

P.E.R.C. NO. 2003-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKEHURST BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2002-352

LAKEHURST EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Lakehurst Education Association for reconsideration of I.R. No. 2003-6. In that decision, a Commission designee denied the Association's request for interim relief based on an unfair practice charge filed against the Lakehurst Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, by unilaterally extending the work year of four child study team members during successor contract negotiations. The designee found that requiring the team members to work an extended work year may have been the exercise of a managerial prerogative and that therefore, the Association had not demonstrated that it had a substantial likelihood of prevailing in a final Commission decision. The Commission concludes that there are no extraordinary circumstances warranting reconsideration of that decision and that the Association may pursue its claim for relief through the regular unfair practice proceedings.

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, Sinn, Fitzsimmons, Cantoli, West & Pardes, attorneys (Kenneth B. Fitzsimmons, of counsel)

For the Charging Party, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Richard A. Friedman, of counsel)

DECISION

On September 18, 2002, after an extension of time, the Lakehurst Education Association moved for reconsideration of I.R. No. 2003-6, 28 NJPER ____ (1____ 2002). In that decision, a Commission designee denied the Association's request for interim relief based on an unfair practice charge filed against the Lakehurst Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),^{1/} by

^{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. (3) Discriminating

unilaterally extending the work year of four child study team members during successor contract negotiations. The designee found that requiring the team members to work an extended work year may have been the exercise of a managerial prerogative and that therefore, the Association had not demonstrated that it had a substantial likelihood of prevailing in a final Commission decision.

In its motion, the Association argues that the designee erred in not requiring the Board to negotiate before changing the employees' work year. It further argues that the Board did not negotiate over the impact of the increased work year; the Board could have met its needs by hiring another employee; the Board violated N.J.S.A. 34:13A-23; and there is no guarantee that a final decision or new agreement will be reached before next summer.

On September 23, 2002, the Board filed a response opposing reconsideration. It relies on its submissions opposing interim relief.

1/ Footnote Continued From Previous Page

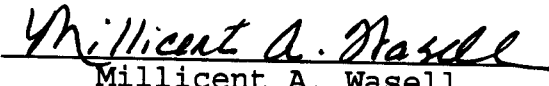
in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

We can reconsider interim relief decisions, but will do so only in extraordinary circumstances. N.J.A.C. 19:14-8.4. The designee found that, under the specific facts of this case, the Board may have had a managerial prerogative to unilaterally implement its determination to extend the child study team members' work year. He therefore found that the Association had not demonstrated a substantial likelihood of prevailing in a final Commission decision. There are no extraordinary circumstances warranting reconsideration of that decision. The Association may pursue its claim for relief through the regular unfair practice proceedings.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: October 31, 2002
Trenton, New Jersey
ISSUED: November 1, 2002