

P.E.R.C. NO.87-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
WINFIELD TOWNSHIP BOARD OF EDUCATION,
Respondent,

-and-

Docket No. CO-86-155-117

WINFIELD PARK TEACHERS' ASSOCIATION,
Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Winfield Park Teachers Association against the Winfield Park Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when, after enactment of the Teacher Quality Employment Act (TQEA), it unilaterally modified the parties' 1985-1986 salary guide; used monies received from the State to implement the TQEA instead of money agreed upon in negotiations to pay teachers' 1985-1986 salaries; and refused to negotiate over whether to distribute monies received from the State, but not used to implement the TQEA. The Commission, in agreement with a Hearing Examiner, finds that the Board's actions were authorized by the TQEA.

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Charging Party.

Appearances:

For the Respondent
Weinberg and Kaplow, P.A. (Irwin Weinberg, of counsel)

For the Charging Party
Ronald J. Harvey, NJEA UniServ Field Rep.

DECISION AND ORDER

On December 16, 1985, the Winfield Park Teachers Association ("Association") filed an unfair practice charge against the Winfield Township Board of Education ("Board"). The charge alleges that the Board violated subsections 5.4(a)(5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when, after enactment of the Teacher Quality Employment Act

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

("TQEA"), N.J.S.A. 18A:29-5 et seq., it unilaterally modified the 1985-86 salary guide in the parties' 1983-86 collective negotiations agreement; used monies received from the State to implement the TQEA instead of money agreed upon in negotiations to pay teachers' 1985-86 salaries; and refused to negotiate over whether to distribute monies received from the State, but not used to implement the TQEA.

On February 18, 1986, a Complaint and Notice of Hearing issued. The Board filed an Answer asserting that it modified the 1985-86 salary guide solely to implement the TQEA; the TQEA provided it was not obligated to reopen negotiations over the 1985-86 salary guide; and it did not distribute any State aid and was not required to negotiate over proposals requiring such distribution.

On April 29, Hearing Examiner Arnold H. Zudick held a hearing. The parties made opening remarks,^{2/} entered stipulations, submitted documents, and examined a witness. The parties filed post-hearing briefs by August 4.

On September 2, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 87-17, 12 NJPER __ (¶ __ 1986) (copy attached). He concluded that the Board had complied with the TQEA in modifying the 1985-86 salary guide to raise all full-time teachers' salaries to \$18,500 and that it was not obligated to

^{2/} In his opening statement, the Association's representative asserted that the changes in the 1985-86 salary guide had erased salary differentials.

reopen negotiations concerning that guide. He further concluded that the Board was not obligated to distribute monies received from the State, but not necessary to implement the TQEA, or to negotiate over proposals requiring such distribution on the 1985-86 salary guide.^{3/}

The Hearing Examiner served his report on the parties and informed them exceptions were due by September 15. Neither party filed exceptions or requested an extension.

We have reviewed the record. The Hearing Examiner's findings of fact (pp.3-5) are accurate. We adopt and incorporate them here.

Last month we decided a series of cases involving the TQEA. Branchburg Bd. of Ed., PERC No. 87-15, ___ NJPER ___ (¶ ___ 1986); Perth Amboy Bd. of Ed., PERC No. 87-29, ___ NJPER ___ (¶ ___ 1986); North Arlington Bd. of Ed., PERC No. 87-30, ___ NJPER ___ (¶ ___ 1986); Westwood Reg. Schools Bd. of Ed., PERC No. 87-31, ___ NJPER ___ (¶ ___ 1986); Lyndhurst Bd. of Ed., PERC No. 87-32, ___ NJPER ___ (¶ ___ 1986). We held that the TQEA required school boards to raise the minimum salaries for full-time teachers to \$18,500 and that school boards doing so were not required under the TQEA to renegotiate

^{3/} He distinguished situations in which a school board elects to distribute excess monies received from the State. There a negotiations obligation would attach, Point Pleasant Beach Bd. of Ed., I.R. No. 86-20, 12 NJPER 395 (¶17155 1986). He also stressed that he was not deciding any questions concerning aid received after the 1985-86 school year.

1985-86 salary guides. We also declined to exercise unfair practice jurisdiction over charges that teachers were contractually entitled to continue to receive salary differentials after the TQEA's implementation. Perth Amboy Bd. of Ed.; Branchburg Bd. of Ed. We did not consider whether school boards were obligated to distribute excess monies received from the State for the 1985-86 school year or to negotiate over proposals which would require such distribution.^{4/} Given our previous decisions, we address only those questions.

