

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD  
OF EDUCATION,

Respondent,

Docket No. CO-76-72-37

-and-

GALLOWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

On the basis of a stipulated record and briefs in an unfair practice proceeding, the Commission finds that a board of education violated the Act by refusing to pay teachers' increments, according to the pre-existing salary schedule, during the course of negotiations for a successor agreement. The Commission orders the board to cease and desist from such conduct, and affirmatively orders the board to negotiate in good faith; to pay teachers' increments during the course of negotiations; to make the teachers whole concerning the increments withheld to date; to post notices whereby its employees will be notified of the board's corrective actions; and to notify the Executive Director of the steps taken to comply with the order.

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Appearances

For the Respondent, Murray, Meagher  
and Granello, Esqs. (Mr. Robert Emmet  
Murray, of Counsel, Mr. Robert J. Hrebek,  
on the Brief)

For the Charging Party, Starkey, Turnbach,  
White & Kelly, Esqs. (Mr. Edward J. Turnbach,  
of Counsel and on the Brief)

DECISION AND ORDER

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on September 12, 1975 by the Galloway Township Education Association (the "Association") alleging that the Galloway Township Board of Education (the "Board") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (the "Act").

The Charge alleges that the Board and the Association were parties to a collective negotiations agreement in effect from July 1, 1974 until June 30, 1975. At the time the Charge was filed the parties had not yet reached agreement on a successor contract. Mediation had been completed

and fact-finding was about to be commenced. The expired agreement contained a salary schedule which included annual increments determined by the teachers' years of service and degree status. In September 1975, when the teachers returned to work, they were advised by the Board that in 1975-76 they would be paid exactly the same amount as they received in 1974-75 and would not receive their increments for the additional year of service during the pendency of the negotiations between the parties. It is the determination by the Board to withhold all increments which the Association alleges constitutes unfair practices pursuant to N.J.S.A. 34:13A-5.4, specifically subsections (a)(1), (2), (3) and (5).<sup>1/</sup>

The Charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Executive Director that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 10, 1975.<sup>2/</sup> Pursuant to the Complaint and Notice of Hearing a pre-hearing

<sup>1/</sup> These subsections provide that "Employers, their representatives or agents are prohibited from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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."

<sup>2/</sup> Another Complaint and Notice of Hearing relating to a different Unfair Practice Charge between the same two parties was issued simultaneously with this Complaint, under Docket No. CO-76-59-36, along with an Order consolidating the two cases for hearing. However, as is indicated infra, the parties were able to reach a stipulation of facts in the within case thus avoiding the necessity of an evidentiary hearing. Therefore by an Order contained in a letter dated December 2, 1975 the Executive Director severed the two cases.

conference was conducted by Stephen B. Hunter, Hearing Examiner of the Commission, on November 25, 1975. At that conference the parties agreed that a stipulation of facts could be developed which would obviate the necessity for an evidentiary hearing in this matter. The parties, with the assistance of Mr. Hunter, thereafter entered into a formal Stipulation of Facts, which concluded with the agreement that the matter would be submitted directly to the Commission based on the formal pleadings, the Stipulation of Facts and the briefs to be submitted.<sup>3/</sup> Final briefs were received from the parties on March 17, 1976 and the matter is now properly before the Commission for decision.

<sup>3/</sup> The Stipulation of Facts provides: "The above-entitled parties hereby agree and stipulate all the essential facts to be as follows:

"1. The Galloway Township Education Association (the "Association") is the recognized exclusive majority representative of teachers employed by the Galloway Township Board of Education (the "Board").

"2. The Association entered into a negotiated agreement with the Board on or about May 14, 1974. This agreement was effective as of July 1, 1974 and expired on June 30, 1975. A copy of this agreement is attached hereto and has been marked as "Exhibit A".

"3. Since the expiration of the aforementioned agreement, the parties have been attempting to negotiate a successor agreement. The parties have already gone through the mediation and fact-finding stages of the Public Employment Relations Commission's impasse resolution procedures. A fact-finder's report and recommendations was issued on October 28, 1975.

"4. The agreement between the Association and the Board which expired on June 30, 1975 contained a salary schedule which included increments based upon the number of years a teacher was employed by the Board and the teacher's degree status.

"5. Upon return of the teachers to school in September of 1975, these teachers were advised by the Board that they would be paid exactly the same salary as they were paid the preceding school year and would not receive any increase to their pay for the preceding year during the pendency of negotiations between the parties.

"6. As of December 15, 1975, the date on which these stipulations were drafted, the teachers have not received any increase to their pay for the preceding school year.

