

P.E.R.C. NO. 2000-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and-

Docket No. CE-2000-9

OCEAN CITY EDUCATION ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and-

Docket No. CE-2000-10

OCEAN CITY DEPARTMENT SUPERVISORS'
ASSOCIATION,
Respondent.

OCEAN CITY BOARD OF EDUCATION,
Charging Party,

-and-

Docket No. CE-2000-11

OCEAN CITY EDUCATIONAL SUPPORTIVE
STAFF ASSOCIATION,
Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Ocean City Board of Education's motion for reconsideration of I.R. No. 2000-13. In that decision, a Commission designee denied the Board's application for interim relief on its unfair practice charge against the Ocean City Education Association, the Ocean City Department Supervisors Association, and the Ocean City Educational Supportive Staff Association. The Board contends that the Associations repudiated a reopener provision on health insurance premium rates. Given the limited record before him, the designee found that the contract may be susceptible to multiple interpretations and that the Board had not demonstrated a likelihood of success on the merits. The Commission concludes that there are no extraordinary circumstances warranting reconsideration of the designee's determination.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Charging Party, Cassetta, Taylor, Whalen &
Hybbeneth, consultants (Garry M. Whalen, on the brief)

For the Respondent Education and Supportive Staff
Associations, Selikoff & Cohen, attorneys (Steven R. Cohen,
of counsel)

For the Respondent Supervisors Association, Wayne J.
Oppito, attorney

DECISION

On April 10, 2000, the Ocean City Board of Education moved
for reconsideration of I.R. No. 2000-13, 26 NJPER 195 (¶31079
2000). In that decision, a Commission designee denied the Board's

application for interim relief on its unfair practice charge against the Ocean City Education Association, the Ocean City Department Supervisors Association, and the Ocean City Educational Supportive Staff Association. The Board contends that the Associations repudiated this reopener provision:

The 1997-1998 premium rates shall serve as the initial threshold. Should the premium rates increase by more than 10% over the preceding year, the parties agree to reopen negotiations. These negotiations shall be limited to the costs which exceed the negotiated maximum Board premium costs (MBPC). The purpose of these negotiations will be for the parties to determine collectively how the premium rates will be brought into line with the negotiated MBPC.

The Board argued to the designee that the parties are negotiating pursuant to the reopener provision, but that the Associations refused to limit the negotiations to the costs which exceed the negotiated maximum Board premium costs. Instead, the Associations allegedly demanded improvements to the "Blue Select" plan, the elimination of certain employee contributions, and the extension of the revised health plan for three years. The Board also asserted that the Associations have not made an offer that comes close to bringing the premium rate into line with the negotiated maximum premium costs. The Board sought an interim relief order requiring the Associations to immediately withdraw any package proposal related to insurance which does not fully drive the 1999-2000 premiums down to a level 10% above the preceding year's; directing the Associations to permit the Board to accept the Associations' offer to make "Blue Select" the base plan unconnected

to any other changes in the contract, including an extension in the duration of the contract; directing the Associations to waive any claims under Article 25.E^{1/} until an agreement is reached under the terms of Article 25.A; and directing that the Board's aggregate liability under Article 25.E shall be reduced by the difference between the premiums saved by any agreement under Article 25.A and \$106,452, the Board's cost above the maximum premium cost for 1999-2000.

On March 24, 2000, the designee denied interim relief. He found that the Board had not acted with sufficient dispatch to warrant interim relief; the Board had not exhausted the available dispute resolution mechanisms; and the reopener provision may be susceptible to multiple interpretations. He concluded that the Board had not demonstrated a likelihood of success on the merits, a requisite element for interim relief.

The Board argues that the designee did not apply the proper standards for interim relief requests. In particular, it argues that the criteria of "sufficient dispatch" and exhaustion of mediation and factfinding have never been applied. It further argues that it has no ability to grieve the Associations' alleged repudiation and that the designee should have determined whether the contract provision is susceptible to differing interpretations. The

^{1/} Article 25.E. creates a \$350 fringe medical account for each teacher to provide reimbursement for medical expenses not covered by insurance.

Board contends that if it is not, the Associations have engaged in an unlawful repudiation. Finally, the Board asserts that it will suffer irreparable harm if relief is not granted. It contends that once the fiscal year closes, it cannot return to the budget the \$140,000 spent over and above the negotiated maximum premium costs.


On April 17, 2000, the Education Association and Educational Supportive Staff Association filed a brief opposing reconsideration. They argue that the Board has not established the requisite extraordinary circumstances warranting reconsideration under N.J.A.C. 19:14-8.4, or provided the pages of the record it relies upon. In addition, the Associations argue that a refusal to negotiate could not be found based upon the totality of the parties' conduct and that the Board has alleged only monetary, not irreparable harm.

To obtain interim relief, a party must demonstrate, among other things, that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982). Given the limited record before him in the interim relief proceeding, the designee found that the contract may be susceptible to multiple interpretations. In other words, it was not demonstrated, at that juncture, that the Board has a substantial likelihood of success on the merits. There are no extraordinary circumstances warranting reconsideration of that determination. Accordingly, the motion for reconsideration is denied.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Muscato was not present.

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000