I.R. NO. 87-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket Nos. CO-87-26
& CO-87-27

AFSCME, COUNCIL 52, LOCALS 888
AND 1761,

Charging Parties.

SYNOPSIS

A Commission Designee grants the Charging Parties' request for interim relief based upon the refusal of the Respondent to continue payment of automatic salary increments on and after the expiration of the parties' most recent collective negotiations agreements.

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Appearances:

For the Respondent, Christine B. Mowry,
Assistant Vice President Staff Affairs
Director, Rutgers Office of Employee Relations

For the Charging Parties
Kirschner, Walters & Willig, Esqs.
(Sidney H. Lehmann, of Counsel)

INTERLOCUTORY DECISION AND ORDER

On July 24, 1986 AFSCME Local 888 ("AFSCME" or "Local 888") and AFSCME Local 1761 ("AFSCME" or "Local 1761") filed unfair practice charges with the Public Employment Relations Commission ("Commission") alleging that Rutgers, The State University ("Rutgers" or "University") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq., ("Act"). The Charges specifically alleged that Rutgers violated subsections 5.4(a)(5) and (7) of the Act by refusing to pay normal

merit increments due on July 1, 1986 to employees represented by the Locals 888 and 1761.[1/]

On August 12, 1986 AFSCME filed applications for interim relief pursuant to N.J.A.C. 19:14-9.1 et seq., asking that the University show cause before the Commission why an interlocutory order should not be issued directing the University to pay eligible employees their salary increments as required by the most recent collective agreements, retroactive to July 1, 1986, during the negotiations for successor agreements. Orders to Show Cause were signed and originally made returnable for September 3, 1986, but were adjourned by agreement of the parties until September 18, 1986. On that date I conducted a hearing having been delegated such authority on behalf of the full Commission. Briefs were submitted by both parties prior to the return date.

At the conclusion of the hearing the parties were advised that pursuant to N.J.A.C. 19:14-9.5(a), a written decision would issue in this matter.

The standards that were developed by the Commission for evaluating the appropriateness of interim relief are similar to those applied by the Courts when confronted with similar

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1/ These subsections prohibit public employers, their representatives or agents from: "(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 and (7) Violating any of the rules and regulations established by the commission."

applications. The test is twofold: the moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegation in the final Commission decision, and the harm alleged will be irreparable if the requested relief is not granted.2/

AFSCME represents two large units of employees at Rutgers. Both units had collective negotiations agreements effective from July 1, 1983 to June 30, 1986 (Exhibits J-1 (Local 888) and J-2 (Local 1761)). The parties have been negotiating for new collective agreements and have recently begun the mediation process.

Both J-1 and J-2 contain salary clauses which include language for normal merit increments on employee anniversary dates for eligible (satisfactory) employees.3/ In addition, attached to both J-1 and J-2 were compensation or salary schedules.

2/ See, Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of N.J. (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

3/ The increments sections of J-1 and J-2 are as follows:

Art. 10 of J-1 provides in pertinent part:

Fiscal Year 1983-84:

1) Each eligible employee shall receive a normal merit increment on the appropriate anniversary date.

Fiscal Year 1984-85

1) Each eligible employee shall receive a normal merit increment on the appropriate anniversary date.

Footnote Continued on Next Page

It was undisputed that the salary structure which existed under J-1 and J-2 contained salary ranges with minimums and maximums with intermediate incremental steps which were achieved by employees

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3/ Footnote Continued From Previous Page

Fiscal Year 1985-86

1) Each eligible employee at steps one (1) through six (6) will receive one and two fifths (1-2/5) the normal merit increment on the appropriate anniversary date and each eligible employee at step seven (7) will receive one and one half (1-1/2) the normal merit increment on the appropriate anniversary date. Effective July 1, 1985, each employee who was on step eight (8) of his/her range as of June 30, 1985 will receive one half (1/2) a normal merit increment as appropriate for that range. The implementation of the above will result in a new salary schedule for each range.

Art. 20 of J-2 provides in pertinent part:

Fiscal year 1983-84:

1) Each eligible employee will receive a normal merit increment on the appropriate anniversary date.

Fiscal Year 1984-85

1 Each eligible employee shall receive a normal merit increment on the appropriate anniversary date.

Fiscal Year 1985-86

1) Each eligible employee at steps one (1) through six (6) will receive one and one third (1-1/3) the normal merit increment on the appropriate anniversary date and each eligible employee at step seven (7) will receive one and one half (1-1/2) the normal merit increment on the appropriate anniversary date. Effective July 1, 1985, each employee who was on step eight (8) of his/her range as of June 30, 1985 will receive one half (1/2) a normal merit increment as appropriate for that range. The implementation of the above will result in a new salary schedule for each range.

based upon length of service, assuming satisfactory performance. Exhibit CP-3 was an 8-step salary schedule for Local 1761 effective for all employees by April 1, 1986. The record showed that each employee had an anniversary date of either January 1, April 1, July 1 or October 1 determined by their original starting date. Increments were automatically paid to each employee on an annual basis on their anniversary date if their performance was satisfactory.

