

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBIDGE TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

Docket No. CO-78-188

-and-

WOODBIDGE TOWNSHIP FEDERATION OF  
TEACHERS, LOCAL 822, AFL-CIO,

Charging Party.

SYNOPSIS

The Woodbridge Township Federation of Teachers sought an interim order from the Public Employment Relations Commission enforcing a provision of the parties' collective negotiations agreement. The dispute concerns a rescheduling of snow days and the Board scheduled make up days or days that had been previously scheduled as non-school days. The Special Assistant to the Chairman, acting on behalf of the Commission, refused to issue an order to show cause in this matter. The Special Assistant determined, in light of the Commission's recent decision in In re Edison Township Board of Education, that the dispute concerns a permissive subject for collective negotiations and that permissive subjects, while enforceable, cannot be enforced by this Commission but rather require enforcement through arbitration or judicial proceedings.

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ORDER REFUSING TO ISSUE  
ORDER TO SHOW CAUSE

This matter being opened to the Public Employment Relations Commission by Sauer, Boyle, Dwyer, Canellis and Cambria, attorneys for the Charging Party; and it appearing that an Unfair Practice Charge, Memorandum of Law, and proposed Order to Show Cause was filed with the Commission by the Charging Party; and the Commission having delegated to the undersigned the authority to act on this matter in its behalf, and the undersigned having read the pleadings and having determined that the proposed Order to Show Cause should not be issued for good cause shown:

It is, on this 22nd day of March, 1978,

ORDERED that the request of the Charging Party that an Order to Show Cause be issued seeking interlocutory restraints against the Respondent, be, and the same is hereby denied.

The Commission's standards for evaluating the appropriateness of interim relief are similar to those applied by the courts when confronted with similar applications. Essentially, the


test applied by the Commission is two-fold: the substantial likelihood of success on the legal and factual allegations set forth in the charge in the Commission's final decision; and the irreparable nature of the harm that will occur, if the relief sought is not granted.

In light of the Commission's recent decision entitled In re Edison Township Board of Education, P.E.R.C. No. 78-53, 4 NJPER \_\_\_\_ (Para. \_\_\_\_ 1978), a copy of which is attached hereto, the undersigned concludes that the charging party cannot satisfy the "substantial likelihood of success" test. The Commission held in the Edison decision that a board of education was not required to negotiate the school calendar and that negotiations regarding the employee work year were limited by the school calendar. The Commission further affirmed that the teacher work year must coincide with days of pupil instruction as established by a board of education and that required negotiations are limited to those days, both as to number and scheduling, in excess of the days of attendance of students scheduled by the board to meet its required educational responsibilities, i.e., in excess of 180 days.

The undersigned has further concluded that the differences between the Edison case and the instant matter alluded to in the March 17, 1978 letter submitted on behalf of the Woodbridge Township Federation of Teachers would not mandate a different conclusion in an unfair practice proceeding before the Commission. In this regard, the Commission's determination in Edison mandates the conclusion that contractual agreements relating to the work year

of teachers within the legislatively mandated 180 instructional days do not relate to required subjects for collective negotiations, but only to permissive subjects for collective negotiations. The Commission has determined that its enforcement authorities in the context of allegations of a refusal to negotiate in good faith relate exclusively to terms and conditions of employment -- required subjects for collective negotiations -- absent factors not relevant to the instant proceeding. See, e.g., In re Piscataway Board of Education, P.E.R.C. No. 77-65, 3 NJPER 169 (1977, Appeal pending, App. Div. Docket No. A-3621-76, In re Newark Redevelopment and Housing Authority, P.E.R.C. No. 78-15, 3 NJPER 52 (1977), and In re Freehold Regional High School Board of Education, P.E.R.C. No. 78-29, 4 NJPER 19 (1977). Contractual provisions relating to permissive subjects of collective negotiations are enforceable through grievance arbitration or through judicial action, but they are not enforceable before the Commission in the context of unfair practice proceedings. Therefore, the undersigned concludes that the Federation's additional arguments relating to the "snow days" question cannot disturb the Commission's conclusion in the Edison case.

BY ORDER OF THE COMMISSION

  
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Stephen B. Hunter  
Special Assistant to the Chairman

DATED: Trenton, New Jersey  
March 22, 1978