

I.R. NO. 2006-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW HORIZONS COMMUNITY CHARTER
SCHOOL BOARD OF TRUSTEES,

Respondent,

-and-

Docket No. CO-2006-095

NEW HORIZONS EMPLOYEE ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission designee grants an interim relief application filed by the New Horizons Employee Association and orders that the New Horizons Community Charter School Board of Trustees immediately pay salary increments to employees represented by the Association. The designee finds that payment of the increments, during collective negotiations for a successor to an expired two-year contract between the parties, is part of the dynamic status quo concerning terms and conditions of employment that must be maintained until agreement on a new contract is reached. The designee concludes that payment of the increments does not conflict with N.J.S.A. 18A:29-14 as construed in Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996) and is required by N.J.S.A. 34:13A-33, part of the "School Employees Contract and Equity Law," P.L. 2003, c. 126. The designee holds that the Association has demonstrated that it is substantially likely to prevail on the merits of its unfair practice charge and will suffer irreparable harm if interim relief is not granted.

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Appearances:

For the Respondent, Jasinski and Williams, attorneys
(David F. Jasinski, of counsel and on the brief)

For the Charging Party, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel and on the brief)

INTERLOCUTORY DECISION

On October 11, 2005, the New Horizons Employee Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the New Horizons Community Charter School Board of Trustees ("Board") violated sections 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq., by

^{1/} These provisions 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."

failing to pay experience-based salary increments to unit employees at the start of the 2005-2006 school year, while the parties were engaged in collective negotiations for a successor agreement.

The charge was accompanied by an application for interim relief seeking the issuance of an order directing the Board to immediately pay unit employees the salary increments due to them under the terms of a two-year agreement between the parties that expired on July 31, 2005. An order to show cause was executed on October 14, 2005 and a return date was scheduled for November 3, 2005, and then rescheduled to November 16, 2005. I was assigned, as a Commission designee to hear the application. The parties submitted briefs, certifications and exhibits in accordance with Commission rules.

On November 16, 2005, both parties appeared on the return date and argued orally. At the end of the Order to Show Cause Hearing, I directed that the Board immediately pay the salary increments, stating my findings and conclusions on the record. This written decision contains my reasoning.

1. The Association is an employee representative within the meaning of the Act and is the exclusive representative for collective negotiations concerning grievances and terms and conditions of employment for a negotiations unit consisting of

"all regularly employed certified teaching staff (including those under a certificate of eligibility)" employed by the Board.

2. The Board is a public employer within the meaning of the Act.

3. The Association and the Board are parties to a collective negotiations agreement covering the period from August 1, 2003 to July 31, 2005.

4. The parties are engaged in collective negotiations for a successor contract but have been unable to reach agreement.

5. The agreement contains negotiated salary guides with incremental steps based on experience. Appendix A contains the guides covering the 2003 to 2004 and 2004 to 2005 school years. Each guide contains 12 steps based on a Bachelors Degree. Appendix A also lists additional stipends for teachers with credits and/or advanced degrees beyond a Bachelors Degree.

6. Article VIII, "Teacher Employment," Section 2 provides:
Each teacher will be placed at his proper step in accordance with the salary guides of the beginning of the school year.

7. Article XX, "Salary," Section 1 provides that employees will receive their salaries in 24 equal installments on the 7th or 22nd day of each month.

8. The first pay period for the 2005 to 2006 school year passed and the employees in the unit received no increase in the salaries they were paid at the end of the prior school year.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Association argues that the facts of this dispute are no different than those of other cases in which interim relief has been granted requiring the payment of experience-based salary increments to teaching staff during the course of collective negotiations for a successor agreement. It cites Waldwick Bd. of Ed., I.R. No. 99-6, 24 NJPER 498, (¶29231 1998) and Mahwah Bd. of Ed., I.R. No. 98-8, 23 NJPER 593 (¶28290 1997). The Association maintains that, because the expired agreement was a two-year agreement, the payment of salary increments after its expiration is not prohibited by N.J.S.A. 18A:29-4.1. It asserts that both the Commission and the courts have recognized that withholding increments during negotiations is a change in the status quo and

chills the collective negotiations process, requiring an immediate remedy.

The Board argues that this dispute involves the application of N.J.S.A. 18A:29-4.1, part of the school laws, and is the province of the Commissioner of Education. It contends that the Commission lacks jurisdiction over claims that implicate school laws. Alternatively, it maintains that Charging Party's claim for relief is not emergent, as the Board has agreed during negotiations that it will make any salary increases retroactive to the expiration date of the prior agreement.

The Association Party has shown that there is a substantial likelihood that it will prevail on the merits of its charge, should this case go to a final agency decision. The payment of an experience-based salary increment to a teaching staff member who has satisfactorily completed an addition year of teaching is part of the dynamic status quo that must be preserved during collective negotiations for a new agreement. See Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996); Galloway Tp. Bd. of Ed v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). Thus, the failure to pay increments at the start of a new school year is a unilateral change in the terms and conditions of employment of teaching staff.

