P.E.R.C. NO. 2018-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX FELLS BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2016-012

ESSEX FELLS TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a Hearing Examiner's report and recommended decision granting the Board's motion for summary judgment and dismissing the complaint. The Association's charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (5), by unilaterally implementing a teacher work year commencing on August 31 despite never previously requiring teachers to report to work prior to September 1. The Commission holds that the Board had a non-negotiable managerial prerogative to set the school calendar for teachers and students. The Commission also finds that the record is devoid of any evidence that the change in the start of the school year resulted in any adverse impact on Association members.

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, Fogarty & Hara, (Stephen R. Fogarty, of counsel)

For the Charging Party, Oxfeld Cohen (Sanford R. Oxfeld, of counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Examiner's Report and Recommended Decision, H.E. 2017-8, 43 NJPER 409 (¶113 2017). On July 27, 2015, Essex Fells Teachers Association (Association) filed an unfair practice charge against Essex Fells Board of Education (Board) alleging that the Board violated section 5.4a(1) and (5)[1/] of the New Jersey

1/ 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.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it unilaterally decided to start the teacher school year on August 31, 2015, having never previously required teachers to report to work prior to September 1.

On August 4, 2016, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On August 15, the Board filed an Answer, denying the allegations in the charge and contending that it had a managerial prerogative to establish the school calendar and determine the start date of the school year.

On October 17, 2016, the Board filed a Motion for Summary Judgment, together with exhibits, a certification, and brief. On November 17, the Association filed a cross-motion for summary judgment, together with a brief and certification. On November 28, the Commission referred the motion to the Hearing Examiner for decision. N.J.A.C. 19:14-4.8.

The Hearing Examiner granted summary judgment in favor of the Board, finding that its unilateral decision to start the teachers' work year on August 31, 2015 was not a change in terms and conditions of employment.

We adopt the undisputed findings of fact made by the Hearing Examiner. H.E. at 4-8. We summarize the pertinent facts as follows. The Association represents a broad-based unit of employees of the Board. The parties' current agreement extends from July 1, 2015 to June 30, 2018.

Article VI (Teacher work year and workday) provides in pertinent part:

> A. Teacher Work Year
>
> 1. The school calendar will include one hundred eighty-seven (187) days, three (3) days of which will be used for emergency closings or returned to teachers at the end of the year. Therefore, the teachers will work one hundred eighty-four (184) days. The work year shall be divided as follows:
>
> 180 Student days
> 1 Orientation day (prior to the start of the student year)
> 3 Staff development days
> 3 Emergency days
>
> The staff development days will be jointly planned by the administration and the teachers. Every attempt will be made to ensure that these days comply with the State professional development standards and thus count toward State requirements
>
> . . .
>
> There shall be one (1) additional day for orientation at the start of the school year for new employees. This shall be in addition to the orientation day previously scheduled for all employees . . .

The parties stipulated the following facts:

> 1. The Board operates a pre-kindergarten through sixth grade school district, which together with Roseland, Fairfield, and North Caldwell, sends its students to the West Essex Regional School District (hereinafter referred to as 'West Essex'), a grade seven through twelve school district.
>
> 2. The Board discussed the 2015-2016 school calendar at each of its Board meetings

beginning in November 2014 through February 2015. . . .

3. On February 18, 2015, the Board formally approved the 2015-16 school calendar. . . .

4. The 2015-2016 school calendar was aligned with West Essex's school calendar, which established August 31, 2015 as the start of the teacher work year and September 2, 2015 as the start of the student school year. . . . Roseland, Fairfield, and North Caldwell are the other districts which send their students to West Essex, and all of these districts directed that their staff report on September 1, 2015 for the beginning of their work year, with Fairfield's student school year commencing on September 2, and Roseland and North Caldwell's student school year commencing on September 3.

5. The District's school calendar corresponds with the number of teacher work days allowed under the 2015-2018 collective negotiations agreement between the Board and the Association. . . .

6. The CNA does not establish a start or end date for the school year, but provides that the teacher work year shall be one-hundred eighty-four (184) days, comprising one-hundred eighty (180) student days, one (1) orientation day (prior to the start of the student school year), and three (3) staff development days. . . . The CNA also does not address when staff development days are to be scheduled. . . .

7. For the 2015-2016 school year, the District scheduled both teacher orientation (as required by the CNA) and a staff development day prior to the start of the student school year, which it has done in the past. . . .

8. A revised 2015-2016 school calendar was approved by the Board on June 17, 2015,

> which changed the Friday before the Labor Day Holiday from a full-day session to a half-day session. . . .