"7. Since the enactment of Chapter 303, Laws of 1968, and the advent of collective negotiations between the Board and the Association thereafter - with the exception of the 1971-72 school (continued)

The dispute in this case, as presented by the pleadings and stipulated facts, would appear to be governed by our holding in In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal pending (App. Div. Docket No. A-8-75). That case concerned the unilateral decision of a board of education to discontinue the payment of hospitalization and medical insurance coverage upon the expiration of the current contract despite the fact that negotiations for the successor agreement had not yet been completed. In Piscataway the Commission adopted the generally accepted principle of both public and private sector labor relations that the unilateral alteration of terms and conditions of employment during the course of collective negotiations

3/ (continued) year - teachers employed within the Galloway Township School District, who were not already at the top of their respective guides, were moved forward on the salary guide one step as of the start of each school year. With the exception of the 1971-72 school year agreements had been concluded by the Board and the Association prior to the start of the school year.

"8. Teachers within the school district did not receive any salary increases and were not moved forward on the salary guide at the start of the 1971-72 school year. The contract for the 1971-72 school year was not signed until November 10, 1971. The teachers received the negotiated salary increases and were moved forward on the salary guide one step on or about November 30, 1971.

"9. The Association has additionally filed with the Commissioner of Education a petition requesting that the Commissioner enter an Order requiring the Board to pay the increments. The Association stated that it took this action in view of the fact that in its opinion the action of the Board in not paying increments not only contravened the New Jersey Employer-Employee Relations Act, but also was contrary to the terms and provisions of Title 18A, N.J.S.A. The Association in its petition to the Commissioner of Education made specific reference to the two-year binding salary provision of Title 18A N.J.S.A. 18A:29-4.1 as well as to the provision in Title 18A which prohibits a Board of Education from withholding increments in any manner other than that set forth in Title 18A N.J.S.A. 18A:29-11.7.

"10. The parties further stipulate that pursuant to Section 19:14-6.7 of the Commission's Rules the parties agree to waive an evidentiary hearing in the above-entitled matter and further agree to waive an intermediate Hearing Examiner's Report. This matter will be the subject of a Commission decision based on the formal pleadings, the Stipulation of Facts and briefs to be submitted by the parties concerning their respective legal contentions."

constitutes an illegal refusal to negotiate.

The Board maintains that its conduct herein does not constitute a unilateral alteration of terms and conditions of employment. To the contrary it claims that by not paying any increments it was maintaining the status quo exactly as it was in 1974-75 until the negotiations resulted in a new agreement. The Commission does not agree. The salary schedule in effect in 1974-75 specified a particular salary step for each year of a teacher's service. It cannot be disputed that a teacher who worked in 1974-75 would have an additional year of service in September 1975 and would be entitled, pursuant to the salary schedule in effect at the expiration of the agreement, to an increment of one step from his or her 1974-75 salary.<sup>4/</sup> The unilateral determination of the Board not to pay any increments was a negation of that additional service and was thus an alteration of the status quo. Teachers were no longer being paid pursuant to that schedule.

The Board argues in its brief that payment of the increments according to the 1974-75 salary schedule would impose an increase on the parties rather than allowing them to negotiate one. The Board argues further that it is not legally required to pay an increase pursuant to an expired contract.<sup>5/</sup> As was

<sup>4/</sup> The July 1, 1974-June 30, 1975 agreement contains a clause which allows the Board to withhold increments for inefficiency or other good cause, and prescribes the procedure for doing this. Neither party maintains that the increments were withheld pursuant to this section of the agreement.

<sup>5/</sup> Stipulation of fact No. 9, footnote 3, states that the Association has also filed a petition with the Commissioner of Education pertaining to this dispute. The Association alleged in that petition, and in their brief to this Commission, that the mandate of N.J.S.A. 18A:29-4.1 making any salary schedule adopted by a board of education binding for two years would include the schedule in dispute herein. The Board attempts to distinguish the argument in its brief, and additionally urges this Commission to defer its decision until the Commissioner of Education renders his interpretation of that section of the Education Law to this dispute. As the preceding discussion indicates this Commission feels that this case can be completely resolved by applying the holding and rationale of the Piscataway decision and we therefore need not deal with the various arguments addressed to Title 18A. However it should be noted that the two-year requirement of 18A:29-4.1 would seem to be completely consistent with the result reached herein.

pointed out in the Piscataway decision these arguments misconstrue the principle being applied. The Commission is attempting to maintain "those terms and conditions of employment in effect" regardless of whether those terms are derived from a contract or some other source. The status quo represents that situation which affords the least likelihood of disruption during the course of negotiations for the new contract. Because the status quo is predictable and constitutes the terms and conditions under which the parties have been operating, it presents an environment least likely to favor either party.

