

I.R. NO. 86-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-85-334

WILLINGBORO EDUCATIONAL SECRETARIES
ASSOCIATION,

Charging Party.

SYNOPSIS

The Willingboro Educational Secretaries Association filed an application for Interim Relief with the Public Employment Relations Commission against the Willingboro Board of Education. The charge, which accompanied the Association's application, alleged that the Board refused to pay salary increases in accordance with an existing agreement. It was the position of the Board that the contract between the parties was never ratified as to the raises in question. A Commission Designee found that there is a substantial likelihood that the Commission will find there is a binding contract between the parties and ordered the Board to implement salary increases pursuant to the existing collective negotiations agreement.

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Appearances:

For the Respondent
Barbour & Costa
(John Barbour of Counsel)

For the Charging Party
Selikoff & Cohen
(Joel S. Selikoff of Counsel)

INTERLOCUTORY DECISION

On June 19, 1985, the Willingboro Educational Secretaries Association ("Association" or "WESA") filed an Unfair Practice Charge against the Willingboro Board of Education alleging a violation of subsection 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

("Act").^{1/} The substance of the charge is that the Association and the Willilngboro Township Board of Education entered into a multiyear agreement in February of 1985 and granted an 8 1/2% raise for 1985-86. On March 11, 1985, the Board ratified the agreement. Subsequently, the Association and the Board's representative computed a salary guide for 1985-1986. The Board of Education, at its June 10, 1985 meeting, refused to approve that salary guide, instead it authorized its staff to pay unit members a salary computed by advancing each employee one step on the 1984-1985 salary guide. It was further alleged that the Board's refusal to implement the negotiated agreement was an unfair practice.

On August 22, 1985, the Charging Party submitted an Order to Show Cause seeking the imposition of interim restraints pending the final disposition of this matter by the full Commission. The matter was heard on September 5, 1985 at the Commission offices in Trenton, pursuant to N.J.A.C. 19:14-9.4. The parties presented affidavits and limited oral testimony was taken.

^{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; (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.

The following facts were established:

The Willingboro Educational Secretaries Association is recognized as the majority representative of the secretarial and clerical employees of the Willingboro Board of Education. The Willingboro Educational Secretaries Association has affiliated with the Willingboro Education Association, ("WEA") which represents teachers in the district. The Board has not recognized this affiliation, although members of the WEA do negotiate for the secretaries.

The parties commenced negotiations for the 1984-1985 contract in October of 1983, those negotiations lasted until January of 1985 at which time a Memorandum of Agreement was entered into between the WEA and the Board's negotiators. That Memorandum of Agreement, by its terms, was subject to ratification, was retroactive to July 1, 1984 and was to run through June 30, 1987. The Memorandum of Agreement provided for an 8 1/2% salary increase for the 1985-1986 academic year. The agreement was ratified by the Board at its March 11, 1985 meeting. However, a salary guide for 1985-1986 was not before the Board at its ratification meeting. Thereafter, the Association, through its representatives, and the Board through its representative, drafted a salary guide in conformance with the agreement. On June 10, 1985, the salary guide for 1985-1986 was put before the Board for its approval. However, the Board refused to approve the salary guide.

It is noted that an affidavit signed by two current Board members was submitted by the Board in opposition to the instant application for Interim Relief. In that affidavit certain claims are made by two Board members: (1) they "do not believe that the collective negotiations involving salary guides were ever brought to conclusion between the Board of Education and the WESA", (2) "the Board of Education never ratified any contract between itself and the WEAS", (3) "the only action of the Board of Education was the approval of a tentative agreement, not a final agreement, and in fact that tentative agreement did not include the salary guides the union seeks herein" and (4) "there has never been a signing of any final contract by the Board of Education." However, it is undisputed that the terms of the Memorandum of Agreement were in fact implemented after the March 11, 1985 Board of Education meeting. Further, minutes of the March 11 Board meeting were introduced at the hearing and it is clear from the minutes that the Board did, in fact, ratify the Memorandum of Agreement.^{2/} Moreover, a former Board member, Alice Martello, testified at the hearing that the Board did ratify the Agreement. It is noted that

