

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CI-79-8

FRANK J. MORRA,

Charging Party.

SYNOPSIS

The Special Assistant issues an Interlocutory Decision denying Frank Morra's request for interim relief during the pendency of an unfair practice proceeding. Morra had sought to enjoin the Board of Education from unilaterally increasing his workload and changing his hours and working conditions by assigning him the duties of Adult Education Director, Adult Basic Education Director and High School Equivalency Director pending a plenary hearing in this instant matter.

After applying the two standards that have been developed by the Commission for evaluating the appropriateness of interim relief -- the substantial likelihood of ultimate success on the legal and factual allegations and irreparable nature of the harm that will result if interim relief is not granted -- the Special Assistant concluded that the facts of this case would not warrant such extraordinary relief. The Special Assistant found that there were substantial and material disputed factual issues that could only be resolved through the utilization of the Commission's plenary hearing procedures after the issuance of a Complaint and Notice of Hearing.

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Appearances:

For the Respondent, Russo & Courtney, Esqs.
(James P. Courtney, on the Brief)

For the Charging Party, Chamlin, Schottland,
Rosen & Cavanagh, Esqs.
(Michael D. Schottland, on the Brief)

INTERLOCUTORY DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 24, 1978 by Frank J. Morra ("Morra") alleging that the Jackson Township Board of Education (the "Board"), and its agents and representatives, had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Charge alleged essentially that the Board violated N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (6) ^{1/} by its conduct in

1/ These subsections prohibit 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage
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unilaterally increasing Morra's workload, work day and professional administrative responsibilities by assigning him the duties of "Adult Education Director", "Adult Basic Education Director" and "High School Equivalency (English) Director" without negotiating these changes with the Jackson Township Administrators Association (the "Association"), the majority representative of certain administrative personnel employed within the school district including Morra, who held the position of Director of Community Services at the time of the alleged change in duties.

Morra's charge was accompanied by a proposed Order to Show Cause with Temporary Restraints. Morra sought an order that, pending a plenary hearing in this instant matter, the Board of Education be enjoined and restrained from increasing his work load and changing his hours and working conditions by assigning him the duties of the aforementioned three directoral positions.

On August 28, 1978 the undersigned, as Special Assistant to the Chairman, convened a hearing to consider the charging party's application for temporary restraints. At that time, after considering the written submissions that had been proffered and in light of the oral argument advanced at that hearing, the undersigned refused to execute the proposed Order to

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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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

Show Cause with Temporary Restraints, but executed a modified Order to Show Cause without restraints establishing September 12, 1978 as the return date of the Order to Show Cause. Both parties, represented by Counsel, appeared at the Order to Show Cause hearing conducted on September 12, 1978 and argued orally with regard to this matter. Edward Elms, the present Director of Curriculum for the Jackson School District, was subpoenaed by the Charging Party to testify at this hearing and testified as to the duties and responsibilities of the Director of the Adult Evening School, High School Equivalency and Adult Basic Education programs.^{2/} Prior to the date of this hearing the parties had submitted briefs, memoranda and affidavits in support of their respective positions. At the conclusion of the September 12, 1978 Show Cause hearing the undersigned reserved judgment on Morra's application for interim relief. This Interlocutory Decision is being prepared, in accordance with N.J.A.C. 19:14-9.5, to set forth the undersigned's determination relating to the Charging Party's request for interim relief.^{3/}

^{2/} For the 1977-78 school year Elms, as the Director of Special Services and Programs, performed the duties of Adult Education Director, Adult Basic Education Director and High School Equivalency English Director.

^{3/} The undersigned has withheld issuing his Interlocutory Decision in this matter until this time in consideration of the efforts of the parties to resolve the underlying issues in dispute. This decision is being issued now since it appears that settlement efforts have not been successful.

Morra alleged that the assignment of three separate adult education directorships effectively mandated a substantial increase in his workload and work day, in part requiring him to competently administer three programs that he had not been previously responsible for as Director of Community Services while he continued to perform his other duties and responsibilities. Morra specifically emphasized that he would have to work certain nights to properly administer these programs in addition to working from 8:00 a.m. to 4:00 p.m. -- his working hours for the 1977-78 school year -- in order to complete assigned duties.^{4/} Morra alleged that he could be required to spend an additional 20 hours a week completing his work because of the unilateral assignment of the three directoral positions. Morra asserted that the Board neither negotiated the question of the assignment of these additional duties with his majority representative, the Administrators Association, nor did the Board attempt to negotiate any impact considerations with the Association, i.e. additional compensation for the new duties and increased hours. Morra contended that he would be irreparably harmed if required to perform these new duties since it was virtually impossible for

^{4/} In this regard Edward Elms testified that when he administered the three pertinent directorships as part of his responsibilities for the 1977-78 school year he found it necessary, in addition to working approximately the same hours that Morra worked during the day, to be present four or five evenings a week during the three or four week "peak period" at the start of each Adult Evening School session and would thereafter work one or two nights a week while the Adult Education Programs were in session.

him to carry out his assigned functions consistent with the requirements of his personal and private life.