When the Legislature enacted the TQEA, it mandated that full-time teaching staff members receive a minimum salary of \$18,500 each year starting with the 1985-86 school year. N.J.S.A. 18A:29-5. It provided in N.J.S.A. 18A:29-5.6 that school boards would:

receive from the State during the 1985-86 academic year and for two years thereafter an amount equal to the sum of the amounts by which the actual salary prescribed for all current full-time teaching staff members under the salary schedule adopted by the local board of education for the 1984-85 academic year in the manner presumed by law is less than \$18,500.00....

Finally, the Legislature declared that nothing in the TQEA required the reopening of any signed contract in effect for the 1985-86 school year.

^{4/} The Director of Unfair Practices has twice refused to issue Complaints on unfair practice charges making such claims. Roselle Park Bd. of Ed., D.U.P. No. 86-22, 12 NJPER 547 (¶17207 1986); Dunellen Bd. of Ed., D.U.P. No. 87-1, 12 NJPER ___ (¶__ 1986)

In this case, the Board received \$2229.00 in State aid for the 1985-86 academic school year because three teachers had earned less than \$18,500 during the 1984-85 academic year. Under the 1985-86 salary guide negotiated as part of the 1983-86 contract, only one teacher received less than \$18,500 and she only needed to receive \$37.00 to meet that minimum. The Board thus had \$2192.00 in State aid which it did not need to meet TQEA's purposes and which it elected not to distribute. The Association then demanded negotiations over the distribution of this excess money on the 1985-86 salary guide. The Board refused to negotiate.

We agree with the Hearing Examiner that the Board was not obligated to distribute excess monies received from the State during the 1985-86 school year nor was it obligated to negotiate over proposals which would require such distribution on the 1985-86 salary guide. The TQEA specifically provides that it does not require the reopening of any contracts in effect for the 1985-86 school year, yet that is precisely what would be required if complying with the TQEA's mandates and receiving the specified State aid sufficed to trigger an obligation to renegotiate.^{5/} Accordingly we dismiss the Complaint.

^{5/} Like the Hearing Examiner, we distinguish situations in which a board elected to distribute additional monies, and we limit our holding to the 1985-86 school year.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
October 30, 1986
ISSUED: October 31, 1986

H.E. NO. 87-17

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SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Winfield Township Board of Education did not violate the New Jersey Employer-Employee Relations Act, or the Teacher Quality Employment Act, by refusing to negotiate with the Association over the distribution of State aid provided pursuant to the TQEA for 1985-86. This decision was limited to 1985-86, and was not intended to address the negotiability of such State aid in subsequent academic years.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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For the Respondent
Weinberg and Kaplow, P.A.
(Irwin Weinberg, of Counsel)

For the Charging Party
Ronald J. Harvey, NJEA UniServ Field Rep.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 16, 1985, by the Winfield Park Teachers Association ("Association") alleging that the Winfield Township Board of Education ("Board") committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that the Board violated §§5.4(a)(5) and (7) of the Act by refusing to negotiate for 1985-86 the money allocated to the Board under the Teacher Quality Employment Act, N.J.S.A.

18A:29-5 et seq. ("TQEA"); and, by not fully allocating to teachers the monies agreed to in negotiations for 1985-86.^{1/}

A Complaint and Notice of Hearing was issued on February 18, 1986, and the Board's Answer to the Charge which was filed on January 14, 1986, was its Answer to the Complaint. The Board denied violating the Act and argued that it complied with the TQEA, that there was no clause in the parties' agreement requiring the Board to negotiate over any money provided by the TQEA, that it has not unilaterally modified the negotiated salary guide except to comply with the TQEA, and that the TQEA does not require the reopening of the Agreement for 1985-86.

A hearing was held in this matter on April 29, 1986 in Newark, New Jersey, at which time the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs on August 4, 1986.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing and consideration of the post-hearing

^{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."

briefs, this matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I make the following:

Findings of Fact

1. The Board is a public employer within the meaning of the Act.
2. The Association is an employee representative within the meaning of the Act.
3. The Board and Association are parties to a collective agreement, Exhibit J-1, which was ratified on or about July 1984, but which was effective from September 1, 1983-June 30, 1986. The agreement included a teacher salary guide for 1985-86 that provided for an 8 1/2% salary increase. Steps 1-5 of the "BA" guide, 1-4 of the "BA+10" guide, and 1 and 2 of the "MA" guide for 1985-86 were all below \$18,500. There was no reopener in J-1 to negotiate a different salary guide than that which had already been negotiated for 1985-86. (Transcript "T" pp. 33-34).

