I.R. NO. 95-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EVESHAM TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-95-30

EVESHAM TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee enters an interim order compelling the Evesham Township Board of Education to pay salary increments due under the recently expired collective negotiations agreement pending negotiations for a new contract. The Board did not dispute it did not pay these increments but rather it claims it had no obligation to do so.

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Appearances:

For the Respondent,
Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel)

For the Charging Party,
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

INTERLOCUTORY DECISION

On October 5, 1994, the Evesham Township Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Evesham Township Board of Education engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (5) and (7).[1/] The Association alleges

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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. (7) Violating any of the rules and regulations established by the commission."

that during negotiations for a successor agreement to the recently expired 1992-1994 agreement, the Board unilaterally changed terms and conditions of employment by refusing to advance unit members to the next step of the 1993-1994 salary guide as of July 1, 1994.

The Association also filed an Order to Show Cause which was executed and made returnable for October 19, 1994. A hearing was conducted on that date.

The Board admits that it refused to pay the salary increments contained in the expired contract. It argues that, "the prevailing law in New Jersey on the issue, set forth in Galloway Township Bd. of Ed. v. Galloway Township Ed. Ass'n, 78 N.J. 25 (1978),...must be reconsidered and overturned because it is based upon an erroneous interpretation of N.J.S.A. 18A:29-4.1."

It further argues that the Association has failed to establish that it will suffer irreparable harm and, as a matter of policy, "blind adherence to the Galloway decision" ignores the economic reality confronting boards of educations and hinders, rather than helps, the collective bargaining process in New Jersey.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

relief, the relative hardship to the parties in granting or denying the relief must be considered.[2/]

The Township seeks to re-examine the Galloway decision. It argues that the Court,

> ...was compelled by operation of N.J.S.A. 18A:29-4.1 to include the salary schedule [of an] expired collective negotiations agreement as the status quo because that statutory provision makes payment of salary increments 'automatic' upon the start of a new school year...However this reading of N.J.S.A. 18A:29-4.1 is not only incorrect but contradicted by a subsequent decision of the Supreme Court. See e.g., Probst v. Haddonfield Board of Education, 127 N.J. 518 (1991)."
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> [Respondent brief at p. 6.]

I disagree.

The case law now being challenged was first adopted by the Commission almost twenty years ago. The New Jersey Supreme Court adopted this concept in Galloway. The Court in Galloway found that the language of N.J.S.A. 34:13A-5.3 ("Proposed new rules or modifications of existing rules governing working conditions shall be negotiated before they are established") requires an employer to preserve the status quo during negotiations. In interpreting this statutory language, the Court looked to private sector labor law principles; specifically, those announced in N.L.R.B. v. Katz, 386 U.S. 736, 743-747 (1962).

2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

The Court in Galloway stated:

> Indisputably, the amount of an employee's compensation is an important condition of his employment. If a scheduled annual step increment in an employee's salary is an "existing rule governing working conditions," the unilateral denial of that increment would constitute a modification thereof without the negotiation mandated by N.J.S.A. 34:13A-5.3 and would thus violate N.J.S.A. 34:13A-5.4(a)(5). Such conduct by a public employer would also have the effect of coercing its employees in their exercise of the organizational rights guaranteed them by the Act because of its inherent repudiation of and chilling effect on the exercise of their statutory right to have such issues negotiated on their behalf by their majority representative.
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> We must accordingly determine whether payment of the salary increment withheld by the Board constituted an element of the status quo whose continuance could not be disrupted by unilateral action. The answer to this question turns, to some extent, on whether the annual step increments in the teachers' salaries were "automatic," in which case their expected receipt would be considered as part of the status quo, or "discretionary," in which case the grant or denial of the salary increases would be a matter to be resolved in negotiations.
> [Id. at p. 49.]

The Commission, as affirmed by the Courts, has consistently ruled that when a contract provides for the automatic payment of increments, payment is part of the status quo which must be maintained during negotiations. Hudson Cty Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt No. A-2444-77 (4/9/79) aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978); Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd and modified App. Div. Dkt No. A-1572-79 (4/1/81); State of New Jersey,

I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); City of Vineland, I.R. No. 81-1, 7 NJPER 234 (¶12142 1981), interim order enforced and leave to appeal denied App. Div. Dkt No. A-1037-80T3 (7/15/81); Belleville Bd. of Ed., I.R. No-87-5, 12 NJPER 629 (¶17262 1980); Hunterdon Cty Bd. of Social Services, I.R. No. 87-17, 13 NJPER 215 (¶18091 1987); Township of Marlboro, I.R. No. 88-2, 13 NJPER 662 (¶18250 1987); Borough of Palisades Park, I.R. No. 87-21, 13 NJPER 260 (¶18106 1987); Sheriff of Middlesex Cty., I.R. No. 87-19, 13 NJPER 251 (¶18101 1987); County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); County of Sussex, 17 NJPER 234 (¶22100 1991); Burlington County, I.R. No. 93-2, 18 NJPER 405 (¶23184 1992); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993).

However, where an incremental structure is not automatic, the Commission will not order the payment of increments. Monmouth Cty. Sheriff, I.R. No. 91-13, 17 NJPER 179 (¶22077 1991); Hudson Cty. Sheriff, I.R. No. 92-13, 18 NJPER 106 (¶22051 1991); Township of Cedar Grove, I.R. No. 91-14, 17 NJPER 232 (¶23051 1991); Ocean Cty. Sheriff, P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986).

The Court in Galloway relied on Katz and the private sector model. It looked to section 4.1 only to determine if increments were discretionary or automatic. Since Galloway, the Commission, with confirmation by the Courts, has applied Galloway to situations where Title 18A does not apply. See Rutgers and Irvington.

When Galloway was issued, N.J.S.A. 18A:29-4.1 required boards of education to pay annual increments to teachers. Although

this statute has been changed and section 4.1 no longer requires the payment of increments, it is also true that section 4.1 does not prohibit the creation of a contractual obligation to pay automatic increments.

The Board argues that Probst v. Haddonfield Bd. of Ed., 127 N.J. 518 (1991) contradicts Galloway. However, Probst simply holds that the new Section 4.1 in Title 18A should be read in pari materia with Section 14.[3/] In Galloway, the Court by inference made the same observation. It states at p. 50, footnote 10: "There is no allegation in this case that the increment(s) for all teachers in the school system were withheld for cause pursuant to N.J.S.A. 18A:29-14."

The Board also argues that changing economic times requires the abandonment of the status quo. The Commission and the Courts have considered and rejected such defenses to similar requests for interim relief. County of Bergen; Rutgers; Hudson County; Galloway; County of Sussex, I.R. No. 91-15, 17 NJPER 234 (¶22101 1991).

The very act of unilaterally modifying a particular term and condition of employment contradicts the meaning of collective negotiations, since ordinarily (before impasse) one cannot unilaterally act and still collectively negotiate about the same subject. Having demonstrated a unilateral change in the status quo, the Association has also proven a per se illegal refusal to

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3/ Section 14 provides that a board of education may withhold an increment for cause.

negotiate in good faith which so interferes with the negotiations process and adversely affects the ability of a majority representative to represent unit members that a traditional award at the conclusion of this case would not effectively remedy the violations of the Act. See Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶14007 1977).

The Board's arguments fail to pursuade me to deviate from long-standing Commission and Court precedent.

Accordingly, I ORDER the Respondent, Evesham Township Board of Education, to immediately pay to those eligible employees the salary increment due to them pursuant to the incremental salary structures in the parties' expired collective negotiations agreement (July 1, 1992 through June 30, 1994).

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: October 28, 1994
Trenton, New Jersey