I.R. NO. 2000-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2000-89

CAMDEN CITY FEDERATION OF SCHOOL ADMINISTRATORS, LOCAL 39,

Charging Party.

SYNOPSIS

The collective agreement between the Camden City Board of Education and the Camden City Federation of School Administrators, Local 39 expired on June 30, 1999. The parties are currently engaged in successor negotiations. The Board has refused to pay increments to unit employees. The Commission designee, relying upon Galloway, ordered the Camden City Board of Education to pay increments to unit employees, retroactive to the start of the school year. He rejected the Board's arguments that Neptune should be read to prohibit it from paying increments. The Commission designee found that the recently expired agreement covered a period of two years; therefore, Neptune does not control.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2000-89

CAMDEN CITY FEDERATION OF SCHOOL ADMINISTRATORS, LOCAL 39,

Charging Party.

Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(Karen A. Murray, of counsel)

For the Charging Party,
Tomar, Simonoff, Adourian, O'Brien, Kaplan, Jacoby & Graziano, attorneys
(Mary L. Crangle, of counsel)

INTERLOCUTORY DECISION

On October 18, 1999, the Camden City Federation of School Administrators, Local 39 (Federation or Charging Party) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Camden City Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1) and (5).[1/] The unfair practice charge was accompanied by an application for interim relief. On October 20, 1999, an order to show cause was executed and a return date was initially scheduled for November 9, 1999, and, subsequently, rescheduled to November 30, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The Federation is the majority representative of a unit of administrators. The Board and the Federation have been parties to a series of collective negotiations agreements over an extended period of time. The most recent agreement covered the period July 1, 1997 through June 30, 1999. The expired agreement provided for the payment of annual salary increments based on years of service as set forth in the negotiated salary guide. The parties are currently engaging in successor negotiations. At the negotiations session held on July 12, 1999, the Board informed the Federation that increments would not be paid on July 1, 1999. The Board told the Federation, inter alia, that a predecessor July 1, 1996 through June

---

1/ These provisions 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.

30, 1997 collective agreement merely constituted an "interim" agreement, and the Board expressed concern about the high cost of the increment.

After the expiration of the 1993-1996 agreement, the parties engaged in lengthy negotiations, including mediation, in an effort to achieve a successor agreement. On November 5, 1997, at the urging of the mediator, the parties executed a memorandum of agreement providing for all terms and conditions of employment to remain unchanged for the 1996-1997 school year, except that the administrators would receive a 4% salary increase, inclusive of increments. Paragraph four of the memorandum of agreement states:

> The parties agree to continue negotiations for a successor agreement. By no later than December 15, 1997 the parties shall agree on the composition of the bargaining unit represented by the Federation. By no later than December 8, 1997 the Board shall supply the Federation with a list of all new titles created by the Board as of April 30, 1997 forwarded with an indication of their position as to whether the title is included or excluded from the Federation represented bargaining unit.

On the basis of paragraph four, the Board contends that the 1996-1997 memorandum merely constituted an interim agreement so as to allow the Board to provide the administrators with a salary increase in light of the upcoming holiday season and yet be able to continue to negotiate for an overall three-year collective agreement. The parties continued to negotiate with the assistance of a mediator and, in April 1998, the parties reached a settlement for the 1997-1998 and 1998-1999 school years.

The Board and the Federation have previously entered into collective agreements with both a two and three year duration.

The Federation contends that the reason for entering into a one-year agreement for July 1, 1996 through June 30, 1997 and the basis for inclusion of paragraph four in the memorandum was because the Camden County Superintendent of Schools insisted upon the reorganization of administrative positions resulting in the abolishment of many titles represented by the Federation, effective July 1, 1997. Thus, when the memorandum was entered into in November 1997, the composition of the administrators collective negotiations unit was unsettled. Moreover, the Board expressed the position that inclusion of any newly created title in the administrators unit was subject to negotiation. The Federation asserts that it was not until the conclusion of the negotiations for the 1997-1999 agreement, in April 1998, that the parties were able to agree on the titles included in the negotiations unit and the salary guides applicable to both old and newly created titles.

On November 24, 1997, the Board passed Resolution #4 which ratified the memorandum of agreement signed by the parties on November 5, 1997.[2/] The Resolution states the following:

2/ The record shows that on December 1, 1997, the Board's attorney sent the Federation's attorney a copy of the Board's ratification resolution approving the 1996-1997 memorandum of agreement. The last paragraph of the Resolution states that it is the Camden City Federation of

Footnote Continued on Next Page

WHEREAS, the Board of Education of the City of Camden and the Camden City Federation of School Administrators reached a settlement agreement through mediation on November 5, 1997 for a successor agreement to the collective bargaining agreements for the Administrative Staff which expired on June 30, 1996; and

WHEREAS, the settlement agreement provides for the salaries and other terms and conditions of employment for the employees represented by the Camden City Federation of School Administrators for the period of July 1, 1996 through June 30, 1997; and

