

P.E.R.C. NO. 94-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LENAPE VALLEY REGIONAL BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-358

LENAPE VALLEY REGIONAL SUPERVISORS'
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission orders the Director of Unfair Practices to issue a Complaint and Notice of Hearing based on an unfair practice charge filed by the Lenape Valley Regional Supervisors' Association against the Lenape Valley Regional Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally abolished a position with a 205-day work year and replaced it with a new position with a 185-day work year. The Association claims that the duties of the new position are substantially the same as the old and that therefore it is really a reduction in workyear. The Board claims that the old position was abolished and a new one created. The Commission believes that a hearing is necessary to review the merits of the Association's allegations.

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Appearances:

For the Respondent, Rand, Algeier, Tosti & Woodruff,
attorneys (Ellen S. Bass, of counsel)

For the Charging Party, New Jersey Principals' &
Supervisors' Association (Wayne J. Oppito, attorney)

DECISION AND ORDER

On March 22, 1994, the Lenape Valley Regional Supervisors' Association appealed D.U.P. No. 94-32, 20 NJPER 162 (¶25074 1994). In that decision, the Director of Unfair Practices refused to issue a Complaint based on an unfair practice charge that the Association filed against the Lenape Valley Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (7),^{1/} when it unilaterally abolished a

^{1/} These subsections 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. (5) Refusing to negotiate in good faith with a majority representative of

position with a 205-day work year and replaced it with a new position with a 185-day work year.

The Director found that the employer has a managerial prerogative to abolish and create positions. He further found that the parties had already negotiated a salary for the 185-day positions in the unit and that the Association had not alleged that the supervisor was not being paid in accordance with the parties' salary guide.

In its appeal, the Association contends that the two positions are substantially the same and that, in reality, the original position was not abolished, but rather its work year was shortened. The Board filed a statement in opposition to the appeal. It contends that the Director's decision is well-reasoned and consistent with the law.

Both parties cite well-established caselaw to support their positions. The Board relies on cases affirming its right to abolish positions and assign employees to new positions. See, e.g., Piscataway Bd. of Ed., P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987). The Association relies on cases affirming its right to

1/ Footnote Continued From Previous Page

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."

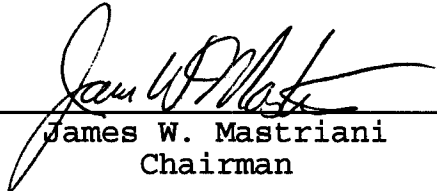
negotiate over changes in work year and salary of unit members. See, e.g., Piscataway Tp. Bd. of Ed. and Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978); Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980). The allegations in this case, however, do not clearly place it in one camp or the other. The Association claims that the duties of the new position are substantially the same as the old and that therefore it is really a reduction in workyear. The Board claims that the old position was abolished and a new one created.

At this stage in the proceedings, we cannot discern which claim is correct. We believe that a hearing is necessary to review the merits of the Association's allegations.

ORDER

This matter is remanded to the Director of Unfair Practices to issue a Complaint and Notice of Hearing.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Smith and Wenzler voted in favor of this decision. Commissioner Klagholz voted against this decision. Commissioner Regan abstained from consideration.

DATED: June 30, 1994
Trenton, New Jersey
ISSUED: June 30, 1994