

I.R. NO. 98-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF EAST HANOVER,

Respondent,

-and-

Docket No. CO-98-42

EAST HANOVER EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In a matter brought by the East Hanover Education Association, a Commission Designee entered an interim order requiring the Board of Education of East Hanover to pay increments to non-certificated personnel. The parties most recent collective negotiations agreement had expired and pursuant to Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996) certificated personnel covered under the expired agreement were not entitled to increments. The Board argued that paying increments to non-certificated employees would have a chilling effect on negotiations since the certificated and non-certificated employees would be treated differently even though they are covered by the same collective negotiations agreement. However, in Neptune, the Court found non-teaching staff members were not barred from receiving increments.

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Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Lawrence S. Schwartz, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel
Linda Ganz Ott, on the brief)

INTERLOCUTORY DECISION

On August 4, 1997, the East Hanover Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board of Education of the Township of East Hanover committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} when after the collective

^{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."

negotiations agreement between the parties expired on June 30, 1997, the Board refused to pay annual incremental salary increases to non-certificated personnel in the negotiations unit.

An application for interim relief and an order to show cause was filed with the charge. The show cause order was executed and made returnable for August 27, 1997. A hearing was conducted on that date.

It is not disputed that the Association and Board were parties to a collective negotiations unit for both certificated and non-certificated personnel including secretaries, bookkeeper-receptionist, clerk typist, maintenance, custodian and groundsmen in both ten and twelve month positions. The most recent contract was for the period July 1, 1994 to July 30, 1997. The expired contract provided for annual salary increases based upon the years of service. The parties are in negotiations for a successor agreement.

Twelve month non-certificated employees have not received incremental salary increases and the Board has stated it will not pay annual salary increments to ten month employees when they return to work in September 1997.

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).

It is the Board's position that it would be illegal for it to pay salary increments to its non-certificated personnel. It argues that since it is prohibited from paying increments to certificated personnel pursuant to Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996) if it were to pay increments to non-certificated employees it "would have a chilling effect on negotiations given that the teaching staff members and non-certificated employees are represented by a single majority representative and both groups are covered by the same collective negotiations agreement" (employer's brief at page 2).

Prior to Neptune, the Commission, following Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978), consistently held that good faith negotiations requires the maintenance of established terms and conditions of employment, i.e. the status quo and the payment of increments is part of the status quo. 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).; 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).

Neptune did not overturn Galloway. Rather, it interpreted N.J.S.A. 18A:29-4.1 to find that teaching staff members were not entitled to receive automatic increments after the expiration of a three year agreement.

The Court stated:

To the extent that any of the litigants in this case are not 'teaching staff members' then the

prohibition against increments in N.J.S.A. 18A:29-4.1 does not apply. Contracts with those employees should be governed by labor law only since no education law preempts that general rule. Id. at 30.

Nothing in Neptune leads me to believe the Commission will alter its long standing precedent.^{2/} Accordingly, I believe the charging party has a substantial likelihood of prevailing on the law here and I will enter an order compelling the East Hanover 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 East Hanover Board of Education pay to all non-certificated employees covered by the July 1, 1994 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: September 9, 1997
 Trenton, New Jersey

^{2/} The Board cites a commission designee's decision in Essex County Vo-Tech, I.R. 97-4, 22 NJPER 343 (¶27178 1996) where the designee declined to enter an interim order in a mixed unit. However, the unit at issue in Neptune was apparently a mixed unit and I am not persuaded by the reasoning in Essex.