

P.E.R.C. NO. 86-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOWELL TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-67-83

HOWELL TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission and in the absence of exceptions to a Hearing Examiner's report and recommended decision, finds that the Howell Township Board of Education violated the New Jersey Employer-Employee Relations Act by failing to pay longevity increments to members of the negotiations unit represented by the Howell Township Education Association during the pendency of collective negotiations. The Chairman orders the Board to cease and desist from withholding salary increments from teachers during collective negotiations, pay all affected employees simple interest at the rate of 12% per annum upon the salary increments withheld and to post a notice of its violation and remedial action taken.

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Docket No. CO-85-67-83

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Bathgate, Wegener, Wouters &
Neumann, Esqs (Jan L. Wouters, of Counsel)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On September 24, 1984, the Howell Township Education Association ("Association") filed an unfair practice charge against the Howell Township Board of Education ("Board"). The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5)^{1/} when it refused to pay longevity increments

^{1/} 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; and (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."

to members of the negotiations unit represented by the Association during the pendency of collective negotiations.

On January 8, 1985, a Complaint and Notice of Hearing issued. The Board then filed its Answer denying that it violated the Act.

The parties waived a hearing and entered into a stipulation of facts including that the Board did not pay increments from September 1 through October 15, 1984 even though the Association demanded payment, and that the Board did pay the increments on October 15, 1984. The parties further stipulated that a successor collective negotiations agreement to that which had expired on June 30, 1984 was executed on November 6, 1984. Both parties filed briefs.

On August 6, 1985, Hearing Examiner Alan R. Howe issued his report and recommended decision. H.E. No. 86-4, 11 NJPER ____ (¶ ____ 1985). He concluded that the Board violated the Act when it failed to pay increments during collective negotiations. Relying on Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978), he concluded that the withholding of the employees' automatic increments violated subsections 5.4(a)(5) of the Act since it unilaterally changed the status quo during negotiations. He therefore recommended a remedial order requiring the posting of a notice and the payment of interest on increments withheld from September 1 to October 15, 1984.

The Hearing Examiner served his report on the parties and notified them that exceptions, if any, were due on or before August 19. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (3-5) incorporate the parties' stipulations. I adopt and incorporate them here. In the absence of exceptions and acting under authority delegated to the Chairman by the full Commission, I agree with the Hearing Examiner's analysis, conclusions of law and remedy. I adopt and incorporate them here.

ORDER

The Howell Township Board of Education is ordered to:

I. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, withholding salary increments from employees represented by the Howell Township Education Association during collective negotiations.

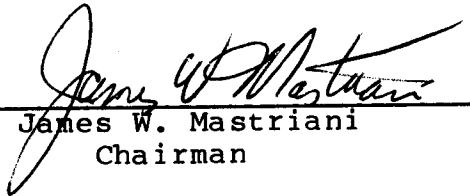
2. Unilaterally changing terms and conditions of employment of employees represented by the Howell Township Education Association particularly, by withholding salary increments from teachers during collective negotiations.

II. Take the following affirmative action:

1. Forthwith pay all affected employees interest at the rate of 12% per annum upon the salary increments withheld between September 1, 1984 and October 15, 1984.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
September 25, 1985

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,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly, withholding salary increments from employees represented by the Howell Township Education Association during collective negotiations.

WE WILL cease and desist from unilaterally changing terms and conditions of employment of employees represented by the Howell Township Education Association particularly, by withholding salary increments from teachers during collective negotiations.

WE WILL forthwith pay all affected employees interest at the rate of 12% per annum upon the salary increments withheld between September 1, 1984 and October 15, 1984.

HOWELL 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 Public Employment Relations Commission, 495 West State, Trenton, New Jersey 08618 Telephone (609) 292-9830.

H. E. NO. 86-4

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOWELL TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-67-83

HOWELL TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally withheld the automatic salary increments from its teaching staff effective September 1, 1984 for the period September 1, 1984 through October 15, 1984 when payment of the increments was made retroactive to September 1, 1984. A violation of the Act was clearly established given the precedent of the Courts and the Commission since the decision of the Supreme Court in Galloway Twp. Board of Education v. Galloway Twp. Education Association, 78 N.J. 25 (1978). The Association sought additionally an award of 12% interest upon the monies due and payable for the six-week period from September 1, 1984. This the Hearing Examiner granted, citing the many decisions of the Commission and the Courts since 1980.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
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Appearances:

For the Respondent
Bathgate, Wegener, Wouters & Neumann, Esqs.
(Jan L. Wouters, Esq.)