In the three previous school years (2012-13, 2013-14 and 2014-15), the Essex Fells calendars aligned with those of West Essex Regional. On January 5, 2015, the Superintendent directed a "survey" of parents to determine their 2015-16 calendar preferences, and on review of those survey results, the Board determined to align with West Essex Regional's 2015-16 calendar. The Association informed the Superintendent that it did not agree to start the teacher work year before September. On February 18, 2015, the Board formally adopted that calendar, establishing August 31, 2015 as the start of the teacher work year and September 2, 2015 as commencing the student school year.

For at least the past 25 years, the start of the teacher work year in Essex Fells was never in the month of August. On an unspecified date, the Association offered to commence the teacher work year on September 1, 2015 and the Board refused.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); see also, Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). In determining whether summary judgment is appropriate, we must ascertain "whether the competent evidential materials presented, when viewed in the light most

favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 523. "Although summary judgment serves the valid purpose in our judicial system of protecting against groundless claims and frivolous defenses, it is not a substitute for a full plenary trial" and "should be denied unless the right thereto appears so clearly as to leave no room for controversy." Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1995); see also, UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

N.J.S.A. 34:13A-5.4a(1) prohibits a public employer from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. An employer violates this section, independently of any other violation, if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification and, derivatively, when an employer violates another unfair practice provision. Lakehurst Bd. of Ed., P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987).

N.J.S.A. 34:13A-5.4a(5) prohibits public employers from "[r]efusing 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. . . ." A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and attitude of the party charged. Teaneck Tp., P.E.R.C. No. 2011-33, 36 NJPER 403 (¶156 2010).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statutory regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
>
> [Id. at 404-405.]

The Association's main exception is that the Hearing Examiner ignored the distinction between the "student school calendar" and the "teacher work year." We disagree that the Hearing Examiner ignored this distinction. The "student school calendar" has been defined as the dates within which students are required to be present for school, a non-negotiable subject, and

the "teacher work year" has been defined as the dates teachers are required to report to work, both in numbers and scheduling, in excess of the days of the student school calendar, a negotiable subject. N.J.I.T and Newark Coll. of Eng'g Prof. Staff Ass'n, P.E.R.C. No. 80-54, 5 NJPER 491, 493 (¶10251 1979), aff'd, NJPER Supp.2d 263 (¶218 App. Div. 1980). In NJIT, teachers were ordered to be available for conferences seven days before student classes began, and the court found that proposals to reduce the number of "availability" days, to restore the prior starting date of the availability period, and for extra compensation were mandatorily negotiable.

In making his findings, the Hearing Examiner relied heavily on Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2014-47, 40 NJPER 337 (¶123 2014), aff'd, 42 NJPER 71 (¶18 App. Div. 2015), a recent Appellate Division decision. The facts of Bethlehem are virtually identical to the facts herein. There, the majority representative alleged that the Board violated the Act by unilaterally setting the 2011-2012 school year to start for students on August 25 and teachers on August 24 in order to match the regional high school. The Commission dismissed the complaint, finding that the Board had a non-negotiable managerial prerogative to set the school calendar. The Appellate Division affirmed, finding that when changing the start date of the school year is not significantly tied to the relationship of the annual

rate of pay to the number of days worked,[2/] the Board has the exclusive managerial prerogative to determine unilaterally "the dates, between which the schools of the district shall be open, in accordance with the law." N.J.S.A. 18A:36-2.

The Association is incorrect that Bethlehem is not applicable because it did not directly address the distinction between "student school calendar" and "teacher work year." While the Bethlehem court did not use the terms "student school calendar" and "teacher work year," it indirectly addressed those concepts. The Hearing Examiner inferred that when the Bethlehem court referred to the "school calendar," it was making reference to the dates within which the district would be "open." He further inferred from Bethlehem that the dates on which the school would be "open" included both the "student school calendar" and the "teacher work year" since schools are "open" during those days that teachers report to work even when students are not present. We agree with the Hearing Examiner's view of Bethlehem and its application to the facts herein. Thus, here, the Board had a non-negotiable managerial prerogative to set the school calendar to start on August 31 for teachers and September 1 for students.

2/ The Association herein makes no claim that the change in the school calendar impacted its members' rate of pay.

The Association also takes exception to the Hearing Examiner's finding that the Association did not establish any adverse impact from the Board's unilateral decision to start the school calendar on August 31, 2015. We agree with the Hearing Examiner that the record is devoid of any evidence that the change in the start date of the school year to August 31 (one day earlier than the September start date the Association was willing to accede to) resulted in adverse impact on its members, either with regard to their rate of pay or otherwise.

ORDER

The Hearing Examiner's Report and Recommended Decision is adopted. The complaint is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Eskilson was not present.

ISSUED: August 17, 2017

Trenton, New Jersey