

P.E.R.C. NO. 2011-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2010-509

BLOOMFIELD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Bloomfield Board of Education's motion for reconsideration of I.R. 2011-12. In that decision, a Commission designee granted an application for interim relief that accompanied an unfair practice charge filed by the Bloomfield Education Association. The designee stayed implementation of his order pending the parties' opportunity to seek reconsideration by the full Commission. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to pay salary increments following the expiration of the parties' one-year collective negotiations agreement. The Commission grants reconsideration holding that this case meets the extraordinary circumstances and exceptional importance tests finding that the substantial hardship to the Board in paying increments it cannot recoup outweighs the hardship to the employees in not receiving the increments.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Schwartz Simon Edelstein Celso & Zitomer, LLC (Stephen Edelstein, argued, Andrew B. Brown, on the brief)

For the Charging Party, Oxfeld Cohen, P.C. (Gail Oxfeld Kanef, argued and on the brief)

DECISION

On September 1, 2010, the Bloomfield Board of Education moved for reconsideration of I.R. No. 2011-12, 36 NJPER 330 (¶129 2010). In that decision, a Commission designee granted an application for interim relief that accompanied an unfair practice charge filed by the Bloomfield Education Association. However, the designee stayed implementation of his order pending the parties' opportunity to seek reconsideration by the full Commission.^{1/} The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

^{1/} On December 16, 2010, the parties appeared before the Commission to present oral argument.

seq., by refusing to pay salary increments following the expiration of the parties' one-year collective negotiations agreement on June 30. We grant reconsideration and deny interim relief.

We summarize the facts as found by the designee. Over the past ten years or longer, salary guides have appeared in the parties' agreements and have been applied as experience guides, meaning that for each year of teaching experience, teachers have moved one step on the guide automatically. Article 25, Compensation, provides that salary guides attached to the agreement:

shall be and are hereby adopted as a guide for the salaries of employees of the Board of Education, effective as to the bargaining unit member, only upon recommendation of the Superintendent when said recommendations have been approved by the Board. The following guide shall not under any circumstances be considered as mandatory or binding upon the Board of Education or as entitling any employee to any salary therein mentioned unless and until the same has been specifically fixed by the Board of Education upon recommendation as aforesaid.

Increments were not paid after the expiration of the 2006-2009 agreement, but were paid retroactively upon execution of the successor agreement. N.J.S.A. 18A:29-4.1 prohibits the payment of automatic increments after the expiration of a three-year agreement, but not after the expiration of a one or two-year

agreement. Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996).

The parties entered into a memorandum of agreement for a successor to the 2006-2009 agreement. The term of the new agreement would have been 2009-2012, however, it was not ratified by the Board once it learned that it would be losing significant State aid.^{2/} The Board then suggested a one-year agreement covering July 1, 2009 to June 30, 2010 and advised the Association that salary freezes and layoffs were likely in 2010-2011.

A one-year agreement expiring on June 30, 2010 was ratified by both parties. The Board subsequently notified the Association at a pre-negotiations meeting for a successor contract that it would not be paying increments after the expiration of the one-year agreement. The disputed increments cost \$735,506. The Association then filed its unfair practice charge and application for interim relief.

The designee's decision recites the standards used to determine whether interim relief is appropriate:

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

^{2/} The District received approximately \$707,000 in federal funds that it has not used given the Department of Education's recommendation that it be reserved for the 2011-2012 school year.

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.

[36 NJPER at 331, emphasis supplied]

On the merits, the designee found that Article 25, standing alone, does not show that automatic payment of increments is not the current condition of employment or status quo. Accordingly, he found that the Association had established a substantial likelihood of prevailing in a final Commission decision. The designee also found irreparable harm to the collective negotiations process.

Finally, the designee found that ordering payment of the increments would cause at least as great a harm to the Board as not ordering payment would cause to the Association, particularly if the Board were to prevail in a final Commission decision and seek recoupment of the paid increments. The designee observed the prohibition that the tenure laws, as they have been construed, place on reducing tenured employee compensation would apply here. Thus, once the Board pays the increments, it could not recoup the money from tenured personnel if the parties settle

for a lesser percentage.^{3/} Accordingly, the designee stayed implementation of his order pending the filing of a motion for reconsideration with this Commission.

In deciding to stay his interim relief order, the designee appropriately relied on the "relative hardships" factor reasoning:

The BEA suffers a chilling effect from the Board's failure to pay automatic increments during the course of collective negotiations. In light of exigent economic circumstances exemplified by the facts of this case, I conclude that the effect of ordering payment of \$750,000 will cause at least as great a harm to the Board, particularly if it prevails in a final Commission decision and seeks recoupment of the paid increments.

