

I.R. NO. 98-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAHWAH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-100

MAHWAH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee enters an interim order compelling the Mahwah Board of Education to pay its employees increments after the expiration of a two-year collective negotiations agreement with the Mahwah Education Association. The Designee rejects the Board's argument that a three-year salary policy was in effect and therefore, pursuant to N.J.S.A. 18A:29-4.1 increments could not be paid. The recently expired agreement was executed at a time when a prior agreement still had a year to run. Accordingly, the Board contends these two contracts should be read together to establish one, three year salary policy.

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Appearances:

For the Respondent,
Sullivan & Sullivan, attorneys
(Mark Sullivan, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

INTERLOCUTORY DECISION

On September 19, 1997, the Mahwah Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Mahwah Board of Education committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} of the Act when upon the expiration of the most recent

^{1/} These subsections 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. (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."

collective negotiations agreement between the parties, a two-year agreement, the Board refused to pay increments as per the terms of that contract.

The unfair practice charge was accompanied by an application for interim relief. An order to show cause was executed and a hearing was conducted on October 8, 1997. Both parties filed affidavits, exhibits and briefs and argued orally.

It is undisputed that the parties had previously entered into a collective negotiations agreement effective July 1, 1992 through June 30, 1995. On April 18, 1994, the parties entered into a successor agreement effective July 1, 1995 to June 30, 1997. Both agreements cover both teaching staff and non-teaching staff. Both agreements provide salary structures which include salary increments based upon years of service. The parties are now negotiating for a successor agreement to the 1995-1997 contract.

It is the Board's position that N.J.S.A. 18A:29-4.1, as interpreted by the Supreme Court in Neptune Board of Education, 144 N.J. 16 (1996), prohibits it from paying increments pending negotiations as demanded by the Association.

Specifically, N.J.S.A. 18A:29-4.1 provides:

A board of education of any district may adopt a one, two or three year salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of one, two or three years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by

such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments.

The Board argues a three-year salary structure as memorialized in two contracts was in effect as of April 18, 1994. It cannot now pay increments to teaching staff.

The Association maintains that the 1995-1997 contract stands on its own. It is a two-year agreement and Neptune only prohibits payment of increments beyond three years. Accordingly, unit members are entitled payment of increments pending the negotiations for a new contract.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

I am not persuaded by the Board's argument that the two contracts must be read together and accordingly there was a three-year salary policy in effect.

If, as the Board urges, the two contracts are read together, there would be a five-year salary policy in effect which is illegal under N.J.S.A. 18A:29-4.1. Even when viewed prospectively, as of April 18, 1994, the date the successor agreement was signed, there would be a three-year, two month policy, (from April 18, 1994 to June 30, 1997) which again would be illegal under Title 18A. These two contract must be read separately and independently. If the Commission were to find two such consecutive contracts should be read together to create one policy, no employee representative would be willing to sign an agreement prior to the expiration of the existing agreement. Such a result would undermine labor relations stability and be contrary to the policy of the Act.

Here, the most recent contract created a salary policy for two years and contains a salary increment structure based upon years of service.

The refusal to pay increments is a unilateral alteration of the status quo and a per se illegal refusal to negotiate in good faith. Such conduct so interferes with the negotiation process that a traditional remedy at the conclusion of the hearing process would not effectively remedy the violations of the Act. Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3, 4 (¶26001 1994); Ramapo-Indian Hills Bd. of Ed., I.R. No. 97-8, 22 NJPER 386 (¶27207 1997).

Accordingly, I believe the charging party has a substantial likelihood of prevailing on the law here and I will enter an order compelling the Mahwah Board of Education to pay increments to

its non-certificated employees pursuant to the most recent collective negotiations agreement.

ORDER

It is **ORDERED** that the Mahwah Board of Education pay to all certificated and non-certificated employees covered by the July 1, 1995 to June 30, 1997 collective negotiations agreement incremental pay increases due on July 1, 1997 for 12 month employees and September 1, 1997 for 10 month employees.



Edmund G. Gerber
Commission Designee

DATED: October 17, 1997
Trenton, New Jersey