Article 23, Para. A of J-1 provides that:

If any provision of this agreement or any application of this agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law....

4. The TQEA became effective by September 9, 1985 and, in simple terms, required school boards in New Jersey to pay full-time certified teachers a minimum salary of \$18,500 beginning with the 1985-86 school year. Section 12 of the legislation creating the TQEA (L. 1985 c. 321) provides that"

Nothing in this act shall be construed to require the reopening of any signed contract in effect for the 1985-86 school year.^{2/}

The Legislature's stated purpose for creating the TQEA was to attract and retain qualified teachers by offering them a competitive salary. N.J.S.A. 18A:29-5.2. The State Board of Education was authorized to adopt rules and regulations to effectuate the TQEA N.J.S.A. 18A:29-5.12, but no rules became effective until June 2, 1986. N.J.A.C. 6:20-5.6. et seq.

5. The Association advanced several arguments in its opening remarks:

First, it argued that as a result of the TQEA the Board was required to negotiate a new salary guide with no salary less than \$18,500, as opposed to just raising certain teachers' salaries (T pp. 12-13).

Second, that under the Act, the Board must negotiate any modification of working conditions, and that since a salary guide change is a modification of working conditions it must be negotiated (T p. 13).

Third, that the TQEA, section 12 in particular, does not repeal the requirements in the Act to negotiate over terms and conditions of employment (T pp. 13-14).

^{2/} The TQEA is currently reported in the 1986 pocket part to N.J.S.A. 18A:25 to 18A:65 p. 35 et seq. Section 12 does not appear in the body of 18A:29-5, but appears as a note to that section on p. 36. It is, nevertheless, clearly included in the law.

Fourth, that by using money received pursuant to the TQEA the Board has used State aid money to replace some of the 8 1/2% salary increase negotiated for 1985-86 teachers' salaries, thus modifying the parties' agreement (T pp. 14, 34).

6. The record shows that in 1984-85 three teachers employed by the Board, Wright, Huffman, and Staab, received less than \$18,500 (Exhibit CP-2), but for 1985-86, only Wright was scheduled to receive less than \$18,500 (Exhibit CP-3). The Board received \$2,229 in State aid to implement the TQEA (Exhibit CP-1), but it only needed \$37 to raise Wright's salary to \$18,500 leaving \$2,192 in State aid remaining (Exhibit CP-4).

By letter dated September 11, 1985 the Association demanded "negotiations on the distribution of the additional money on the salary guide." (Exhibit CP-5). The Board responded by letter of October 2, 1985 denying the Association's demand for negotiations and argued that the TQEA did not require a reopening for 1985-86 (Exhibit CP-6).

7. The Association's representative admitted that the Association's intention was to reopen and renegotiate the 1985-86 salary guide.

8. No facts were presented to show that the Board violated any Commission rule or regulation.

Analysis

Legal Background

When the Legislature originally passed the TQEA it did not contain Section 12, supra, and it contained the following language in Section 6:

Teachers receiving more than the minimum salary set forth in this amendatory and supplementary act shall not receive automatic salary increases pursuant to any existing collective negotiations agreement with a salary guide indexed to compute salaries on the basis of a ratio established between the minimum salary and all other ranges, increments, or increases. Any salary guide in effect on the effective date of this amendatory and supplementary act which is based upon such an index shall be renegotiated.

However, the Governor conditionally vetoed the original legislation and recommended, among many other items, the elimination of the last sentence of Section 6 concerning renegotiations, and the inclusion of Section 12. The Legislature agreed to both items and Section 6, minus the last sentence, became N.J.S.A. 18A:29-5.5.