WHEREAS, the terms of the negotiations settlement are set forth in the Memorandum of Agreement, signed by both parties' on November 5, 1997; the original of which is on file in the Board Secretary's office; and

WHEREAS, the Memorandum provides that the terms and conditions of employment will remain status quo for the 1996-97 school year and that the Administrators will receive an increase of 4.0%, inclusive of increment, for the 1997-98 school year; and

WHEREAS, the Camden City Federation of School Administrators, prior to this resolution being considered, has ratified the terms for the settlement agreement on November 17, 1997; and

---

2/ Footnote Continued From Previous Page

School Administrators ratifying the memorandum of agreement rather than the Board. In paragraph 4 of the resolution it states that the administrators will receive an increase of 4% for the 1997-1998 school year. In correspondence between the respective parties' attorneys dated December 4, 1997, the Board's counsel confirms that the Board's resolution approving the 1996-1997 memorandum of agreement which was sent under cover letter dated December 1, 1997 has a typographical error and references paragraph four of the resolution indicating that the incorrect school year was used. Accordingly, I find that Resolution #4 is the Board's resolution not the Federations.

> NOW, THEREFORE, BE IT RESOLVED, that the Camden City Federation of School Administrators hereby ratifies the Memorandum of Agreement which sets forth the wages and terms and conditions of employment for the employees represented by the Camden City Federation of School Administrators for the period of July 1, 1996 through June 30, 1997. As set forth above. (Amendment)

On April 29, 1998, the Board ratified the 1997 through 1999 collective agreement. Resolution #7 reads as follows:

> WHEREAS, the Board of Education of the City of Camden and the Camden City Federation of School Administrators, Local No. 39, reached a settlement agreement on April 2, 1998 for a successor agreement to the collective bargaining agreement, which expired on June 30, 1997; and
>
> WHEREAS, the settlement agreement provides for the salaries and other terms and condition of employment for the employees represented by the Camden City Federation of School Administrators, Local No. 39 for the period July 1, 1997 through June 30, 1999; and
>
> WHEREAS, the terms of the negotiations settlement are set forth in a Memorandum of Agreement, signed by both parties' negotiations team, the original of which is on file in the Board Secretary's office; and
>
> WHEREAS, the Memorandum provides for a total economic package, which includes salary increases, of 4.25% for 1997-1998 and 4.25% for 1998-99; and
>
> WHEREAS, the Camden City Federation of School Administrators, Local No. 39 prior to this resolution being considered, has ratified the terms of the settlement agreement on April 20, 1998; and
>
> NOW, THEREFORE, BE IT RESOLVED, that the Camden Board of Education hereby ratifies the Memorandum of Agreement which sets forth the wages and terms and conditions of employment for the employees represented by the Camden City Federation of School Administrators, Local No. 39, for the period of July 1, 1997 through June 30, 1999.

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).

The Board contends that in November 1997, the parties entered into an interim agreement, concerning salary only, for the 1996-1997 school year. The parties then immediately continued to negotiate with respect to terms and conditions of employment for the next two years covering the period July 1, 1997 through June 30, 1999. Ultimately, the parties reached an agreement covering the 1997-1999 period. The Board argues that the 1996-1997 interim agreement and the 1997-1999 successor agreement created a collective negotiations agreement covering a three-year term. The Board claims that upon the expiration of this three-year agreement on June 30, 1999, the Board, pursuant to Bd. of Ed. of the Township of Neptune v. Neptune Tp. Ed. Assn., et al., 144 N.J. 16 (1996) is now prohibited from paying increments to unit employees.

Applying fundamental canons of contract construction to determine whether the parties had entered into two separate contracts, the first with a one-year duration, the second with a two-year duration, or a single three-year contract, one must attempt to derive the intent of the parties. If no subjective intent is apparent or ascertainable, that intent must be based on the objective language of the contract. State Troopers Fraternal Assn. v. State of New Jersey, 149 N.J. 38, 49 (1997). In this case, the subjective intent appears to be in dispute. The Board claims that the 1996-1997 memorandum was merely an interim agreement; the Federation disagrees. The language contained in the memorandum references a term of agreement of July 1, 1996 through June 30, 1997. It preserves all other terms and conditions of employment for the duration of the memorandum. Resolution #4 speaks in terms of "... a successor agreement to the collective bargaining agreements for the administrative staff which expired on June 30, 1996 ...." It states that "the terms of the negotiations settlement are set forth in the memorandum of agreement ...." and that the memorandum "... provides that the terms and conditions of employment will remain status quo for the 1996-1997 school year ...."

In Cty. of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. den., P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980), the Commission adopted the Director of Representation's finding that a memorandum of agreement will be considered sufficient to act as a contract bar to a representation petition if it contains

substantial terms and conditions of employment and if it has been ratified, where ratification is required by its terms. In City of Wildwood, D.R. No. 88-22, 14 NJPER 77 (¶19028 1987), the Director found that a memorandum of agreement would serve as a contract bar to a representation petition where the parties had signed and ratified the memorandum which covered, and incorporated by reference, essentially all terms and conditions of employment including a salary increase based on a percentage.

