I.R. NO. 95-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOGOTA BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-95-102

BOGOTA EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an application for interim relief brought by the Bogota Education Association, a Commission Designee declines to order the Bogota Board of Education pay certain salary experience adjustment payments. In the 1993-94 school year, the Board paid an experience adjustment payment to teachers although it was not obligated to do so. When the current school year began in September 1994, no new contract was in effect and the Board did not pay the experience adjustment payments. The charging party failed to demonstrate it had a substantial likelihood of prevailing on the law in this matter.

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Appearances:

For the Respondent,
Diktas, Gillen & Cinque, attorneys
(Christine Gillen, of counsel)

For the Charging Party,
Springstead & Maurice, attorneys
(Lauren E. McGovern, of counsel)

INTERLOCUTORY DECISION

On October 5, 1994, the Bogota Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Bogota Board of Education committed an unfair practice within the meaning of New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4; specifically subsections (a)(1), (3) and (5)[1/] when, during the course of negotiations for a

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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. (3) Discriminating in regard to hire or tenure of employment or any term or

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successor agreement, the Board unilaterally eliminated an experience adjustment payment provided for under the parties recently expired collective negotiations agreement.

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for October 18, 1994, at which time the parties were given an opportunity to argue orally, submit evidence and present evidence.

The Board of Education opposed the application arguing that the actions it engaged in were pursuant to the parties expired collective negotiations agreement. The relevant clause provides:

> An experience adjustment in the amount of $1600.00 per year shall be paid to those employees in the bargaining unit who were at Step 16 as of the 1989-90 school year. This experience adjustment payment shall be in effect until June 30, 1993, subject to the Association's right to negotiate this term with respect to a successor Agreement.
>
> Article VII, pg. 17, governing teachers' salaries.
>
> An experience adjustment in the amount of $1200.00 per year shall be paid to those employees in the bargaining unit who were at Step 13 as of the 1989-90 school year. This experience adjustment payment shall be in effect as of July 1, 1990, and shall continue in effect until June 30, 1993, subject to the Association's

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1/ Footnote Continued From Previous Page

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."

> right to negotiate this term with respect to a successor Agreement.
>
> Article VIII, pg. 22, governing secretarial salaries. (emphasis supplied)

The Board argues that the charging party has filed a grievance on this matter and, therefore, this charge should be deferred to the grievance arbitration provision of the contract.

The parties have been without a contract since June 30, 1993. Nevertheless, during the 1993-94 school year, the Board paid the experience adjustment payment. The Board, however, has not paid the experience adjustment payment for this school year but says it is prepared to negotiate for a renewal of this benefit in the future agreement.

The Association argues that when the Board granted this experience adjustment payment in 1993, even though no contract was in effect, it established a term and condition of employment which it cannot now unilaterally alter.

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.[2/]

Where an employer provides a benefit greater than one stated in a contract, it is not a unilateral alteration of terms and conditions of employment if the employer reduces that benefit to the level provided for in the contract. It is the contract which establishes the terms and conditions of employment rather than the actual practice. New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978).

The Association, however, argues that after the contract expired in the Spring of 1993, the Board continued to pay the experience adjustment increase thereby creating a new term and condition of employment that it cannot now unilaterally alter. I cannot predict if the Commission will adopt this argument. Accordingly, the Association has failed to meet its heavy burden here.

The Board also argues that this matter should be deferred to arbitration. If the Board agrees not to raise procedural defenses to the claim of arbitration, allows the arbitrator to hear this matter on its merits, and agrees to be bound by the decision, I would be inclined to so defer this case to arbitration. State of

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2/ 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).

New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Absent such assurance, this matter will not be deferred.

The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: October 21, 1994
Trenton, New Jersey