For the Charging Party
Klausner & Hunter, Esqs.
(Stephen B. Hunter, Esq.)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 24, 1984 by the Howell Township Education Association ("hereinafter the "Charging Party" or the "Association") alleging that the Howell Township Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that for a period of approximately one year, representatives of the

parties met to negotiate a successor collective negotiations agreement to that which expired on June 30, 1984; and, although a tentative agreement was reached, it has not as yet been ratified by both parties and an issue remains regarding the specific distribution of agreed upon salary increases; and, as of the beginning of the 1984-85 school year, the Board has frozen each employee's salary and has failed and refused to provide each employee in the unit with his or her salary increment despite requests to do so; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 8, 1985. Pursuant to the Complaint and Notice of Hearing the parties entered into a written stipulation of facts and waived an evidentiary hearing, which stipulation was executed on June 26, 1985. The said stipulation indicates that the increments due to employees were paid on October 15, 1984 and that the only outstanding issue remaining is the demand of the Association that the Board pay interest upon the increments for the period between

^{1/} 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; and (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."

September 1, 1984 and October 15, 1984. The parties filed post-stipulation briefs by July 30, 1985.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after consideration of the stipulation of facts, supra, and the briefs of the parties in support of their respective positions on the issue of interest, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire stipulated record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Howell Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Howell Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The prior collective negotiations agreement was effective during the term July 1, 1982 through June 30, 1984 and contained on the last page a salary guide for the 1983-84 school year with 17 steps (Exhibit "A")
4. For a period of approximately one year representatives of the parties met to negotiate a successor collective negotiations agreement.

5. All teaching staff members employed by the Board during the period September 1, 1984 through October 15, 1984 were paid salaries in accordance with the 1983-84 salary guide in Exhibit "A," supra. The Board credited the said teaching staff members with one additional year of experiential credit for the purpose of movement on the salary guide. However, during the time period between September 1 and October 15, 1984 the teaching staff members were not given credit for an additional year of teaching experience over and above that provided for in the prior school year.

6. A successor collective negotiations agreement was executed on November 6, 1984 and, after it was ratified by the parties, it became effective during the period July 1, 1984 through June 30, 1986.

7. Between September 1 and October 15, 1984 the Association made demands upon the Board to provide each individual teaching staff member with his or her employment increment during the pendency of negotiations for a successor agreement.

8. On October 15, 1984 the Board paid each teaching staff member his or her employment increment for the 1984-85 school year, retroactive to September 1, 1984.

9. Additionally, the Association made numerous requests of the Board for payment of interest on the increments withheld from teaching staff between September 1, 1984 and October 15, 1984, which requests the Board rejected and this is the only outstanding issue between the parties at this time, in addition to a request by the

Association that the Board post a notice upon a finding of a violation of the Act as alleged.

DISCUSSION AND ANALYSIS

The Respondent Board Violated Subsections (a)(1) And (5) Of The Act When It Unilaterally Withheld Normal Salary Increments From Its Teaching Staff Between September 1, 1984 And October 15, 1984.

The Charging Party correctly contends that the Board herein violated the Act as alleged when it unilaterally withheld salary increments from its teaching staff between September 1 and October 15, 1984. The Supreme Court of New Jersey in 1978 agreed with the Commission that the withholding of automatic, as opposed to discretionary, salary increments is a unilateral change in terms and conditions of employment, i.e., an alteration of the status quo, and ordered payment of increments due, notwithstanding that the collective negotiations agreement had expired: Galloway Twp. Board of Education v. Galloway Twp. Education Association, 78 N.J. 25. The state of the law has remained unchanged since Galloway and there are numerous Commission decisions ordering payment of automatic salary increments, many of which have arisen in the interim relief context where a plenary hearing had not taken place: City of Vineland, I.R. No. 81-1, 7 NJPER 324 (1981); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (1981); Jersey City Board of Education, I.R. No. 83-6, 8 NJPER 593 (1982); Alexandria Twp. Board of Education, I.R. No. 84-5, 10 NJPER 1 (1983); and Carteret Board of Education, I.R. No. 85-2, 10 NJPER 492 (1984).

Thus, as the Association correctly points out at page 7 of its brief: "...after seven years of consistent judicial and PERC precedent obligating boards of education and other public employers to maintain as a part of the status quo, the payment of employment increments during the pendency of negotiations, it is no longer appropriate under the...Act to permit a board of education to unilaterally withhold salary increments..." The Hearing Examiner concurs completely with this statement by the Association and deems the posting of a notice by the Board as a partial remedy for the Board's conduct herein totally appropriate.