The Board disputed Morra's contentions that his work day and workload would necessarily be increased as a result of the three new directoral assignments. The Board asserted that the job description delineating the duties and responsibilities of the Director of Community Services clearly provided that this Director would involve himself in all community activities and services among other specific duties, that the Director would cooperate with the establishment of educational programs in the community, and that the Director would perform any other related duties assigned by the Superintendent of Schools. The Board maintained that the three adult education directorships were all related to community service and educational programs in the community and that these assignments were in Morra's area of expertise and job responsibilities. Moreover, the Board asserted that Morra was not required to perform evening work as part of his duties and that in any event he could receive compensatory time off if he in fact worked certain evenings in fulfillment of his directoral responsibilities, i.e. he would work the same number of hours in a week as he had before. The Board stated that Morra had claimed that he had virtually no continuous projects to work on as Director of Community Services during the period between July 1977 and June 1978 and little work to do. The Board submitted that the performance of his new responsibilities would not increase his workload as it existed from July 1977 to June 1978, but would merely

substitute certain professional duties for other professional duties that were substantially similar in intensity. The Board stressed that at the time of the show cause hearing every potentially critical aspect of this case was conjectural inasmuch as Morra had not yet performed any of the directoral duties. The Board concluded that Morra could not therefore substantiate any aspect of his case apart from the mere assignment of certain new responsibilities. The Board recognized its duty to negotiate any impact considerations with Morra's majority representative but contended that no impact could be discerned until Morra performed his new duties during the 1978-79 school year. Lastly, the Board asserted that Morra could not establish irreparable harm since an economic remedy at the conclusion of this case could make Morra whole for any additional work performed or hours worked.

After careful consideration of the written submissions of the parties, and in further consideration of the oral arguments proffered at the show cause hearing, the undersigned has concluded that Morra has not satisfied the Commission's standards that have been developed for evaluating the appropriateness of interim relief. It must first be borne in mind that this is an interim proceeding seeking extraordinary relief pursuant to N.J.A.C. 19:14-9.1 et seq. and is not a substitute for the Commission's normal unfair practice procedures. The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are stringent in nature and are quite similar

to those applied by the courts when confronted with similar applications. Basically the test is two-fold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted.^{5/} Both standards must be satisfied before the requested relief will be granted.

In the instant case there would appear to be substantial and material disputed factual issues that may only be resolved through the utilization of the Commission's plenary hearing procedures, after the issuance of a Complaint and Notice of Hearing. There are factual disputes concerning: (1) the scope and intensity of Morra's duties as Director of Community Affairs during the 1977-78 school year; (2) whether Morra's new directoral duties were in addition to or in substitution for duties he performed as Director of Community Affairs the prior school year; (3) whether Morra was required to lengthen or restructure his work day to fulfill his new responsibilities competently; (4) whether Morra's job description provided that he be responsible for all existing adult education programs; (5) whether it was necessary to work certain nights to fulfill essential adult

^{5/} See for example In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); In re City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976); In re Ridgely Park Board of Education, P.E.R.C. No. 78-1, 3 NJPER 217 (1977); In re Newark Redevelopment and Housing Authority, P.E.R.C. No. 78-15, 4 NJPER 52 (¶4024 1978); In re Union County Regional High School Board of Education, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1978) and In re Willingboro Education Association, P.E.R.C. No. 78-64, 4 NJPER 168 (¶4083 1978).

education responsibilities; and (6) what Morra's specific responsibilities would be as Director of the three adult education programs.^{6/} It is possible that Morra may establish after an evidentiary hearing before a Commission Hearing Examiner that his work hours and workload have in fact been increased without prior negotiations. The Board may be ordered to make Morra whole for any harm suffered as a result of the unilateral change in his terms and conditions of employment, however, given the disputed factual issues as set forth above, and in light of the aforementioned standards utilized in interim relief proceedings, it would be inappropriate to predict what the Commission's decision will be in this particular case.

For the above reasons, the Charging Party's application for interim relief is hereby denied.^{7/}

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
January 24, 1979

^{6/} At the close of the hearing in this matter Morra's request for a secretary for the adult education programs had been granted by the Board and a request for an administrative assistant to help Morra was still pending.

^{7/} In light of the undersigned's determination that the Commission's substantial likelihood of success standard has not been satisfied it is unnecessary to determine whether the Commission's "irreparable harm test" is satisfied in this matter.