The Board has also argued that its conduct in this case does not evidence a pre-determined intention to avoid, rather than reach, an agreement. The Board relies on In re State of New Jersey, E.D. No. 79, 1 NJPER 39, aff'd, P.E.R.C. No. 76-8 (1975), appeal pending (App. Div. Docket No. A-531-75). We find that its reliance is misplaced. That case dealt with the standard and analysis to be used when determining whether a party has refused to negotiate in "good faith". Good faith is not in issue in the case sub judice. The Piscataway decision states that the unilateral alteration of the status quo while engaged in collective negotiations constitutes an unlawful refusal to negotiate.<sup>6/</sup> Regardless of the intent or the subjective motivation involved

<sup>6/</sup> The Board has characterized the status of the negotiations as one of impasse, implying that their duty to maintain the status quo had ceased. Suffice it to say that in footnote 7 of the Piscataway decision we held that the obligation continues at least until the Commission's impasse resolution procedures have been exhausted. See N.J.A.C. 19:12-1.1 et seq. As the pleadings and stipulation of facts indicate fact-finding had just been commenced and was not completed until some two months after the Board's actions. Additionally the Board points out that once before it followed the same procedure when the school year started without an agreement. That situation occurred in 1971-72 before the enactment of Chapter 123 of P.L. 1974 placed unfair practice jurisdiction with the Commission and is thus distinguishable. But even if it were not, the failure of the Association to take prompt action to remedy that violation of the duty to negotiate does not foreclose them from asserting their rights under the Act upon a subsequent violation.

such unilateral action violates N.J.S.A. 34:13A-5.4(a)(1) and (5).

In view of our conclusion that the Board's conduct constitutes an unlawful refusal to negotiate we find it unnecessary to determine if the unilateral conduct herein also constituted violations of N.J.S.A. 34:13A-5.4(a)(2) and (3).



ORDER

Respondent, Galloway Township Board of Education, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the Act.

(b) Refusing to negotiate collectively in good faith with the Galloway Township Education Association as the majority representative of teachers, concerning terms and conditions of employment of such teachers.

(c) Unilaterally altering, or threatening to unilaterally alter, terms and conditions of employment of its teachers during the course of collective negotiations with the Galloway Township Education Association.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, negotiate collectively in good faith with the Galloway Township Education Association concerning the terms and conditions of employment of its teachers.

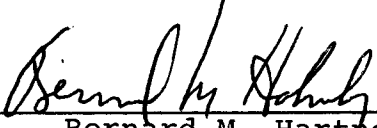
(b) During the course of collective negotiations with the Galloway Township Education Association, pay its teachers increments pursuant to the 1974-75 salary schedule.

(c) Pay its teachers the monetary difference between the amounts they would have received had their increments not been unilaterally withheld, and the amounts they were in fact paid since the commencement of the 1975-76 school year.

(d) Post at its central office building in Galloway Township, New Jersey, copies of the attached notice. Copies of said notice on forms to be provided by the Executive Director of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify the Executive Director, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

  
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Bernard M. Hartnett, Jr.  
Acting Chairman

DATED: Trenton, New Jersey  
April 27, 1976

Issued: April 28, 1976

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, 1968

we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by the Act.

WE WILL NOT refuse to negotiate collectively in good faith with the Galloway Township Education Association as the majority representative of teachers, concerning terms and conditions of employment of such teachers.

WE WILL NOT unilaterally alter, or threaten to unilaterally alter, terms and conditions of employment of our teachers during the course of collective negotiations with the Galloway Township Education Association.

WE WILL, upon request, negotiate collectively in good faith with the Galloway Township Education Association concerning the terms and conditions of employment of our teachers.

WE WILL, during the course of collective negotiations with the Galloway Township Education Association, pay our teachers increments pursuant to the 1974-75 salary schedule.

WE WILL pay our teachers the monetary difference between the amounts they would have received had their increments not been unilaterally withheld, and the amounts they were in fact paid since the commencement of the 1975-76 school year.

GALLOWAY TOWNSHIP BOARD OF EDUCATION

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Executive Director of the Public Employment Relations Commission, Labor & Industry Bldg., P.O. Box 2209, Trenton, NJ 08625. Telephone (609) 292-6780