

P.E.R.C. NO. 2015-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WAYNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-181

WAYNE SUPERVISORS OF CURRICULUM/  
INSTRUCTION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the exceptions of the Wayne Supervisors of Curriculum/Instruction Association to a Hearing Examiner's decision granting the Wayne Township Board of Education's motion for summary judgment and denying the Association's cross-motion for summary judgment in an unfair practice case filed by the Association. The Commission agrees with the Hearing Examiner that there are material issues of fact as to whether there was a workload increase triggering a duty to negotiate, but disagrees with the Hearing Examiner that the subsequent elimination of the supervisor positions rendered this dispute moot. The Commission vacates the Hearing Examiner's decision on the motions for summary judgment, and remands for a hearing to resolve the issue of a negotiations obligation arising from the alleged workload increase.

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, Machado Law Group, LLC, attorneys  
(Paul D Clarke, of counsel)

For the Charging Party, Zazzali, Fagella, Nowak,  
Kleinbaum & Friedman, of counsel (Aileen O'Driscoll, of  
counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Examiner's decision granting the Wayne Township Board of Education's motion for summary judgment and denying the Wayne Supervisors of Curriculum and Instruction Association's cross-motion for summary judgment in an unfair practice case filed by the Association.

On December 31, 2012 and January 2, 2013 the Association filed an unfair practice charge and amended charge, respectively, alleging that the Board violated the New Jersey Employer-Employee Relations Act , N.J.S.A. 34:13A-1 et seq.<sup>1/</sup>, specifically

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<sup>1/</sup> The Director of Unfair Practices determined that the alleged  
(continued...)

subsections 5.4a(1) and (5)<sup>2/</sup>, when the Board refused to negotiate upon demand over the impact of an increase in the workload of employees caused by the retirement of a Supervisor of Secondary Special Services, a position that was then left vacant.

A Complaint was issued on August 8, 2013. The Board filed its Answer on August 29, 2013 generally denying that it violated the Act, but admitting that the Supervisor of Secondary Special Services retired in July 2012.

On February 4, 2014, the Board filed a Notice of Motion for Summary Judgment together with a letter brief, certifications of Paula Clark, Esq. and Superintendent Dr. Raymond Gonzalez with attached exhibits. On March 4, 2014, the Association filed a letter brief in opposition to the Board's motion as well as a cross-motion for summary judgment together with certification of former Association President Fred Vafaie with attached exhibits.

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1/ (...continued)  
violations of 5.4a(3) did not meet the Commission's complaint issuance standards and, therefore, dismissed that alleged violation.

2/ These provisions prohibit public 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; ... [and] (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.

On June 2, 2014, Hearing Examiner Wendy L. Young issued her recommended decision and Order on the parties' cross-motions for summary judgment. H.E. No. 2014-14, 41 NJPER 13 (¶3 2014). She found that although there were material disputed facts as to whether there was a work load increase triggering a duty to negotiate, the Association was a defunct labor organization since a reorganization at the end of the 2012-2013 school year eliminated all the positions represented by the Association. Thus, the Hearing Examiner concluded that the issue in dispute was moot and dismissed the Complaint since the only potential remedy would be an order to negotiate.

On June 26, 2014, the Association filed exceptions. It asserts the Hearing Examiner erred in concluding that because it is no longer in existence, the issue of the workload increase for the 2012-2013 school year is moot. The Board responds that the Hearing Examiner was correct in dismissing the Complaint as no remedy can be granted to the Association.

We grant the exceptions of the Association and remand this matter back to the Hearing Examiner for a hearing on the merits of the dispute. We agree with the Hearing Examiner that there are material issues of fact as to whether there was a workload increase triggering a duty to negotiate. We disagree with the Hearing Examiner that the subsequent elimination of the supervisor positions rendered this dispute moot.

The Supreme Court in Galloway Township Bd. of Ed. v. Galloway Township Educ. Ass'n, 78 N.J. 25 (1978), affirmed our holding that judicial enforcement of Commission Orders should normally not be denied because of mootness allegedly resulting from events occurring after the commission of unfair practices, in part, to prevent the recurrence of similar unfair practices. We remand this case to the Hearing Examiner for resolution of the issue as to whether there was a negotiations obligation arising from the alleged workload increase. If the Hearing Examiner determines the Board violated the Act, an appropriate remedy at the discretion of the hearing examiner may be ordered that includes a negotiations order limiting the time frame to the 2012-2013 school year and/or a posting to employees of the unfair practice.

ORDER

The Hearing Examiner's decision granting the Wayne Township Board of Education's motion for summary judgment is vacated. The case is remanded to the Hearing Examiner for hearing.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall was not present.

ISSUED: December 18, 2014

Trenton, New Jersey