Section 11 of the TQEA, now N.J.S.A. 18A:29-5.10, provides:

Any funds appropriated for salaries that will be replaced by 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 members salaries:

Pursuant to the rule making authority in N.J.S.A. 18A:29-5.12, the State Board of Education adopted rules, N.J.A.C. 6:20-5.6, to effectuate the TQEA. Section 5.6(a) of the Rules

provided that boards of education adopt salary schedules which provide no step lower than \$18,500.^{3/} Sections 5.6(f), 5.6(i), and 5.6(j) were designed to effectuate 18A:29-5.10. Section 5.6(f) prevents a board from transferring out of any line item account or program, funds replaced by the State aid received pursuant to the TQEA. Section 5.6(i) provides that funds replaced by State aid be held in a special balance to be used in subsequent years to pay teachers' salaries, and Section 5.6(j) provides that for 1985-86, school boards increase the amounts appropriated for teacher salaries by an amount equal to the amount of State aid which the board received under the TQEA.^{4/}

3/ N.J.A.C. 6:20-5.6(a) is as follows:

(a) For the 1985-86 school year and thereafter, a district board of education shall for the purpose of receiving State aid pursuant to the Teaching Quality Employment Act adopt a salary schedule(s) for full-time teaching staff members which provides that no step on the salary schedule(s) is lower than \$18,500 regardless of funding source.

4/ N.J.A.C. 6:20-5.6(f), 5.6(i) and 5.6(j) are as follows:

(f) For the 1985-86 school year and subsequent school years, a district board of education shall not transfer out of any line item account or program category any funds replaced by State aid received pursuant to the Teacher Quality Employment Act.

(i) Any part of the funds replaced by State aid as determined in (g) and (h) which remains unexpended at the completion of the 1985-86 school year or a subsequent school year, shall be held as a special balance appropriated which shall only be used in subsequent school years for the payment of full-time teaching staff member salaries for duties which are part of the teaching staff member's regular contractual responsibilities.

When the instant Charge was filed on December 16, 1985 it was the first case filed with the Commission raising negotiations and 5.4(a)(5) issues as ramifications of the implementation of the TQEA. A Complaint issued on February 18, 1986.

The Director of Unfair Practices, however, has subsequently refused to issue complaints in cases raising essentially the same issues as presented by the instant Charge.^{5/} Beginning with Clark Bd.Ed., D.U.P. No. 86-16, 12 NJPER 474 (¶17178 6/5/86), the Director concluded that, particularly because of Section 12 of the TQEA, boards of education were not required to renegotiate salary guides for 1985-86 merely because boards upgraded certain salaries in compliance with the TQEA. The charge in Clark, supra, was filed on March 26, 1986 by the same Association representative that filed the instant Charge, and he advanced similar arguments. In Clark the association argued that when the board increased certain salaries to comply with the TQEA it effectively reduced differentials that had been negotiated for teachers with masters degrees, and that it

4/ Footnote Continued From Previous Page

(j) For the 1985-86 school year a district board of education shall increase the amounts appropriated for teaching staff member salaries in the various line item accounts or program categories by an amount equal to the amount of State aid which the district board of education is entitled to receive pursuant to the Teacher Quality Employment Act.

5/ I believe that the Director of Unfair Practices chose to issue a Complaint in this matter as a vehicle to present novel issues of law to the Commission for consideration.

eliminated certain step increases for teachers with undergraduate degrees in the 1985-86 school year. In reliance upon State of New Jersey v. State Supervisory Employees Association, 78 N.J. 54 (1978), the Director refused to issue a complaint in Clark and held that Section 12 of the TQEA preempted the board's duty to negotiate. The Director held:

In State v. Supervisory Employees Association, 78 N.J. 54 (1978), the Court delineated certain statutory requirements concerning negotiable terms and conditions of employment. The Court stated:

...the adoption of any specific statute or regulation setting or controlling a particular term or condition of employment will preempt any inconsistent provision of a negotiated agreement governing that previously unregulated matter. In short, the parties must negotiate upon and are free to agree to proposals governing any terms and conditions of public employment which have not been set, and thus preempted, by specific statutes or regulations. 78 N.J. at 81.

The Court also declared non-negotiable all proposals which affect rights established by "mandatory" or "imperative" statutes (i.e., "those enactments which set up a particular scheme which 'shall' be handled as directed.") Id at 81-82.

From both a literal and contextual reading (in light of State Supervisory Employees Association) of the TQEA, I determine that the Legislature's setting of a minimum salary for teachers and its specific admonition that nothing shall require the reopening of signed contracts in effect for 1985-86, preempt the employer's duty to negotiate concerning those affected terms and conditions of employment. Specifically, employers are not required to negotiate changes in salary guides of executed agreements where the changes resulted exclusively from the upgrading of teacher salaries to comply with the statute (TQEA). In this case, the Board did not unlawfully change any negotiated term and condition of employment of any teacher earning \$18,500 or more when it upgraded teacher salaries for 1985-86; it merely complied with the TQEA. 12 NJPER at 475.

