

I.R. NO. 97-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY VOCATIONAL AND  
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-97-29

SCHOOL EMPLOYEES ASSOCIATION OF  
ESSEX VO-TECH,

Charging Party.

---

ESSEX COUNTY VOCATIONAL AND  
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-97-32

ESSEX COUNTY VOCATIONAL  
EDUCATION ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Commission Designee orders the Essex County Vocational and Technical Board of Education to pay increments to its employees represented by the School Employees Association after the expiration of the parties 1994-96 collective agreement, pending negotiations for a new contract.

The Commission Designee denied the Education Association's request that the Board be ordered to pay increments for the non-certificated employees it represents in a unit that also includes teaching staff members. In view of Neptune Twp. Bd. Ed. v. Neptune Twp. Ed. Assoc., et al., 144 N.J. 16 (1996), the Designee held that issues of law were raised warranting consideration by the full Commission.

I.R. NO. 97-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY VOCATIONAL AND  
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-97-29

SCHOOL EMPLOYEES ASSOCIATION OF  
ESSEX VO-TECH,

Charging Party.

---

ESSEX COUNTY VOCATIONAL AND  
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-97-32

ESSEX COUNTY VOCATIONAL  
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

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

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

INTERLOCUTORY DECISION

On July 23, 1996, and July 26, 1996, the School Employees Association, and the Essex County Vocational Education Association, respectively, filed unfair practice charges against the Essex County

Vocational and Technical Board of Education, alleging that the Board violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A 34:13A-1 et seq.<sup>1/</sup> Both unions allege that the Board violated the Act by failing to pay salary increments for the 1996-1997 school year commencing on July 1, 1996, after expiration of their respective collective agreements.

Both charges were accompanied by applications for interim relief with supporting documents. An Order to Show Cause was executed and made returnable for August 28, 1996. The Board submitted its responses in opposition to the applications on August 22, 1996. A consolidated hearing was held on the return date.

CO-97-29

The School Employees Association represents in a separate unit, all custodians, maintenance workers, security guards and truck drivers employed by the Board. The most recent collective agreement covering those employees was effective from July 1, 1994 through June 30, 1996. That agreement contained salary guides with numerous steps, and there was no dispute that employees automatically moved

---

<sup>1/</sup> 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."

from one step to another each succeeding year. The parties have not reached a new collective agreement, but negotiations are continuing. By July 15, 1996, the Board had refused to pay those employees their increments for the 1996-97 school year.

CO-97-32

The Education Association represents all secretaries, aides and clerical employees employed by the Board in a negotiations unit that includes all teachers and other certificated employees. Although these parties issue two separate collective agreements, one for the secretaries, aides and clerical employees, and one for teachers and other certificated (professional) employees, there is no dispute that they are all included in one negotiations unit. The Education Association negotiates for all unit members (professional and non-professional) at the same time.

The most recent collective agreements covering both the professional and non-professional employees were effective from July 1, 1993 through June 30, 1995. Those agreements contained salary guides with numerous steps, and there was no dispute that employees automatically moved from one step to another each succeeding year.

These parties have been negotiating for new agreements since March 1995. They have completed both mediation and fact-finding, but have yet to reach new agreements. In July 1995, the Board paid increments to all the employees in the unit for the 1995-96 school year based upon the expired 1993-95 agreements, but

as of July 1996, the Board has refused to pay increments for any employees in the unit for the 1996-97 school year. The Education Association's application only seeks increments for the secretaries, aides and clerical employees in its unit.

The Board does not deny that it refused to pay the increments. It argues, however, that based upon the State Supreme Courts recent decision in Board of Education of the Township of Neptune v. Neptune Township Education Association, et al., 144 N.J. 16 (1996), neither the School Employees Association, nor the Education Association, established a substantial likelihood of success or irreparable harm to warrant the grant of interim relief.

In Neptune, the Court held that pursuant to N.J.S.A. 18A:29-4.1, teaching staff members were not entitled to receive automatic increments after the expiration of their three year agreement. In that case custodians were affiliated with, but represented in a distinctly separate unit from the teaching staff members. The Court held that since N.J.S.A. 18A:29-4.1 did not apply to the custodial group, labor law, not education law, applied to them, and pursuant to labor law they were entitled to their increments.