In the instant case, both parties ratified the memorandum of agreement and agreed to maintain the status quo on all existing terms and conditions of employment, and the Board proceeded to pay the salary increase in compliance with the terms of the memorandum. Likewise, the agreement covering the period July 1, 1997 through June 30, 1999 specifies within the four corners of the agreement all terms and conditions of employment including unit employees' compensation program. Article XXI, Duration of Agreement, provides that the agreement will be effective July 1, 1997 through June 30, 1999, unless an extension is agreed to by both parties and expressed in writing. The language of Resolution #7 references the 1997-1999 agreement to serve as a successor to "...the collective bargaining agreement which expired on June 30, 1997...." I find nothing in the 1997 through 1999 agreement that references the 1996 - 1997 memorandum. Accordingly, I reject the Board's contention that the parties entered into a three-year collective agreement for the period 1996 - 1999 and find that the 1996 - 1997 memorandum operates as a separate one-year collective agreement; and I find that the

1997 - 1999 collective agreement likewise stands on its own as a two-year contract. Therefore, the Board's contention that it is precluded under Neptune from paying increments under a salary program which exceeds three years must, likewise, be rejected.

Alternatively, the Board argued that under Neptune's rationale it is prohibited from paying increments even where the duration of the collective agreement is less than three years. The Board argued that the plain language of the statute, N.J.S.A. 18A:29-4.1, provides that a Board may enter into a "one, two **or** three" year salary schedule (emphasis in original). The Board claims that the Neptune Court determined that the statute prohibited the Neptune Board from paying increments beyond the expiration of the contract. Thus, the Board here asserts that the statutory changes mandate the conclusion that the statute prohibits the paying of increments upon the expiration of the parties' "one, two **or** three" year contract (emphasis in original), and, therefore, that the statute prohibits the paying of increments beyond the expiration of a two-year contract. Additionally, the Board argues that in Neptune, the Legislature's purpose supports a finding that the Board is prohibited from paying increments beyond the expiration of a two-year agreement.

There have been prior cases where a board of education, relying upon Neptune, had refused to pay increments to employees after the expiration of a two-year collective agreement. In Mahwah Bd. of Ed., I.R. No. 98-8, 28 NJPER 593 (¶28290 1997), the Commission Designee ordered the payment of increments to unit employees after the expiration of a two-year agreement. Likewise,

in Waldwick Bd. of Ed., I.R. No. 99-6, 24 NJPER 498 (¶29231 1998), the Board was also ordered to pay unit employees increments after the expiration of a two-year agreement. Consequently, following Waldwick and Mahwah I reject the Board's argument that it is precluded from paying increments to unit employees after the expiration of a two-year collective agreement. Accordingly, I find that the Federation has established a substantial likelihood of success in a final Commission decision.

Under Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978), the Commission has consistently held that good faith negotiations requires the maintenance of established terms and conditions of employment, i.e., the "dynamic status quo", and the payment of increments as part of that status quo. The refusal to pay increments has been found under Galloway to constitute a unilateral alteration of the status quo and a refusal to negotiate in good faith. Historically, the Commission has found that such conduct so interferes with the negotiations 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 and Hudson Cty PBA Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd NJPER Supp.2d 62 (¶44 App. Div. 1979); Rutgers, the State University and Rutgers University College Teachers Association, et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp.2d 96 (¶79 App. Div. 1981); City of Vineland and Vineland PBA 266, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981); Belleville Bd. of Ed., I.R. No. 87-5, 12 NJPER 692 (¶17262

1986); 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 (¶18107 1987); Middlesex Cty. Sheriff, 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, I.R. No. 91-15, 17 NJPER 234 (¶22101 1991); Burlington County, I.R. No. 93-2, 18 NJPER 406 (¶23185 1992); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993).

In accordance with Galloway, irreparable harm exists when an employer refuses to apply automatic increments because such action changes the established terms and conditions of employment. Galloway held:

> Indisputedly, the amount of an employee's compensation is an important condition of ...employment. If a scheduled annual step increment in an employee's salary is an 'existing rul[e] 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-5.4a(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. [78 N.J. at 49.]

Pursuant to the traditional application of Galloway to the circumstances in this case, I find that the Federation has established that it will suffer irreparable harm as the result of the Board's failure to pay increments.

In balancing the parties relative hardship, I find that the chilling effect of the Board's failure to pay increments and the irreparable harm which the Charging Party suffers as the result of the Board's action during the course of negotiations outweighs any harm suffered by the Board as the result of maintaining the status quo by granting increments to unit employees.[3/]

ORDER

It is ORDERED that the Camden City Board of Education pay all unit employee increments retroactive to the first pay period as appropriate for 10 or 12 month employees for school year 1999-2000. This interim order will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.

Stuart Reichman
Commission Designee

DATED: December 9, 1999
Trenton, New Jersey

3/ During oral argument the Board asserted that it would suffer significant financial hardship as the result of an order directing it to pay increments to unit employees, however no affidavits or other documentation was submitted in support of that assertion.