Neptune construes N.J.S.A. 18A:29-4.1, as amended in 1987, to limit the obligation to pay salary increments under an expired

labor agreement to no more than three years.^{2/} Accordingly, where there is an expired three year contract covering teaching staff and the parties have not yet concluded negotiations for a new contract, payment of salary increments at the start of a fourth year, conflicts with N.J.S.A. 18A:29-4.1.^{3/} A board would not be required to pay salary increments to teaching staff under those circumstances until a new agreement is reached.

However, as the New Horizons contract is for a two year term, N.J.S.A. 18A:29-4.1 does not bar the payment of salary increments to these teachers during successor collective negotiations. In Waldwick Bd. of Ed., I.R. No. 99-6, 24 NJPER 498, (¶29231 1998), the Board was ordered to pay salary increments to certificated staff following the expiration of a two year agreement.

One further issue remains. In 2003, Public Law 2003, Chapter 126, known as the "School Employees Contract and Equity Law,"

^{2/} N.J.S.A. 18A:29-4.1 provides in pertinent part:

A board of education of any district may adopt a one, two or three year salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of one, two or three years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments.

^{3/} This statute does not apply to school employees who are not considered teaching staff. Neptune, 144 N.J. at 34.

added N.J.S.A. 34:13A-31 through 39 to the Act. N.J.S.A.

34:13A-33 provides:

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the Commission's impasse procedures, or the utilization or completion of the procedures required by this Act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete, or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment without specific agreement of the majority representative.^{4/}

During oral argument I solicited the parties' positions on whether this law affected the issues in this dispute. The Association asserts that N.J.S.A. 34:13A-33 supports its position that the failure to pay salary increments is a change in existing terms and conditions of employments. The Board argues that the law specifically requires that all working conditions remain unchanged during negotiations. It reasons that the payment of increments would change the salaries of the unit employees in contravention of the statute.

I am unaware of any court or agency decision interpreting the "School Employees Contract and Equity Law," since it took effect on July 10, 2003. I conclude that this law supplements and

^{4/} N.J.S.A. 34:13A-32 defines public employer to include a charter school and its board of trustees.

reinforces the Act's proscription against unilateral changes in terms and conditions of employment during the course of collective negotiations.^{5/} It does not change a public employer's duty to maintain the dynamic status quo during negotiations. Maintenance of the status quo requires that the Board pay experience-based step increments to teaching staff during the course of negotiations for a successor agreement. Paying increments is not a "change" in terms and conditions of employment within the meaning of N.J.S.A. 34:13A-33. Rather, failing to pay experience-based increments to teaching staff at the beginning of a new school year "alters" existing terms and conditions of employment and violates that law.^{6/} Thus the "School Employees Contract and Equity Law," reinforces the Association's substantial likelihood of prevailing on the merits of its unfair practice charge.

^{5/} The statement accompanying the amendments to A-3419, the bill that was enacted as P.L. 2003, c. 126 provides:

These Assembly amendments clarify that the bill's prohibition against an employer unilaterally imposing, modifying, amending, deleting or altering terms and conditions of employment, without specific agreement of the majority representative, applies whether or not the existing terms and conditions are expressly set forth in the expired or expiring collective negotiations agreement, so long as they are negotiable terms and conditions of employment.

^{6/} Even assuming that payment of the increments constituted a "change" there is little doubt the charging party would specifically agree to it, as it seeks an order requiring the immediate payment of the increments.

The irreparable harm that results from the withholding of salary increments during negotiations has been discussed in other interim relief decisions. See Waldwick, 24 NJPER at 499. See also, State of New Jersey, I.R. No. 82-2, 7 NJPER 532, 536 (¶12235 1981). I find that it is not ameliorated by the Board's acknowledgment that any agreed upon raises will be made retroactive as applying contract changes back to the effective date of the new agreement is a normal practice in collective negotiations. See State Troopers Fraternal Ass'n v. State, 149 N.J. 38 (1997).

In balancing the relative hardship to both parties, I find that the chilling effect that results from the Board's failure to pay the increments and the irreparable harm that is suffered by the Charging Party as a result of the Board's unilateral change in conditions of employment during the course of negotiations will outweigh any inconvenience to the Board as a result of being required to maintain the dynamic status quo by paying increments to unit employees.

Therefore, I **ORDER** the Board to immediately pay employees represented by the New Horizon Employee Association the salary increments due to them pursuant to the salary structure in the parties' agreement that expired on July 31, 2005. Such increments shall be paid retroactive to the first pay period for the 2005 to

2006 school year.^{7/} This order shall remain in effect until the conclusion of proceedings before the Commission or until the parties have reach agreement through collective negotiations.^{8/}

BY ORDER OF THE COMMISSION



DON HOROWITZ
Commission Designee

DATED: November 28, 2005
Trenton, New Jersey

7/ I deny the Association's request for the payment of interest on the increments withheld to date, without prejudice to its right to renew its application before a Hearing Examiner and/or the Commission at the appropriate time.

8/ This order conforms to the proposed form of order prepared by the Association, that was reviewed by the Board and then forwarded to me.