



STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD
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October 7, 1988

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Dear Mr. Sandler and Mr. Williams:

RE: Christina Education Assn., Inc., v. Board of Education
U.L.P. No. 88-09-026
Slip Decision on Request for Preliminary Injunction

The Board of Education of the Christina School District ("District") and the Christina Education Association, Inc. ("Association") are parties to a collective bargaining agreement for the period of September 1, 1987 through August 31, 1990. This agreement provides, in relevant part, at Article 18.4:

The employees normal in-school work day shall be seven continuous hours and shall normally fall between the hours of 7:30 a.m. and 4:30 p.m.

On or about July 26, 1988, the District's Assistant Superintendent for Personnel, Franklin Rishel, contract the Association Secretary/Treasurer, Dorothy Grzybowski, to solicit Association support for the District's proposal to change the starting time for teachers in six secondary schools to 7:15 a.m. During the hearing in this matter, Mr. Rishel explained that it was necessary to open these school earlier because of the District's inability to hire a sufficient number of part-time bus drivers, thereby requiring some of the District's buses to run triple routes in transporting students to and from school. Mr. Rishel requested that the Association cooperate with the District in altering the normal work day in the affected schools. Approximately two days later, Ms. Grzybowski advised Mr. Rishel by phone that, after having consulted with other members of the Association's Executive Board, the Association opted to stay with the contractually defined work day of 7:30 to 4:30. Mr. Rishel responded that he did not believe the District would be able to operate within the framework of Article 18.4.

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On the first day of the 1988-89 school year, September 6, 1988, the District implemented its proposed change in starting hours and required some teachers to report for duty at 7:15 a.m.

The Association filed an unfair labor practice charge with the Public Employment Relations Board alleging the District's action constitutes a willful failure to collectively bargain in good faith in violation of 14 Del.C. sections 4007(a)(3) and 4007(a)(5). Further, the Association seeks an order from this Board temporarily restraining the District from changing the starting and ending times agreed upon in the collective bargaining agreement. An expedited hearing was held on October 5, 1988. During this hearing the parties were provided with the opportunity to present oral argument concerning the Association's request for injunctive relief. It is this limited issue which is the subject of this slip decision.

In its decision on the request for preliminary injunctive relief in N.C.C.V.T. Education Assn. v. Bd. of Education (Del.P.E.R.B., Request for Preliminary Injunction, U.L.P. No. 85-05-025 (6/28/88, p.4)), the PERB clearly set forth that a charging party must establish that there is both a reasonable probability that it will prevail on the merits of the dispute and that it or its members will suffer irreparable harm if its request for injunctive relief is denied in order to prevail in its request for such relief. Further, failure to establish either element precludes the granting of the requested relief.

In the instant case the record is void of testimony or evidence concerning the harm suffered by the teachers who were required to report to school 15 minutes early. Nor is there evidence that harm will be done if injunctive relief is not ordered prior to the final resolution of this dispute. It is, therefore, impossible for the Board to determine whether irreparable harm has or will occur. This being the case, the Association has failed to carry its burden of proving that a denial of its request for relief will result in irreparable harm to its effected members. Having so concluded, it is unnecessary to consider whether or not there exists a reasonable probability that the Association will ultimately prevail in the pending unfair labor practice charge.

The request for preliminary injunction is therefore denied.

D. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Principal Assistant/Hearing Officer
Public Employment Relations Board

Charles D. Long, Jr. /dlm
CHARLES D. LONG, JR.
Executive Director
Public Employment Relations Board

DATED: October 7, 1988