

I.R. NO. 98-13

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILDWOOD CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-139

WILDWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee orders the Wildwood City Board of Education to pay automatic increments as provided for in the recently expired collective negotiations agreement between the Board and the Wildwood Education Association pending a final Commission decision.

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Appearances:

For the Respondent,  
Cassetta, Taylor, Whalen & Hybbeneth  
(William F. Hybbeneth, Jr. Consultant)

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

INTERLOCUTORY DECISION

On October 27, 1997, the Wildwood Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Wildwood City Board of Education engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1) & (5)<sup>1/</sup> when on September 1, 1997, after the

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<sup>1/</sup> 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."

expiration of the most recent one-year collective negotiations agreement between the parties, the Board refused to pay increments as provided for in the expired collective negotiations agreement.

The unfair practice charge was accompanied by an order to show cause. The order was executed and made returnable for November 12, 1997. A hearing was conducted on that date. Both parties argued orally at that time.

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 does not dispute that the most recently expired collective negotiations agreement provided for the payment of increments nor that it refused to pay increments. Rather, it argues that the New Jersey Supreme Court decision in Board of Education of Neptune Township v. Neptune Township Education Association, 144 N.J. 16 (1996) leaves serious questions as to the continuing viability of the Commission's long-standing precedent that the preservation of

the status quo at the expiration of a contract requires a payment of increments. The Board points to language in Neptune:

...the practice of automatically paying an increment will limit a board's ability to respond to ever-changing economic conditions of the district. Schools that need to cut budget growth will face serious problems. Teachers will have a reduced incentive to agree to a new collective bargaining agreement. Indeed, teachers may resist negotiating and wait for the more generous increments that will accrue under the expired collective bargaining agreement. Those teachers who have received increments under the old schedule will obtain a larger share of a shrinking pie. Id at 28.

The Association argues that the language cited by the Board is, in essence, dicta and the decision in Neptune did not undermine the Courts earlier decision in Galloway Township Bd. of Ed. v. Galloway Tp. Ed. Assn. 78 N.J. 25 (1978).

#### ANALYSIS

The Commission, in following Galloway, has consistently held that good faith negotiations requires maintaining terms and conditions of employment, i.e., the status quo; the payment of increments is part of the status quo. Neptune did not reverse 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 specifically states:

...any payments of increments here violates the meaning of N.J.S.A. 18A:29-4.1.

It is significant that in Neptune the court did not seek to restrict the payment of increments to non-teaching staff members.

The Court specifically held:

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.

It has been a long-standing Commission policy to require the payment of increments at the expiration of a collective negotiations agreement. Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3, 4 (¶26001 1994). Regardless of the Court's comments as to the negative aspects of increments, the decision specifically left standing the right for payment of increments for Board employees. It simply holds that N.J.S.A. 18A:29-4.1 preempts the payment of increments to teaching staff members after the expiration of three-year agreement. Board of Education of the Township of East Hanover and East Hanover Education Association, I.R. 98-4, 23 NJPER 537 (¶28264 1997).

Nothing in Neptune leads me to believe the Commission will alter its long-standing precedent. Accordingly, I believe the charging party has a substantial likelihood of prevailing on the law here and I will enter an order compelling the Wildwood City Board of Education to pay increments pursuant to the most recent collective negotiations agreement.

#### ORDER

It is hereby ORDERED that the Wildwood City Board of Education pay increments to all pursuant to the September 1, 1996

through August 31, 1997 collective negotiations agreement between  
itself and the Wildwood Education Association.

  
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Edmund G. Gerber  
Commission Designee

DATED: November 14, 1997  
Trenton, New Jersey