

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN HILLS REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-002

WARREN HILLS REGIONAL HIGH  
SCHOOL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Warren Hills Regional Board of Education for a stay of the Commission's order in P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2005). In that decision, the Commission found that the Board violated the New Jersey Employer-Employee Relations Act by subcontracting regular bus routes and terminating full-time and regular part-time bus drivers and a mechanic in retaliation for the bus drivers' electing to have the Warren Hills Regional High School Education Association represent them. The Commission ordered the Board to offer reinstatement, make the employees whole, and negotiate with the Association over their terms and conditions of employment. The Commission discerns no error in its analysis or a likelihood of success on the merits of the Board's appeal. Considering all the arguments and balancing the equities, the Commission denies the Board's request for a stay.

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 Respondent, Broscious & Fischer, attorneys  
(John M. Zaiter, of counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys  
(Gail Oxfeld Kanef, of counsel)

DECISION

The Warren Hills Regional Board of Education seeks a stay pending appeal of the Decision and Order in P.E.R.C. No. 2005-26, 30 NJPER 439 (145 2005). In that decision, we found that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by subcontracting regular bus routes and terminating full-time and regular part-time bus drivers and a mechanic in retaliation for the bus drivers' electing to have the Warren Hills Regional High School Education Association represent them. We ordered the Board to offer reinstatement, make these

employees whole, and negotiate with the Association over their terms and conditions of employment.

In a December 23, 2004 letter denying the Board's request for a stay, the Commission Chairman noted the absence of any reasons for a stay in the Board's request or a likelihood of success on the merits of the appeal. However, the Board had sent a certification supporting its request before the Chairman issued his decision that was not received until after he had issued it. Under these circumstances, the Chairman granted reconsideration to permit us to consider the Board's request anew. The Association opposes the Board's request for a stay.

The Board asserts that it will suffer irreparable injury if the Order is not stayed. It contends that once it breaches its contract with the subcontractor and reinstates the terminated bus drivers, it will not be able to reverse those actions should it prevail on appeal. The Board has not submitted a copy of its contract with the subcontractor or established that reinstating the drivers would force it to breach that contract. Nor has the Board established that such actions could not be reversed should it prevail on appeal.

The Board contends that any harm to the bus drivers can be corrected with money damages and that the balance of equities supports the issuance of a stay. However, an order like this

one, issued after employees have prevailed in an administrative proceeding and won reinstatement and back pay, will not be stayed pending appeal absent other reasons not present here. Contrast Bridgewater Tp., P.E.R.C. No. 95-36, 21 NJPER 31 (126020 1994) (granting stay of reimbursement portion of order so employer could place the amount in its next year's budget).

Finally, the Board argues that it has a meritorious appeal because the Hearing Examiner found that it established a legitimate business justification for its decision to subcontract based on its fiscal concerns. However, as we stated in our decision, we disagree with the factual predicate for the Board's argument. The Hearing Examiner found and we agreed that hostility to the school bus drivers' union organizing was the sole reason for the subcontracting. Saving money would have been a legitimate business reason for subcontracting bus services, but it was not this employer's motivation for this subcontracting decision. We do not discern any error in our analysis or a likelihood of success on the merits of the appeal.

Considering all the arguments and balancing the equities, we deny the Board's request for a stay pending appeal.

ORDER

The request of the Warren Hills Regional Board of Education for a stay of the Order in P.E.R.C. No. 2005-26 is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, Fuller, Mastriani and Watkins voted in favor of this decision. Commissioners DiNardo and Katz were not present. None opposed.

DATED: January 27, 2005  
Trenton, New Jersey  
ISSUED: January 27, 2005