[36 NJPER at 332]

Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4.

We grant reconsideration as this case meets both the extraordinary circumstances and exceptional importance tests.

^{3/} N.J.S.A. 18A:6-10 provides, in part, that "No person shall be dismissed or reduced in compensation, if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state."

The facts of this case establish that interim relief should not be granted after weighing the relative hardship to the parties and considering the harm to the public interest. We begin with providing a brief overview of the current status of the law, which requires a "dynamic" status quo,^{4/} including the payment of automatic increments during the hiatus period after the expiration of a collective negotiations agreement. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, P.E.R.C. No. 76-32, 2 NJPER 186 (1976), aff'd by 78 N.J. 25 (1978).^{5/} The requirement to pay increments as part of maintaining the status quo was applied universally until 1996, when our Supreme Court held that school boards are precluded from paying salary increments to teaching staff after the expiration of a three-year agreement. Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996). The Court relied on an amended N.J.S.A. 18A:29-4.1 which provides that "[a] board of education of any district may adopt a one, two

^{4/} Pursuant to the Act, an employer is prohibited from unilaterally altering the status quo concerning mandatory negotiations topics, whether established by expired contract or past practice, without first negotiating to impasse. "Dynamic" status quo includes the payment of previously scheduled increments in an expired contract while the "static" status quo does not. 144 N.J. 16, 22-24 (1996).

^{5/} In Galloway, the Court grounded its decision not in the Act, but in N.J.S.A. 18A:29-4.1, an education law statute that made all salary schedules binding for a two-year period. That statute authorized boards of education to adopt salary schedules for its full-time teachers and specified that the schedules shall be binding for a period of two years.

or three year salary policy, including salary schedules for all full-time teaching members. . . .” The Court noted that tenure statutes prohibit a board from reducing a teacher’s compensation. Neptune, 144 N.J. at 33. Allowing the payment of increments after the expiration of a three-year agreement would render such an increase permanent and binding for a fourth year and each year of tenure beyond. See e.g. Cohen v. Bd. of Ed. of S. River, 94 N.J.A.R. 2d. (EDU) 242 (1994) and Dowd v. Bd. of Ed. of E. Orange, 1986 S.L.D. 419 (Comm’r of Ed.) (tenure statutes prohibit Boards of Education and majority representatives from negotiating salaries lower than an individual teacher’s current salary).

All of the requisite elements must be present to warrant the issuance of interim relief. After consideration of the relative hardship to the parties and the harm to the public interest, we find that interim relief should not be granted. The relative hardship to the Board if it were required to pay the increments is substantial. The loss of State aid to school districts has been widely publicized. School districts are attempting to manage the loss of State aid while still continuing to meet their educational obligations to students. For the 2010-2011 school year, Bloomfield’s State aid was reduced by \$4.4 million, which is approximately 7% of its budget. The employees will incur some hardship in not immediately receiving their increments. In most cases in which increments are paid upon the expiration of a

collective negotiations agreement, the amount of the increment received is a factor in successor negotiations and/or subtracted from the amount of the increase agreed upon in successor negotiations. However, in this case, the Board is seeking a wage freeze in negotiations with no increment movement on the salary guide. Payment of the increment would cost the Board \$735,506. Should the successor contract reflect the wage freeze sought by the Board, the amount of the increments paid cannot be a factor worked out between the parties through the regular negotiations process. Under tenure law, the increments are irretrievable once paid, so the Board will have no opportunity to recoup the money. Neptune, 144 N.J. at 33. There are 414 tenured teachers on the salary guide who would receive an irretrievable increment. We reject the Association's argument that the teachers' salaries may be "red-circled" as a recoupment option because the Board still currently suffers the harm of having to pay the money. All of these facts establish that the substantial hardship to the Board if it were required to pay the increments outweighs the hardship to the employees in not receiving the increments. Given these same considerations, the interests of the public would also be harmed if interim relief were granted. Accordingly, by resolving this preliminary issue on a narrow ground, we need not revisit the "dynamic status quo" doctrine at this time. See Gauer v. Essex County Div. of Welfare, 108 N.J. 140, 151 (1987).

ORDER

The motion for reconsideration is granted and the Order granting interim relief is vacated. The case is transferred to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Colligan, Eaton and Eskilson voted in favor of this decision. Commissioner Voos voted against this decision. Commissioner Krengel was not present.

ISSUED: February 3, 2011

Trenton, New Jersey