

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHREWSBURY BOROUGH BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-81-75

SHREWSBURY BOROUGH TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission denies an application for a stay pending appeal of its decision and order in an unfair practice case. The Shrewsbury Borough Board of Education, which was found to have committed unfair practices in P.E.R.C. No. 81-119, 7 NJPER (¶ _____ 1981), sought to have the Commission stay its decision during the pendency of proceedings before Superior Court, Appellate Division which had been initiated by the Board through the filing of a notice of appeal. The Commission holds, in accordance with earlier decisions, where a party has commenced a proceeding in the Appellate Division to review a decision and order of the Commission, a stay or other similar relief should be sought from the Court rather than PERC.

P.E.R.C. NO. 81-140

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHREWSBURY BOROUGH BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-81-75

SHREWSBURY BOROUGH TEACHERS
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Atkinson & DeBartolo, Esqs.
(Bunce D. Atkinson, Esq.)

For the Charging Party, Greenberg & Mellk, Esqs.
(James F. Schwerin, Esq.)

DECISION ON APPLICATION FOR STAY PENDING APPEAL

On April 20, 1981, the Public Employment Relations Commission issued its Decision and Order in the above-entitled unfair practice proceeding. P.E.R.C. No. 81-119, 7 NJPER ____ (¶ ____ 1981). This matter was initiated by the filing of an Unfair Practice Charge by the Shrewsbury Borough Teachers Association (the "Association") against the Shrewsbury Board of Education (the "Board") alleging that the Board had committed an unfair practice pursuant to N.J.S.A. 34:13A-5.4(a)(1) and (5). The specific allegation of the Association was that the Board had violated the New Jersey Employer-Employee Relations Act by refusing to provide the Association with information relating to a grievance processed by a member of the Association's collective

negotiations unit individually and without the aide of an Association representative.

A clause in the grievance procedure which is part of the parties' collective negotiations agreement permits an individual to discuss a grievance informally with an appropriate member of the district's administrative staff and to attempt to adjust the grievance without the intervention of the Association. That process was followed by an individual teacher who was a member of the collective negotiations unit but had not chosen to become a member of the Association. The individual teacher and the Board were apparently able to satisfactorily adjust the grievance without the participation of the Association. Subsequent to the resolution of the grievance the Association requested information from the Board relative to the settlement of the grievance. The Board denied this request for the stated reason that the grievant was not a member of the Association and had not, according to the Board, consented to the disclosure of the information.

Subsequent to the issuance of a Complaint and Notice of Hearing, the Association filed a Motion for Summary Judgment arguing that it had a right to the information pertaining to the resolution of the grievance. The Board filed a cross-motion for Summary Judgment also on the legal question that the Board did not have an obligation to disclose the material absent the consent of the individual teacher involved. The Commission proceeded to decide the question on the basis of the motions for summary judgment.

In its Decision and Order, the Commission found that the Board had violated the Act. We held the majority representative had a right to information relating to the processing of a grievance as part of its responsibility to adequately represent all members of the collective negotiations unit. As part of that responsibility, it was important that the Association keep current on the application of the contract, Board policy and the resolution of matters which might have implications for other members of the collective negotiations unit or be similar to matters relevant to the employees. By way of remedy, the Commission ordered the Board to cease and desist from refusing to disclose pertinent information to the Association which it requires to perform its responsibilities as majority representative of the employees in the unit and affirmatively ordered the Board to disclose to the Association the pertinent information requested relevant to the grievance involved in this case.

On May 26, 1981, the Commission received a copy of a Notice of Appeal of the Decision and Order which had been filed by the Board in the Superior Court of New Jersey, Appellate Division. Thereafter, on June 1, 1981, the Commission received an application for a stay of its Decision and Order in this matter pending the disposition of the Board's appeal. The application was supported by an affidavit from the Board's attorney setting forth the reasons for seeking the stay pending appeal. On June 4, 1981 the Commission received an Affidavit in Opposition to the Request for a Stay filed on behalf of the Association. After review of the application and opposing documents, the Commission hereby determines to deny the request for a stay.

The Commission has previously set forth its general philosophy with respect to the appropriate forum in which a party should seek a stay pending appeal of a Decision and Order in an unfair practice proceeding. See, e.g., In re North Brunswick Twp. Board of Education, P.E.R.C. No. 79-26, 5 NJPER 19 (¶10011 1978). As indicated in those earlier decisions, the Commission believes, except in very unusual circumstances not present here, it is more appropriate for a party to seek a stay of a Commission decision by applying directly to the Appellate Division pursuant to Court Rule 2:9-7. ^{1/}

N.J.S.A. 34:13A-5.4(f), empowers the Commission to apply to the Appellate Division for an order enforcing orders issued in unfair practice proceedings. In Galloway Twp. Bd of Ed v. Galloway Twp. Ed Ass'n, 78 N.J. 25 (1978) at pages 33-37, the Supreme Court discussed PERC's role in seeking enforcement of its orders in unfair practice proceedings. In that discussion the Court noted that once the Commission has decided that an unfair practice has been committed PERC's role becomes prosecutorial in that it bears the primary responsibility to take all steps necessary to insure that compliance with its order is achieved.


^{1/} Court Rule 2:9-7 provides:

On or after the filing with the Appellate Division of a notice of appeal or a notice of motion for leave to appeal from a state administrative agency or officer, a motion for ad interim relief or for a stay of the decision, action or rule under review may be made to the Appellate Division.

Therefore, it is possible that the Commission could become a party to this appeal. Under these circumstances, it has been the Commission's policy that in most instances it would not be appropriate for it to grant a stay of an order the enforcement of which is its primary responsibility. It is for this reason that the Commission will generally direct parties to the procedures set forth by Court Rule 2:9-7.

For all of these reasons, the instant application for a stay is hereby denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin, Hartnett and Parcels voted for this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: June 9, 1981
Trenton, New Jersey
ISSUED: June 10, 1981