On June 5, 1986 the Director, in addition to Clark, issued five other decisions refusing to issue complaints for the same reasons enunciated in Clark. Lyndhurst Bd.Ed., D.U.P. No. 86-17, 12 NJPER 475 (¶17179 1986); Perth Amboy Bd.Ed., D.U.P. No. 86-18, 12 NJPER 477 (¶17180 1986); Branchburg Bd.Ed., D.U.P. No. 86-19, 12 NJPER 478 (¶17181 1986); North Arlington Bd.Ed., D.U.P. No. 86-20, 12 NJPER 479 (¶17182 1986); and Westwood Bd.Ed., D.U.P. No. 86-21, 12 NJPER 481 (¶17183 1986).

On March 26, 1986, the same Association representative that filed the charge in Clark and the instant Charge, also filed the charge leading to the Director's refusal to issue complaint in Roselle Park Bd.Ed., D.U.P. No. 86-22, 12 NJPER 547 (¶17207 6/18/86). In Roselle Park, supra, the association, in addition to alleging that the board violated the Act by refusing to negotiate the new salary guide that resulted from implementation of the TQEA, also alleged that the board violated the Act by refusing to negotiate over the distribution into the 1985-86 salary guide of residual money--money remaining from the State aid provided to the board pursuant to the TQEA but not needed that year to raise the 1985-86 salaries to \$18,500. The board in Roselle Park had been given \$48,980 in State aid for 1985-86, but only need approximately \$18,980 to raise salaries to \$18,500, leaving approximately \$30,000 in State aid remaining. The association demanded to negotiate over the distribution of the \$30,000 into the 1985-86 salary guide, but the board refused.

The Director dismissed the first part of Roselle Park--the demand to negotiate over the creation of a new salary guide as a result of the implementation of the TQEA--for the same reasons expressed in Clark. He dismissed the second part of Roselle Park--the demand to negotiate over the distribution of residual money--in reliance upon Section 12 of the TQEA. The Director held:

After careful consideration,...I determine that the Legislature's specific direction that nothing shall require the reopening of a signed contract in effect for 1985-86, preempts the employer's duty to negotiate concerning those affected terms and conditions of employment. Thus, I find that the Roselle Park Board of Education is not obligated to discuss with the Association distribution of the residual monies received from the State for the 1985-86 school year. This determination is based on the express language of the statute which speaks only to the 1985-86 school year. Accordingly, nothing in this decision should be construed to comment on distribution of residual monies for any years beyond 1985-86. [citation omitted] 12 NJPER at 548.6/

On June 20, 1986 another charge was filed alleging that a board violated the Act by refusing to negotiate over residual money for 1985-86. In Dunellen Bd.Ed., D.U.P. No. 87-1, 12 NJPER _____

6/ In Roselle Park, however, the Director made note of an earlier decision he issued as Commission Designee, Point Pleasant Beach Bd.Ed., I.R. No. 86-20, 12 NJPER 395 (¶17155 5/15/86), which is distinguishable from Roselle Park. In Point Pleasant, supra, the association sought to restrain the board from unilaterally distributing residual money remaining after the implementation of the TQEA for 1985-86 to employees already above \$18,500. The Commission Designee granted interim relief and restrained the board from unilaterally distributing the residual money. That decision, I believe, correctly concluded that the board had no basis under the TQEA to unilaterally alter salaries at or above \$18,500.

(¶ _____ 7/10/86), the Director refused to issue a complaint for the reasons expressed in Roselle Park.

Association Arguments

In addition to the arguments it raised at hearing, Finding of Fact No. 5, supra, the Association raised additional arguments in its post-hearing brief. In sum, it argued that N.J.A.C. 6:20-5.6(a) required the inclusion of all State aid received pursuant to the TQEA had to be negotiated into the 1985-86 salary guide; that the State Board in creating N.J.A.C. 6:20-5.6 et seq. intended boards to use residual State aid money to increase salaries of other teaching staff members in 1985-86; and that Section 12 of the TQEA does not prevent the renegotiation of the 1985-86 salary guide. In addition, the Association argued that Clark and Roselle Park were not applicable in the instant matter at least partly because the Director did not consider the language in N.J.A.C. 6:20-5.6 et seq.

Discussion

Having considered the Association's numerous arguments, and having analyzed both N.J.S.A. 18A:29-5 et seq. and N.J.A.C. 6:20-5.6 et seq. and considered the case law discussed above, I conclude that the Board did not violate the Act. I agree with the Director's legal analysis of the TQEA in Clark and Roselle Park and the other cases cited above.

