

P.E.R.C. NO. 79-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF THE
TOWNSHIP OF CHERRY HILL,

Respondent,

Docket No. CO-77-281-111

-and-

THE CHERRY HILL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission ruled upon a Motion for Clarification filed by the Cherry Hill Education Association with respect to a previous decision issued by the Commission in a matter involving the Cherry Hill Education Association as the charging party and the Board of Education of the Township of Cherry Hill, P.E.R.C. No. 79-18, 4 NJPER 462, (¶4209 1978). In its Motion for Clarification, the Association sought a determination as to whether the Commission contemplated the payment of interest on a back pay award issued in its earlier decision. The Commission's review of the record indicated that the issue of interest was raised for the first time in the Motion for Clarification and that the Commission did not intend, in the absence of a request, to award interest in this matter.

P.E.R.C. No. 79-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF THE
TOWNSHIP OF CHERRY HILL,

Respondent,

- and -

Docket No. CO-77-281-111

THE CHERRY HILL EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Charging Party, Joel S. Selikoff, Esq.

For the Respondent, Davis & Reberkenny, Esqs.
(William C. Davis, of Counsel, Martin S. Ettin,
on the Brief)

MOTION FOR CLARIFICATION

On March 7, 1979 the Cherry Hill Education Association (the "Association") moved before the Public Employment Relations Commission for clarification of its prior decision in this matter, P.E.R.C. No. 79-18, 4 NJPER 462 (1978), issued on October 25, 1978. Specifically, the Association sought a statement from the Commission as to whether its order contemplated payment of interest on the back pay award included therein. The Association filed a brief and supporting affidavit on March 7, 1979, and the Board of Education of the Township of Cherry Hill (the "Board") filed its brief in opposition on March 23, 1979.

In its decision, the Commission, in part, ordered the Board to:

2. Take the following affirmative action to make teachers whole for the loss of pay actually suffered through the rescheduling of days of school which were worked without compensation.

(a) Compensate all teachers represented by the Cherry Hill Education Association who actually had days of work rescheduled in 1976-77 school year for the number of days rescheduled in each instance, as set forth in the decision. Such compensation to be paid based upon the same daily rate of pay used in docking the said teachers during the strike which occurred in October 1976.

The Association in its motion for clarification argued that (1) an award of back pay without interest fails to make the affected employees whole and (2) the Commission's rules contemplate that the instant motion be granted. Reference is made to N.J.A.C. 19:10-3.1(a) regarding a liberal construction of the rules when unusual circumstances or good cause exist.

The Board argues (1) that this motion for clarification is in reality an untimely motion for reconsideration, (2) that the Commission has no authority to award interest, and (3) that the facts of this case do not warrant an award of interest.

The first issue is the procedural issue. If this were a motion for reconsideration, the Board would certainly be correct that the motion is untimely as more than fifteen days have passed since the issuance of the decision by the Commission.^{1/} Assuming arguendo that this is not a motion for reconsideration, but rather a request to clarify its decision, the Commission will consider the merits of the Association's request.

A review of the record in this matter reveals that this is the first time that the Association has requested an award of back

1/ N.J.A.C. 19:14-8.4.

pay with interest. The unfair practice charge itself did not request any type of relief. On the record, the Association requested back pay and "...a declaration that the Board acted wrongfully in unilaterally implementing this change without negotiating the change."^{2/} No request for interest was made. In the letter memorandum in lieu of a formal brief to the Hearing Examiner, the Association, once again, requested an award of back pay only. Finally, in the Charging Party's brief in response to the Respondent's exceptions, the Association "...respectfully submitted that the Hearing Examiner's Recommended Report and Decision be adopted in its entirety by the Commission".

Assuming that the Commission might award interest in the appropriate circumstances, it has not done so heretofore^{3/} and, in the instant matter, the award was for back pay only. The Association had ample opportunity to request any relief it desired. Now, six months after the issuance of the final determination in this matter, the Association has posed for the first time a new request. The Commission did not intend, in the absence of a request, to award interest in this matter and hereby clarifies its decision by stating that the award was only for the payment of the loss of pay actually suffered. The Commission does not address the contentions of the Board with respect to the authority of the Commission to award interest or whether this is an appropriate case for such an award

^{2/} Transcript, pp. 10 and 11.

^{3/} See In re Salem County Board for Vocational Education, H.E. No. 79-29, 5 NJPER 65 (¶10043 1979), footnote 46 in which the Hearing Examiner recommended that interest be granted in that case.

as the resolution of these issues would not affect the clarification expressed herein.

BY ORDER OF THE COMMISSION

By


JEFFREY B. TENER
Chairman

Chairman Tener, Commissioners Parcells and Hartnett voted for this decision. Commissioner Graves opposed. Commissioner Newbaker abstained. Commissioner Hipp was not present at the time of the vote.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: April 27, 1979