The Association's Request That The Board Be Required To Make Payment Of Interest At The Rate of 12% Per Annum Upon The Increment Monies Withheld Is Granted.

The Hearing Examiner notes first the citation by the Board of three Commission decisions, which it contends support a holding that the payment of interest is not warranted: Twp. of Moorestown, P.E.R.C. No. 84-122, 10 NJPER 268 (1984); Ridgefield Park Board of Education, P.E.R.C. No. 84-120, 10 NJPER 266 (1984); and Twp. of Rockaway, P.E.R.C. No. 82-72, 8 NJPER 117 (1982). In the opinion of the Hearing Examiner these three case, separately or collectively, do not stand for the proposition that an award of interest should not be made in the instant case.

In Moorestown no monetary award was directed because there was a failure on the part of the charging party to establish a definitive actual monetary award. Here the actual loss may be

definitively calculated by applying the 12% award of interest to the calculable amount of the increment due each member of the teaching staff from September 1, 1984 to October 15, 1984. In Ridgefield Park, supra, a technical violation of Subsection (a)(1) of the Act was found but no notice was directed to be posted in view of the nature of the employer violation. Finally, in Twp. of Rockaway the complaint was dismissed, essentially because the case was moot, the respondent employer having resolved with the charging party the manner of execution of several collective negotiations agreements.

The Hearing Examiner finds that none of the cases cited by the Board herein, supra, militate against the direction of an award of interest as sought by the Association. The Hearing Examiner finds sufficient precedent for so concluding in the decision of the Commission in Willingboro Twp. Board of Education, P.E.R.C. No. 85-55, 11 NJPER 19 (1984) where, in adopting the order of an Administrative Law Judge, the Commission concluded that not only was the Judge correct in retroactively reimbursing teachers for salaries and benefits lost when they were illegally paid and treated as substitutes but found that the award of interest was also appropriate for those salaries and benefits illegally withheld (11 NJPER at 20).

The Commission has been awarding interest at the rate set by the Courts of New Jersey since 1980 and the Appellate Division has approved this remedy of the Commission in more than one case: Salem Cty. Board for Vocational Education, P.E.R.C. No. 79-99, 5

NJPER 239 (1979), aff'd. in part, rev'd. in part, App. Div. Docket No. A-3417-78 (1980); Bergen Pines Cty. Hosp., P.E.R.C. No. 82-117, 8 NJPER 360 (1982), appeal dismissed App. Div. Docket Nos. A-117-82T1 and A-5942-81T2; and Logan Twp. Board of Education, P.E.R.C. No. 83-23, 8 NJPER 546 (1982), aff'd. App. Div. Docket No. A-696-82T2 (1983).

Accordingly, given the five years standing of the award of interest by the Commission, and approved by the Courts, together with the specific precedent of Willingboro, supra, the Hearing Examiner concludes that interest should be awarded in the instant case at the rate of 12% per annum on the monies due and paid to the Board's teaching staff between September 1, 1984 and October 15, 1984.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when it unilaterally withheld the salary increments for its teaching staff in the 1984-85 school year between the dates of September 1, 1984 and October 15, 1984.

2. The Respondent Board should be directed to make payment of interest at the rate of 12% per annum on the increments withheld from its teaching staff between September 1, 1984 and October 15, 1984.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from withholding salary increments from its teaching staff, commencing on September 1, 1984 for the 1984-85 school year.

2. Unilaterally changing terms and conditions of employment for its teaching staff, and altering the status quo, particularly, by refraining from withholding salary increments from its teaching staff, commencing on September 1, 1984 for the 1984-85 school year.

B. That the Respondent Board take the following affirmative action:

1. Forthwith make payment to all affected members of its teaching staff interest at the rate of 12% per annum upon the salary increments withheld between September 1, 1984 and October 15, 1984.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.



Alan R. Howe
Hearing Examiner

Dated: August 6, 1985
Trenton, New Jersey

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,

AS AMENDED

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, particularly, by refraining from withholding salary increments from our teaching staff, commencing on September 1, 1984 for the 1984-85 school year.

WE WILL NOT unilaterally change terms and conditions of employment for our teaching staff, and alter the status quo, particularly, by refraining from withholding salary increments from our teaching staff, commencing on September 1, 1984 for the 1984-85 school year.

WE WILL forthwith make payment to all affected members of our teaching staff interest at the rate of 12% per annum upon the salary increments withheld between September 1, 1984 and October 15, 1984.

HOWELL 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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State State Street, Trenton, New Jersey 08618 Telephone (609) 292-9830.