.J. Super. 311 (App. Div. 1982), argued that there was a presumptive period of disability 30 calendar days before and 30 calendar days after delivery and that sick time could not be used thereafter as child rearing leave without a further determination of disability. The parties are litigating this same legal issue before the Commission in a scope of negotiations petition, Docket No. SN-2005-092.

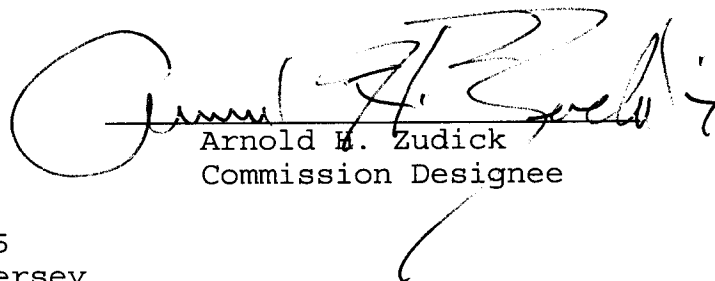
Having considered the facts, the parties arguments and related legal proceedings the application for interim relief is denied. Given the Commission's active consideration of the same legal issue in the related scope petition, it is not possible for

me to assess the substantial likelihood of the charging party's success on that matter and would be premature for me, on behalf of the Commission, to pass judgment on that issue. Additionally, the charging party's irreparable harm argument lacks merit. Murphy, in all her requests, clearly expressed her intent to be off the entire 2005-2006 school year by use of Family Medical Leave time and unpaid contractual time which would cover her absence for the balance of the year regardless of when her use of sick time ceases. The only remaining issue, how much of Murphy's leave time will be paid, is not irreparable and can be remedied by money, if necessary, after a hearing or arbitration regarding this matter.

Accordingly, based upon the above findings and analysis, I issue the below.

ORDER

The request for interim relief is denied.

  
Arnold H. Zudick  
Commission Designee

Dated: August 17, 2005  
Trenton, New Jersey