I.R. NO. 96-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLORHAM PARK BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-96-4

FLORHAM PARK EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On July 14, 1995, the Florham Park Education Association filed an unfair practice charge against the Florham Park Board of Education alleging the Board engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5)[1/] when on

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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

June 30, 1995, after the expiration of the collective negotiations agreement between the parties, the Board announced its intention to freeze salaries at their 1994-95 level and refused to pay salary increments.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and made returnable for August 2, 1995. A hearing was conducted on that date.

It is undisputed that the most recent collective negotiations agreement between the parties expired on June 30, 1995. The contract provided for a salary structure with increments. The increments were keyed to letter designations, A through O. A separate salary conversion chart keyed years of experience to the letter designations on the salary guide. The conversion chart compressed the salary guide over the life of the contract. Accordingly, the relationship between years of experience and steps on the salary guide changes from year to year. By way of example, in 1992-93 only teachers with one year experience were on the first step, "O." In 1993-94, teachers with one and two years experience were on the "O" step and in 1994-95, teachers with one, two and three years experience were all at "O." This clustering of years of experience with a letter designation is not uniform throughout the guide. For example, in 1994-95 only teachers with four years of experience were on the "N" step whereas teachers with 18, 19 and 20 years experience were all on the "C" step.

The Board argues that "stasis rather than movement on the steps was a prevailing term and condition of employment at the time the Agreement expired. The fact that this term and condition may change in the future may not affect the status quo during negotiations" (Board's brief p. 4).

The Association argues that the salary conversion chart does not survive the Agreement; the Commission should only look to the salary guide which pre-existed and survives the conversion chart (and the contract) and constitutes a term and condition of employment. In the alternative, it argues that if the salary guide should be read in conjunction with the conversion chart, increments should be paid in accordance with the conversion chart.

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/]

2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 54 (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 37 (1975).

The Association has not demonstrated it has a substantial likelihood of success in prevailing on the facts in this matter. It is not clear on the record before me how or if the contract created a term and condition of employment which survives the expiration of the contract. Ocean County Sheriff's Dept., PBA Local 258 v. Ocean County Bd. of Chosen Freeholders, et al., P.E.R.C. No. 86-107, 12 NJPER 341, 347 (¶17130 1986); Hudson County Sheriff's Officers, PBA Local 334 v. Hudson County Sheriff, et al., H.E. No. 93-2, 18 NJPER 384, 387 (¶23173 1992), aff'd P.E.R.C. No. 93-56, 19 NJPER 64 (¶24029 1992).

The Application for Interim Relief is denied. This matter shall go forward to a full plenary hearing.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: August 10, 1995
Trenton, New Jersey