

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELVIDERE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-176-60

BELVIDERE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

This unfair practice proceeding, which was submitted directly to the Commission on the basis of stipulated facts and without an intermediate Hearing Examiner's Recommended Report and Decision, involved the scheduling of make up days due to the large number of school days lost during the 1977-78 winter. There is no dispute regarding the need to schedule additional days to meet the requirement of 180 days of instruction. Additionally, the parties' agreement does not affect this decision.

In this context, the Commission determines that the Board did not violate the Act by unilaterally scheduling the make up days without negotiations. The Commission concludes that a board is not required to negotiate regarding the establishment of a school calendar and that, although the teachers' work year is a required subject, negotiations are limited by the school calendar. Thus, the work year must coincide with days of instruction as established by the school board and negotiations are limited to those days, both as to numbers and scheduling, in excess of the days of attendance of students scheduled by the Board to meet its required educational responsibilities. Accordingly, the complaint was dismissed in its entirety.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELVIDERE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-178-60

BELVIDERE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Jacob Green, Esquire

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Ms. Nancy I. Oxfeld, of Counsel)

DECISION AND ORDER

On February 16, 1978, a Unfair Practice Charge and Request for Interim Relief was filed with the Public Employment Relations Commission by the Belvidere Education Association (the "Association") alleging that the Belvidere Board of Education (the "Board") had engaged in unfair practices in violation of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Association alleges that the Board violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (7).^{1/} At the time the instant unfair practice charge was filed the Special Assistant to

1/ These subsections prohibit 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 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." The Commission's authority to grant interim relief in unfair practice cases is set forward in N.J.A.C. 19:14-9.1 et seq.

the Commission's Chairman declined to sign the proposed Order to Show Cause with temporary restraints submitted by the Association. A Complaint was issued on February 21, 1978. Thereafter, the parties agreed to waive an evidentiary hearing and a Hearing Examiner's Report and to submit this matter to the Commission for a decision on an expedited basis. A stipulation of fact was executed by the parties and this stipulation, along with the briefs submitted by counsel for each party, constitute the entire record in this case. A copy of this stipulation of fact is attached hereto and made a part hereof.^{2/}

The facts giving rise to the charge are not complex. Basically, the dispute concerns the Board's unilateral cancellation of a previous school closing (February 17, 1978) in order to partially recoup a deficiency concerning the student school year. This deficiency resulted from the fact that classes had to be cancelled nine times during the current school year due to inclement weather. Provision had only been made for two inclement weather cancellations in the school calendar. At the time of the Board's unilateral action, the Board would not have met the required 180 days of pupil instruction under the then existing school calendar.^{3/}

In its brief the Board advances several arguments in support of its right to act unilaterally and without prior negotiations under the circumstances in this case. Arguing that the

^{2/} The Board in its brief expressed some reservations regarding this procedure. In view of our disposition in this case, that reservation is moot.

^{3/} The 180 day minimum school year for pupils is undisputed. See Formal Opinion No. 19-1975, N.J. Attorney General, August 14, 1975.

emergent circumstances generated a need for swift action, the Board describes its action as a non-negotiable major educational policy decision designed to meet and remedy the emergency. The Board contends that it need not negotiate its decision regarding the scheduling of the school calendar. It further contends that the "impact" or effect of that decision on teachers' terms and conditions of employment, which it concedes is negotiable, does not include the actual days to be worked by the teachers. Additionally, the Board interposes as a defense for its unilateral action, certain language contained in the current collective negotiations agreement in effect between the parties.

Conversely, the Association's brief argues that the Board was required by law to negotiate its decision to require the affected teachers to work on a previously unscheduled day, in that the Board's action unilaterally changed terms and conditions of employment.^{4/} The Association also claims that the circumstances faced by the Board did not constitute emergent circumstances sufficient to excuse the claimed negotiations obligation. Finally, it is argued that the Board's action violated the terms of the parties' current collective negotiations agreement.

The pertinent facts and arguments submitted for a decision in this matter are very similar to those which we addressed in In re

^{4/} The Association cited our decision in In re Sayreville Board of Education, P.E.R.C. No. 78-41, 4 NJPER 71 (Para. 4034 1978) as support for its position. However, that case is inapposite because in Sayreville, the dispute involved work days outside of the days of pupil instruction.

