L.D. NO. 93-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

UNION TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-145

UNION TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Michael A. Blasi, Consultant

For the Charging Party
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

The Union Township Supervisors' Association filed an unfair practice charge with the Public Employment Relations Commission. On March 3, 1993, the Union Township Board of Education and the Association entered an agreement to resolve this dispute through the Litigation Alternative Program. The parties agreed to be bound by the decision entered.

Pursuant to that agreement, I conducted a hearing on June 17, 1993. The parties were given the opportunity to submit evidence, examine and cross examine witnesses, argue orally and file briefs. The Board waived its right to call witnesses and both parties waived their right to file briefs.

The parties agreed that the issue to be resolved is:

> What was the proper salary guide and increment schedule to be used on September 1, 1992, when applying increments for supervisors. On that date the three year agreement between the parties expired and negotiations for a successor agreement were continuing.

The expired contract provides at Article VI:

> 6.01 The salaries of a ten (10) month Supervisor shall be determined by adding the appropriate salary amount from the teachers' salary guide in accordance with each individual's class and step plus a stipend amount as follows:
>
> For 1989-90 --- $5,500
> For 1990-91 --- $5,900
> For 1991-92 --- $6,200
>
> 6.02 The salaries of a ten (10) month Supervisor shall be determined by multiplying the base salary by 1.10 and adding the appropriate stipend to establish the total annual salary.

The term "teachers' salary guide" refers to the teacher salary schedules listed in the teachers' contract. The current teachers' contract runs from September 1, 1990 through August 31, 1993, and there are salary schedules for each year of the agreement.

In the 1991-1992 school year, each supervisor received a $6,200 stipend plus their salary based upon the 1991-92 teachers' salary guide.

Commencing September 1, 1992, the supervisors were working without a contract. The Board computed the supervisors' salaries using the 1991-92 stipend added to the appropriate salary on the 1991-92 teachers' salary guides. Those supervisors who were not at a maximum salary on the 1991-92 guide received a salary increment based on the 1991-92 guide. It is noted that there are approximately 12 employees in the supervisors unit. Nine supervisors are at maximum so three unit members received a salary increment.

During the hearing, the Association called Luciann Slomanski as a witness. She testified that the supervisors have worked without a contract at least three times in the past, most recently was in September 1989. On all these occasions, the supervisors were paid on the teachers' current salary guide; only the amount of the stipend was negotiated. This was the first time supervisors were paid on the prior year's salary guide. Although Slomanski was a hesitant witness and had difficulty recalling specifics, such hesitancy does not undermine her crediblity here for she could not recall facts which would have bolstered the Association's position. Moreover, the Board did not attempt to rebut her testimony. I credit Slomanski's testimony.

The Board recognizes that it has a duty to maintain the status quo during the pendency of negotiations as per Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). The Board argues that its method of calculating the salaries maintains the status quo as per Galloway. It believes that preserving the status quo means paying increments under the same, i.e., the 1991-92, salary guide used prior to the expiration of the contract.

The Association claims that, pursuant to the terms and conditions of employment established in the expired contract, the supervisors' salaries should be based upon the teachers' salary guide currently in use, i.e. the 1992-93 guide, pending a resolution of negotiations. It does not dispute that the supervisors should be paid the 1991-92 stipend pending negotiations. The Association has also asked that interest be assessed against the Board. It cites Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-114, 17 NJPER 335 (¶22149 1991), in support of its position.

The contract is not so clear that either party's interpretation of the contract language is unquestionably right or wrong. The language is ambiguous. Accordingly, I must look to the legal consequences of each interpretation to make my determination.

The underlying rationale of Galloway is to keep the parties' respective positions in balance during negotiations and not give one side or the other any advantage. An incremental salary structure is based upon the concept that employees with greater experience are more valuable employees and are entitled to larger salaries. Increments are not raises for they are granted pending the negotiation of raises. The salaries in the 1992-93 teachers' guide are larger than the salaries in the 1991-92 guide because those salaries contain raises negotiated by the Teachers' Association as well as increments. To require the Board to pay salaries based upon the 1992-93 guide would effectively require the employer to pay a proportionate share of the supervisors' raises without negotiations.

The parties' conduct in the past, when no contract was in effect, is not controlling. In Scotch Plains, the employer refused to pay increments claiming, since it never paid increments in the past when employees worked without a contract and the Association never objected, the Association waived its right to them. The Commission held this past practice was not controlling. Similarly, the parties past practice here is not controlling. An employer can grant a greater benefit than called for in the contract without creating a binding past practice. New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978).

Here the Board properly used the 1991-92 teachers' guide in computing salaries of the 1992-93 school year. I find for the Board and will not order it to pay any additional monies.

Edmund G. Gerber
Commission Designee

DATED: June 23, 1993
Trenton, New Jersey