

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BURLINGTON COUNTY SPECIAL SERVICES  
SCHOOL DISTRICT,

Respondent,

Docket No. CO-78-183

-and-

BURLINGTON COUNTY SPECIAL SERVICES  
CUSTODIAL AND MAINTENANCE  
ASSOCIATION, a/w NEW JERSEY  
EDUCATION ASSOCIATION and WILLIAM  
HORN,

Charging Parties.

SYNOPSIS

The Special Assistant to the Chairman, acting on behalf of the entire Commission, issues an Interlocutory Decision denying the Association's request for interim relief during the pendency of an Unfair Practice proceeding. The Charging Party had sought to enjoin the District from giving continued effect to a collective negotiations agreement it had negotiated with another organization that the Charging Party contended had been illegally recognized as the employee representative for custodial and maintenance employees employed by the District.

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 the irreparable nature of the harm that will result if interim relief is not granted -- the Special Assistant concluded that the facts of this case did not warrant such extraordinary relief. The Special Assistant noted that the parties conceded that the instant case involved important legal issues that had not yet been considered by the Commission, and concluded that it would not be appropriate to predict what the Commission's decision would be on these undecided points of law. Moreover, the Special Assistant stated that there were substantial and material disputed factual issues that could only be resolved after utilization of the Commission's plenary hearing procedure.

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Appearances:

For the Respondent, Kessler, Tutek & Gottlieb,  
Esqs. (Myron H. Gottlieb, Of Counsel)

For the Charging Parties, Joel S. Selikoff, Esq.  
(On the Brief)

INTERLOCUTORY DECISION

On February 22, 1978, the Burlington County Special Services Custodial and Maintenance Association, affiliated with the New Jersey Education Association and William Horn (the "Charging Parties") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") alleging that the Burlington County Special Services School District (the "District") violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). This Charge was amended March 10, 1978 by the Charging Parties. The Charge, as amended, in apposite part, alleged that the District had violated Subsections 1, 2, 5 and 7 of Section 5.4(a) of the Act<sup>1/</sup>

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<sup>1/</sup> These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing

(Continued)

when it withdrew recognition from the Custodial and Maintenance Association affiliated with the N.J.E.A., and negotiated a three-year contract with a separate and distinct labor organization that is presently being implemented, at a time when an irrebuttable presumption existed concerning the continuing majority status of the Custodial and Maintenance Association affiliated with the N.J.E.A. More specifically, the Charging Parties contend that the District could not lawfully recognize a labor organization different from that which it recognized in June, 1977, i.e., the Custodial and Maintenance Association affiliated with the N.J.E.A., at least until such time as the District and that Association had a full opportunity to meaningfully engage in collective negotiations, i.e., for a period of twelve (12) months or at least a reasonable period of time. There is a Second Count to the Charging Parties' Unfair Practice Charge that need not be discussed in this Interlocutory Decision.

The Charging Parties' Unfair Practice Charge was accompanied by a request for interim relief pending the disposition of the Unfair Practice proceeding. A proposed Order to Show Cause was prepared on behalf of the Charging Parties and submitted to the Commission. The relief requested consisted of an Order restraining and enjoining

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1/ (continued from preceding pg.)

employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

the District from giving effect to any collective negotiations agreement it had with any labor organization other than the Custodial and Maintenance Association affiliated with the N.J.E.A. The undersigned, who has been delegated by the Commission to act upon requests for interim relief on behalf of the Commission, executed the Order to Show Cause on March 14, 1978, that was originally made returnable on March 30, 1978. The Show Cause hearing was later postponed until April 12, 1978.

At the April 12, 1978 Show Cause hearing, the undersigned, after consideration of the formal pleadings, affidavits submitted by the parties, and the briefs of the parties, informally advised the Charging Parties that it appeared highly unlikely that they could establish at the Show Cause hearing that the standards that the Commission had developed for evaluating the appropriateness of interim relief in unfair practice proceedings could be satisfied.<sup>2/</sup> The Charging Parties, after this informal assessment of their chances of prevailing on their application for interim relief, chose to submit this matter to the undersigned solely on the basis of the pleadings and the briefs that had been submitted concerning the application for interim relief. The parties further agreed that the undersigned would thereafter issue a written Interlocutory Decision relating to the Charging Parties' application for interim relief, after further consideration of all the parties' submissions.

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<sup>2/</sup> These standards will be referred to in a later section of this Interlocutory Decision.

This Interlocutory Decision is thus being prepared in accordance with the agreements of the parties.<sup>3/</sup>

In passing upon the parties' various arguments, it must be borne in mind that this is an interim relief proceeding seeking extraordinary relief, pursuant to N.J.A.C. 19:14-9.1 et seq. The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are of a rather stringent nature. These standards are similar to those applied by the courts when confronted with similar applications. Basically the test is twofold: A substantial likelihood of success or the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the relief is not granted.<sup>4/</sup>

After reviewing all the written materials submitted by the parties, the undersigned concludes that it cannot be said at this juncture that either the law or the facts germane to this instant matter are so clearly in the Charging Parties' favor so as to concede to them the substantial likelihood of success before the Commission on the ultimate merits of the case.

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<sup>3/</sup> It appearing that the allegations of the Unfair Practice Charge, if true, could constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 5, 1978 by the Commission's Director of Unfair Practices and Representation.

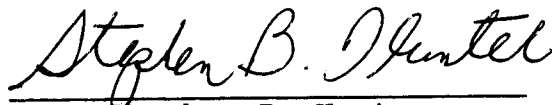
<sup>4/</sup> See e.g., In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); In re City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976); In re Ridgefield 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 (Par. 4024, 1978); Union County Reg. H.S. Bd. of Ed. v. Union Cty. Reg. Teachers' Assn., P.E.R.C. No. 78-27, 4 NJPER 11 (Para. 4007, 1978), appeal pending, App. Div. Docket No. A-1552-77).

The parties have conceded that this instant case raises particularly important legal issues that have not yet been considered by the members of the Commission, e.g., whether there should be an irrebuttable presumption that an organization voluntarily recognized by an employer as the exclusive majority representative of certain of its employees for the purposes of collective negotiations continues to represent a majority of the employees for at least a reasonable period of time, notwithstanding the proffer of objective evidence that may evince a loss in majority status. In addition, the legal status of the labor organization with whom the Board negotiated a three-year contract, is in dispute. The Board contends that the labor organization that it negotiated a contract with in January of 1978 is the same organization that it formerly recognized in June 1977, i.e., the employees comprising the Custodial and Maintenance Association have merely disaffiliated from the New Jersey Education Association. The Charging Party Association, in sharp contrast, maintains that ample legal precedent establishes that the organization with whom the Board negotiated the contract, rather than retaining the identity of the Custodial and Maintenance Association, affiliated with the N.J.E.A., is a separate and distinct organization illegally recognized by the Board as the majority representative of the custodial and maintenance employees. Given the facts in this case, I believe that it would not be appropriate for me to predict what the Commission's decision will be on these and other undecided points of law.

Moreover, 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 the Complaint and Notice of Hearing.<sup>5/</sup> For example, the Board strongly disputes the Charging Parties' position that agents and representatives of the school district, including the Superintendent of Schools and Board Secretary, assisted the custodial and maintenance employees in disaffiliating from the Charging Party Association. For all the foregoing reasons, the application for interim relief is hereby denied.

BY ORDER OF THE COMMISSION



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Stephen B. Hunter  
Special Assistant to the  
Chairman

DATED: Trenton, New Jersey  
June 14, 1978

<sup>5/</sup> See fn. 3.