Edison Township Board of Education, P.E.R.C. No. 78-53, 4 NJPER ____ (Para. ____ 1978), and decided this date. In Edison, we held that a board of education is not required to negotiate the school calendar and that negotiations regarding the employee work year, although required, are limited by the school calendar. The work year must coincide with days of pupil instruction as established by the board and 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.

We have carefully considered the entire record in this matter and we determine that, given the existing school calendar, the numerous cancellations of classes due to inclement weather, and the severity of the winter of 1977-78, of which we take administrative notice, the actions of the Board in this matter were reasonably designed to assure a school year with 180 instructional days. The parties' collective negotiations agreement does not affect this decision because, although it provides that the first make up day would be June 16 if the number of days falls below 180 due to emergency closings, it also contains an express reservation regarding the Board's right to make changes at its discretion, citing N.J.S.A. 18A:36-2.

Through the application of the legal principles enunciated in Edison, supra., and in view of the fact that the Board acknowledges its present duty to negotiate the effect of its decision on the affected teachers' terms and conditions of employment but not

the days to be worked, we find and determine that the actions complained of in the instant matter do not constitute a violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (7).

ORDER

For the above-stated reasons, the Commission hereby dismisses the instant complaint in its entirety.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hurwitz and Parcels voted for this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
March 16, 1978
ISSUED: March 22, 1978

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of :
BELVIDERE BOARD OF EDUCATION, :
Respondent, : DOCKET NO. CO-78-176-60
-and- : STIPULATION OF FACTS
BELVIDERE EDUCATION ASSOCIATION, :
Charging Party. :
:

The parties stipulate "all the essential facts" in the above entitled matter to be as follows:

1. The Respondent, Belvidere Board of Education (hereinafter the Board), is a public employer within the meaning of the New Jersey Employer-Employee Relations Act. The Charging Party, the Belvidere Education Association (hereinafter the Association), is an employee organization within the meaning of the Act and is the recognized majority representative for purposes of collective negotiations of all teaching staff members employed by the Board.

2. The parties are signatories to a collective negotiations agreement effective July 1, 1977 to June 30, 1978. A copy of this agreement is attached and made a part hereof.

3. In accordance with the procedures set forth in Article 7 of the aforementioned agreement (titled School Calendar), the Board adopted a School Calendar which in part set forth that school would be closed on Friday, February 17, 1978 as part of the Presidential weekend.

4. Said Calendar provided that the first day of the school

year would be September 7, 1977 and that the school year would end on June 15, 1978. Two (2) inclement weather or snow days were provided for within the School Calendar.

5. As of the present date, school has been closed on nine (9) days due to inclement weather, leaving seven (7) inclement weather days not provided for in the aforementioned Calendar.

6. On February 13, 1978, the Board adopted a resolution directing that one of the above seven (7) days be made up by cancelling the holiday of February 17, 1978 and compelling the concerned teaching staff members to work on this date. The Board did not negotiate the decision to cancel the February 17, 1978 holiday with the Association, nor did the Board negotiate the impact, if any, of its decision on the terms and conditions of employment of the affected teachers prior to its announcement on February 13, 1978.

7. On February 14, 1978, the Association requested negotiations with the Board concerning the decision to rescind the February 17, 1978 holiday as well as negotiations concerning "impact considerations" affecting unit members. The Board, through its representatives, refused to negotiate the issue of the School Calendar with the Association but affirmed that it would negotiate the impact issue with the Association.

8. No negotiations between the Board and the Association concerning the above issues took place prior to February 17, 1978. On that date school remained open and the teachers were required to be present on that date.

9. The parties further stipulate that pursuant to the Commission's rules the parties agree to waive an evidentiary hearing in the above entitled matter and further agree to waive an intermediate hearing examiner's report. This instant case will be the subject of a Commission decision based on the formal pleadings, the record pertaining to the Association's request for interim relief, the Stipulation of Facts and briefs to be submitted by the parties concerning their respective legal positions.

10. All briefs will be due promptly on or before Friday, March 3, 1978. The parties should file with the Commission an original and nine (9) copies of all briefs, together with proof of service of a copy of any brief upon the opposing parties.

FOR THE BELVIDERE BOARD OF EDUCATION

DATED

FOR THE BELVIDERE TEACHERS' ASSOCIATION