The instant dispute involves those employees with anniversary dates of July 1 who completed another year of satisfactory service by June 30, 1986 at which time AFSCME contends they became entitled to their next increment. AFSCME argues that the University's withholding of that increment, during negotiations for a new agreement, violates the Act. The University admits that it has not paid increments to employees with July 1 anniversary dates. It argued, however, that increments were not automatic, that J-1 and J-2 were only intended to provide increments during the effective dates of those agreements, and it argued that AFSCME had not demonstrated irreparable harm.

The law in this area is well settled. The Commission, as confirmed by the courts, has consistently held that automatic salary increments contained in an expired contract must be paid while the parties are negotiating for a new collective agreement. Galloway Tp. Bd.Ed. v. Galloway Tp. Ed.Assn., 78 N.J. 25 (1978); Union Cty. Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977);

Hudson Cty. Bd.Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); Newark Public Library, I.R. No. 84-9, 10 NJPER 321 (¶15154 1984); Belleville Bd.Ed., I.R. No. 87-5, 12 NJPER ___ (¶_____ 1986).

Although Rutgers argued that increments were not "automatic" in the instant cases, the undisputed facts prove otherwise. At hearing, the University reluctantly admitted that in accordance with J-1 and J-2, after each year of satisfactory performance employees represented by Locals 888 and 1761 received an increment pursuant to their salary guide. In fact, pursuant to the 1985-86 increment clause in J-1 and J-2, even employees at step 8, the top step of the salary guide, received one-half a normal increment. The Commission in the above-cited cases has consistently interpreted such increment clauses to be automatic clauses that make the giving of an increment on an employee's anniversary date part of the status quo of the employee's terms and conditions of employment despite the fact that the contract(s) expired. Thus, in this case the employees represented by Locals 888 and 1761 with an anniversary date of July 1, 1986, who completed another satisfactory year of

service, were entitled to an increment in accordance with the 1985-86 increment clauses in J-1 and J-2.

As stated in State of New Jersey, I.R. No. 82-2, supra, where the employer was ordered to pay salary increments which were due to employees pursuant to the terms of the parties' expired contract:

> It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional period of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide must remain in effect requires that they move up one step and receive the appropriate salary increments. State of New Jersey, supra, 7 NJPER at 536.

The University's argument that its increment clauses in J-1 and J-2 were not automatic demonstrates its confusion over how those clauses are interpreted. The University argued that because AFSCME has not had increment clauses in all of its previous collective agreements, and because the parties negotiate during each round of negotiations over whether increments will be included in new agreements, that increments are therefore not "automatically" included in future agreements and therefore it should not be required to pay increments now because the successor agreements to J-1 and J-2 may not contain increments. That argument misses the point. The issue is not what the parties' future agreement(s) may provide, the issue is only whether the parties' most recent

agreement(s) contain a clause automatically giving increments to employees upon satisfactory performance. J-1 and J-2 contain such clauses and therefore the University must continue to pay increments in accordance with J-1 and J-2 because the payment of increments is part of the status quo which must be maintained.4/

The University here has raised many of the same arguments it raised in Rutgers University, supra, where the Commission clearly stated that it had considered and rejected all of those arguments when it issued the decisions in Galloway, supra; Hudson County, supra; and Union County Regional, supra. Similarly, the University in this case has not raised any new legal arguments or theories regarding increments that have not been previously considered.

In addition, with regard to its irreparable harm argument, the Commission in State of New Jersey, supra, explicitly held that the failure to pay automatic increments is irreparable harm because it has a coercive and chilling effect on the ongoing negotiations process. 7 NJPER at 535.

Finally, this case is distinguishable from Ocean Cty. Bd.

4/ The University's argument over the meaning of "automatic" clauses would be relevant if there were no increment clauses in the parties' collective agreement(s) and the union was alleging a past practice of paying increments. Then the University could utilize the parties' prior agreements and negotiations history to prove that there was no practice of automatically paying increments. But that is not the situation in this case. Here we have agreements with increment clauses which are clear on their face and which automatically entitle employees to an increment each year upon satisfactory performance.

of Freeholders and Ocean Cty. Sheriff, I.R. No. 84-14, 10 NJPER 398 (¶15184 1984), P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986) which was relied upon by the University. The Commission in Ocean County, supra, concluded that the parties had never reached a meeting of the minds regarding an increment clause. The instant parties, however, did have a clear increments clause in their agreements.

Accordingly, AFSCME has met the requirements for interim relief and I enter the following:

ORDER

The University is hereby ORDERED to immediately pay eligible employees in the units represented by AFSCME Locals 888 and 1761, effective July 1, 1986, the normal salary increments as determined by the salary schedule and increment clauses in effect for 1985-86 under the 1983-86 agreements, those increments to be paid during the negotiations with AFSCME for successor agreements or until further order of this Commission made in the course of these proceedings.

It is FURTHER ORDERED that the University immediately pay the affected employees in Locals 888 and 1761 the monetary difference between the amount the eligible employees actually received since July 1, 1986 and the amount they would have received to date if their increments had not been unilaterally withheld.

Arnold H. Zudick
Commission Designee

Dated: September 24, 1986
Trenton, New Jersey