

I.R. NO. 86-20

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PT. PLEASANT BEACH BOARD
OF EDUCATION,

Respondent,

- and -

DOCKET NO. CO-86-232

PT. PLEASANT BEACH
EDUCATION ASSOCIATION,

Charging Party.

Synopsis

A Commission Designee restrains the Point Pleasant Beach Board of Education from disbursing stipends to teachers employed by the Board since these stipends were not part of the collective negotiations agreement covering the teachers. The Board received monies from the State Department of Education pursuant to the Teachers Quality Employment Act, N.J.S.A. 18:29-5.1 et seq. The Board received \$11,370 more than it needed to provide for teachers' minimum salaries. The Board unilaterally, without negotiations, announced it would distribute this money through the stipulations in question.

I.R. NO. 86-20

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PT. PLEASANT BEACH BOARD
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-232

PT. PLEASANT BEACH
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Berry, Kagan, Privetera & Sahradnik, Esqs.
(Seymour J. Kagan, of counsel)

For the Charging Party
Oxford, Cohen & Blunda, Esqs.
(Mark J. Blunda, of counsel)

DECISION

On February 28, 1986 the Pt. Pleasant Beach Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Pt. Pleasant Board of Education ("Board") has violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, it is alleged that the Board violated

subsections 5.4(a)(1), (3), (5) and (7) of the Act^{1/} by unilaterally paying stipends to its employees without ever negotiating such stipends. The contract between the parties has no provisions for stipends. The stipend were paid during the pendency of collective negotiations for a successor agreement. It is alleged that the unilateral issuance of stipends constitutes a unilateral change in terms and conditions of employment and is in violation of the New Jersey Employer-Employee Relations Act. It is further alleged that the issuance of stipends, which are not part of the base salary, violates N.J.S.A. 18A:29-5.1 et seq. and, further, since this unilateral change occurred during the pendency of negotiations, the harm is irreparable and the Education Association demanded Interim Relief. The Charge was accompanied by an Order to Show Cause.

The Board admits most of the facts alleged by the Charging Party but denies that it committed an unfair practice. It further raised a separate unfair practice charge against the Association

^{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 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; (7) Violating any of the rules and regulations established by the commission."

claiming it unlawfully demanded to negotiate the distribution of funds which the Board received pursuant to 18A-29-5.1 et seq. The Board does not claim that such unlawful demands to negotiate constitute irreparable harm and, accordingly, this charge will not be considered in the instant decision.

The Association and the Board are parties to a collective negotiations agreement which runs through June 30, 1986. In October of 1985, the Association and the Board commenced negotiations for a successor agreement. These negotiations are pending at the present time. During this same period, the Board received monies from the State Department of Education pursuant to the Teacher Quality Employment Act, N.J.S.A. 18:29-5.1 et seq. Altogether the Board received \$11,370 more than it needed to provide teachers' minimum salaries of \$18,500 during the current school year. The Association asked that the Board negotiate the distribution of this money. The Board would not reopen contract negotiations on the existing contract.^{2/}

The Board of Education states that it has no problem distributing this money to the teachers in the unit. However, this money is not permanently funded and, therefore, should not be added to the permanent salary structure of the teachers. The Board claims

^{2/} As discussed above, the board contends the union's demand to reopen negotiations for the purposes of negotiating how these salaries would be dispersed was in fact a separate unfair practice.

it had considered the last request submitted by the Association concerning how this money would be distributed and adopted a resolution which it claims is similar to the Association's request. The Superintendent of Schools, Vincent Bickler, by way of affidavit, denied that the granting of these monies was an attempt to chill or undermine the contract negotiations. Rather, part of the Association's demands as to the distribution of this extra \$11,370 was that the salary guide was to be compressed, it was the Board's position that compression of the guide would raise the financial base of the agreement and it was unwilling to raise the base since the funding as the source of this extra money was not a permanent one. These sums were given to the named employees simply because the named employees were on a list provided to the Board from the union. The money was to be distributed in two payments, one in February of 1986 and one in June of 1986.

In November and December of 1985, the Association protested the Board's intention to unilaterally issue stipends to certain members of the bargaining unit and on December 17, 1985, the Board resolved to issue stipend checks. The stipend checks went to twenty-one teaching staff members within the bargaining unit, the stipends varied in amounts ranging from \$130 to \$1,240.

The Board distributed this money in February as a stipend and the Association brought the instant unfair practice charge, seeking to restrain the Board from making the second distribution in June of 1986. The Association does not ask that the monies distributed by the Board in February be returned.

ANALYSIS

There is no question that compensation is a term and condition of employment within the meaning of the Act. Here, the Association does not contend that the Board is obligated to renegotiate any salaries in effect in the 1985-1986 school year. N.J.S.A. 18A:29-5, paragraph 12 provides: "nothing in this Act shall be construed to require the reopening of any signed contract in effect for the 1985-1986 school year." The Association argues that even though there may be no obligation on the part of the Board to increase salaries, it maintains it is an unfair practice for the Board to increase salaries unilaterally beyond the \$18,500 minimum and indeed nothing in N.J.S.A. 18A:29-5 has such a requirement. The Association also points to paragraph 11: "any funds appropriated for salaries that will be replaced by this state aid as authorized pursuant to this amendatory and supplementary act shall not be transferred to or used for any purpose other than the payment of teaching staff salary members." (Emphasis supplied) It is argued that the extra monies received from state aid should be used for salaries in the following school year.^{3/}

Neither the Commission nor the Court has yet interpreted N.J.S.A. 18A:29-5. However, I am satisfied that the Association has

^{3/} Paragraph 14 states: "The State Board of Education shall adopt rules and regulations which are necessary to perfectuate the purpose of this Act." The Department of Education has promulgated proposed rules concerning the use of these monies. However, these rules have not been adopted.

a substantial likelihood of prevailing on the facts and law here. Nothing gives the Board the right to unilaterally alter salaries which are at or above the \$18,500 minimum and N.J.S.A. 18A:29-5 must be read in conjunction with the Act. The unilateral disbursement of these stipends alters a term and condition of employment, compensation, and creates an impermissible and irreparable chilling effect on negotiations. See, Galloway Twp. Board of Education and Galloway Twp. Education Association, 78 N.J. 25 (1978) and C.W.A. and State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).


In balancing the equities here, no significant harm will come to the Board if it is restrained from disbursing the stipend in June. By contract, the unilateral disbursement of these monies could seriously disrupt the negotiations process.

For the reasons set forth above, I am convinced that the Association has established a substantial likelihood of success on the merits, and the existence of irreparable harm.

ORDER

IT IS HEREBY ORDERED that the Borough of Point Pleasant is restrained from disbursing stipends in June of 1986 as described above pending a final Commission decision in this matter.

IT IS FURTHER ORDERED I shall retain jurisdiction here and if the Association and the Board reach an amicable agreement concerning the distribution of these monies they may jointly request that these restraints be lifted.



Edmund G. Gerber
Commission Designee

DATED: May 15, 1986
Trenton, New Jersey