Although the Board recognized that the holding in Neptune was limited to "teaching staff members", it argued that much of the analysis therein is applicable here, and that the Commission should extend that decision to non-certificated employees. The Board further argued that the Commission should abandon the dynamic status

quo approach as it is applied to increments, and adopt the static status quo approach which would limit employees to the pay they actually received at the time their contract expired.

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. 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).

In support of its argument that neither Association met the substantial likelihood of success standard, the Board relied upon Neptune, and argued that the Courts holding in Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978), which held that automatic increments must be paid after contract expiration as part of the status quo (the dynamic status quo), no longer represented the state of the law.

The Board argued that there was no irreparable harm in either case because monetary relief was available upon settlement of

the contracts. With respect to the secretaries, aides and clerical employees, however, it also argued that since those employees are included in a unit with teachers and other certificated employees who are not entitled to increments for 1996-97, ordering increments for the secretaries et al., would have a chilling effect on the negotiations process. The Board claims that being forced to pay increments to some, but not all, unit members would strain the on-going negotiations with the Education Association, and that such disparate treatment of employees in the same unit was not envisioned by the Court in Neptune.

Finally, the Board argued that its secretaries were subject to tenure, and that it would suffer irreparable hardship if required to pay increments to employees with tenure before new agreements were reached because the tenure laws make those increases "beyond recall". See N.J.S.A. 18A:25-5, and 18A:17-1 to -3.

The Associations argued that pursuant to Galloway they were entitled to the requested relief. They noted that Neptune should not control because the Court limited its holding to teaching staff members:

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. 144 N.J. at 34.

CO-97-29 - The Custodial Group

The Board's arguments against the School Employees Association's application are insufficient to overcome the long standing consistent rule that when a contract provides for the automatic payment of increments, payment is part of the (dynamic) status quo and it must be maintained during negotiations and after contract expiration. Galloway; 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).

This case is no different than the many increment cases that have come before the Commission under the Galloway doctrine.



Pursuant to Galloway, the Commission has consistently held that irreparable harm exists because refusal to pay automatic increments changes the established terms and conditions of employment. In State of New Jersey, the Commission held:

It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional period of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide must remain in effect requires that they move up one step and receive the appropriate salary increments. 7 NJPER at 536.

See also, Bd. Ed. of Watchung Hills Reg. H.S., I.R. No. 96-10, 22 NJPER 44 (¶27022 1995); Evesham Twp. Bd. Ed., I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

Since Neptune was specifically not applied to non-teaching staff members there is a substantial likelihood that the custodial group will continue to be entitled to increments under Galloway. Consequently, I grant the School Employees Association's application and order increments be paid to Board employees in their unit.

CO-97-32 - The Secretarial Group

The Board's irreparable harm argument regarding the secretarial group was no more persuasive than it was for the custodial group. But, on balance, its arguments regarding the

substantial likelihood of success standard warrant consideration by the full Commission.

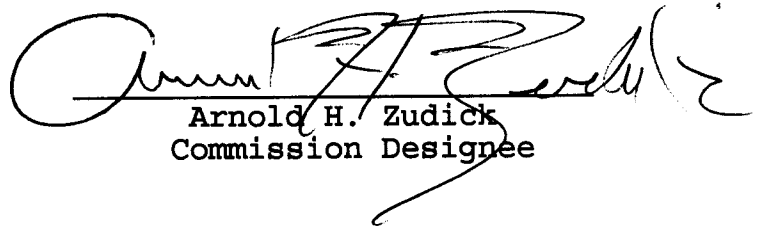
The facts here present a case of first impression. This is the first time since the Neptune decision that the Commission has been asked to order increments for non-certificated employees that are included in a unit with teaching staff members who are not entitled to increments pursuant to Neptune. The Board claims that ordering increments for only some unit members will strain negotiations with the Education Association, that receipt of an increment is beyond recall because of tenure laws, and, that the dynamic status quo approach should be abandoned. Therefore, it asks that Neptune be extended to cover the remaining unit members.

Given the heavy burden required for interim relief, I believe the circumstances in CO-97-32 raise issues requiring consideration by the full Commission.

Accordingly, the Education Association's application for interim relief is denied. The School Employees Association, however, is entitled to interim relief. Therefore, I ORDER the

Board to immediately pay its employees included in the unit represented by the School Employees Association the salary increment due to them pursuant to the incremental salary structure in the parties' collective agreement which expired on June 30, 1996.

BY ORDER OF THE COMMISSION



Arnold H. Zudick  
Commission Designee

DATED: September 4, 1996  
Trenton, New Jersey