^{2/} In the ratification procedures, Board did seek to modify the pay scales of 1984-1984 year, and the Association accepted those modifications of the salary guide before the implementation of the contract.

the name of one of the Board's affiant's, Elmer F. Corda, does not appear on the roll call vote in the minutes. The other affiant, Robert Wisniewski, was the only Board member who voted against the ratification of the contract. Given the language of the minutes, the clear testimony of Alice Martello and the president of the Association, Jankowski, as to the ratification of the contract and the undisputed fact that the terms of the contract were implemented for 1984, as opposed to the highly conclusionary statements in the affidavits of Corda and Wisniewski, I find that the Education Association has a substantial likelihood of success proving these facts at a full evidentiary hearing.

Jankowski and Martello both testified that the Board adopted the proposed salary schedule for 1985-1986 at its July 11 meeting. ^{3/} The Board never implemented this salary guide. Instead it granted salary increments based on the 1984-85 salary guide. It has, however, implemented other provisions of the contract that were contractually scheduled to be effective on July 1, 1985, which are adverse to the interests of WESA members and the

^{3/} Although Counsel for the Board disputed that this salary schedule was adopted by the Board, the affidavit proffered by the Board is silent as to this question and, once again, I find that the Association has a substantial likelihood of success prevailing at a full plenary hearing on this factual question.

effect of this action is that certain employees are earning less now than they did in June of 1985. The Association president also maintains that the Board's conduct has undermined the WESA's attempt at affiliation with the WEA. The secretaries now question whether they could not have gotten better representation if they did not affiliate and, further, WESA is having difficulty finding a representative in one of the schools in the district. The Association believes that the Board's conflict has undermined them as the majority representative.

The grounds for the issuance of a restraint pursuant to the Commission rules are set forth in N.J.A.C. 19:14:9C(c)

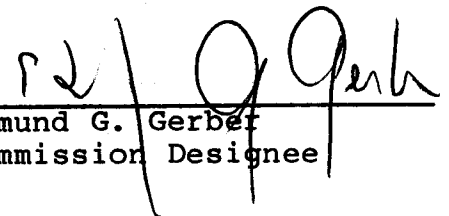
A twofold test must be met. First, the Charging Party must show it has a substantial likelihood of success in prevailing on both the law and the facts at a full plenary hearing and, second, it must show that the alleged harm is irreparable. Here, I am satisfied that the Association has met the first part of this test. The Board ratified an agreement granting a raise to secretaries in the unit in question on March 11, 1985, this agreement was, in fact, implemented for 1985. The Board is now attempting to repudiate that very contract. It is clear that repudiation of a contract is violative of §5,4(a)(5) of the Act.

It cannot be gainsaid that the most fundamental of terms and conditions of employment is salary. See, Woodstown-Pilesgrove

v. Woodstown-Pilegrove Education Association, 81 N.J. 582 (1985). Here that term and condition of employment is being repudiated by the Board. The Board had an obligation to implement a salary with an 8.5% salary increase in accordance with the modified Memorandum of Agreement. The salary schedule presented to the Board was a simple mechanical codification of that agreement prepared by its very own representative. Although the Board may not have had an obligation to ratify that precise schedule, if in fact there were some defect contained therein, it did have an obligation to implement the salary raises. Finally, I find that the harm here is irreparable. Beginning with Galloway Twp. v. Galloway Educational Secretaries, 78 N.J. 1 (1978), the courts and this Commission have long held that the alteration of an expired contract prior to the exhaustion of the Commission's conciliation procedures undermines the ability of an Association to properly represent employees. See, In re CWA v State of New Jersey, I.R. No. 82-2, 8 NJPER 425 (¶ 13197 1982); In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); (In re State of New Jersey Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975) and In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975). The very same rationale should be applied with even greater vigor here where an employer, for no reason, repudiates a term of an existing contract. The union would be handcuffed, and unable to carry out its statutory

obligations if an employer were free to simply ignore contractual obligations which have been entered into in good faith.

Accordingly, for the reasons set forth above, it is hereby ordered that the Willingboro Board of Education implement the salary schedule which its representative and the Association have constructed for the 1985-1986 school year retroactive to July 1, 1985.


Edmund G. Gerber
Commission Designee

DATED: September 20, 1985
Trenton, New Jersey