With respect to the Association's primary argument about the negotiability of salary guides under the TQEA, the Association recognized in its post-hearing brief, that when the TQEA was first

passed by the Legislature including the last sentence of Section 6 and not including Section 12, it would have required renegotiations of salary guides for 1985-86. The Association then recognized that the Legislature dropped the last sentence of Section 6 and added Section 12, but the Association apparently failed to recognize the obvious meaning of the Legislature's actions. By dropping the last sentence of Section 6 and adding Section 12 the Legislature obviously intended not to require boards of education to renegotiate existing salary guides for 1985-86 even though those boards were required to implement the TQEA that year. Since the TQEA became effective on September 9, 1985, after the start of the 1985-86 school year, the Legislature was apparently concerned about disrupting 1985-86 salary guides which--for the most part--were already in place and being complied with before the TQEA became effective. Thus, the Legislature added Section 12 to the TQEA, I believe, to prevent disturbing the salary guides for that academic year.

Although I agree with the Association that Section 12 of the TQEA did not "prevent" boards from negotiating any residual State aid into the 1985-86 salary guide, boards clearly were not required to engage in such negotiations for 1985-86. See Roselle Park. In Point Pleasant, supra, the board obviously was willing to distribute residual State aid into the 1985-86 salary guide although it was not required to do so, but once it was interested in distributing that money I agree with the Commission Designee that it

was then required to negotiate over the distribution of the money. That scenario did not occur in the instant case. The Board exercised its right pursuant to Section 12 of the TQEA not to renegotiate the 1985-86 salary guide. Thus, it did not violate the Act.

With respect to the Association's assertion that our Act required negotiations in the instant matter, and that Section 12 of the TQEA does not repeal that requirement, the Association has failed to consider our Act and the TQEA in pari materia. This is not a question of one act superseding or preempting the other, this is a question of discerning legislative intent and, therefore, both acts must be given equal weight. in City of Clifton v. Passaic County Bd. of Taxation, 28 N.J. 411, 421 (1958), the State Supreme Court indicated that statutes in pari materia are to be construed as a harmonious whole, and that such statutes should be construed so that unreasonable results are avoided and the legislative purpose given effect. In Pfizinger v. Board of Trustees Public Employee's Retirement System, 62 N.J. Super. 589 (Law Div. 1960), a lower court emphasized that in construing legislative intent, a court must look to the objective sought in the context of the subject matter.

The Association accurately argues that our Act requires negotiations over terms and conditions of employment which includes salary guides, and normally the unilateral alteration of a salary guide would violate §5.4(a)(5) of the Act. However, this is not a "normal" situation because the Board was required by the TQEA to

alter the 1985-86 salary guides. Our Act, therefore, cannot be read in a vacuum.

In applying the directives from City of Clifton, supra, and Pfizinger, supra, to the instant matter one could not conclude that the Legislature intended boards of education to negotiate over the distribution of State aid money provided pursuant to the TQEA into 1985-86 salary guides. To do so would be an unreasonable result since it would give no meaningful effect to Section 12 of the TQEA. The Legislature was obviously aware of the requirements of our Act when it passed the TQEA, and the objective of Section 12, I believe, was to eliminate the need to negotiate over the State aid in the 1985-86 academic year.

With respect to the Association's argument that N.J.A.C. 6:20-5.6 et seq. somehow requires negotiations over State aid in 1985-86, the Association has badly misinterpreted those Rules. The Rules were adopted to effectuate the TQEA, not to deviate from it. Section 12 of the TQEA is clear on its face, salary schedule renegotiations for 1985-86 are not required. Rules cannot supersede statutes. Thus, to the extent that anything in the Rules deviate from Section 12 of the TQEA, they have no effect.

I have reviewed the Rules, however, and find that they do not deviate from properly effectuating the TQEA at least with respect to this case. N.J.A.C. 6:20-5.6(a) does not require that salary schedules be negotiated, nor do §§5.6(f), (i), or (j) require negotiations over State aid or residual money for 1985-86. In fact,

the Association's concern over the remaining \$2,192 of State aid not used in 1985-86, and its argument that State aid replaced some of the 8 1/2% increase in 1985-86, are addressed by §§5.6(i) and (j) of the Rules. The Board is required to place the additional money in a special account to be used for teacher salaries in the future. Nothing, however, requires the use of the residual or replaced funds for 1985-86.

Finally, Article 23, Para. A of J-1 was operative here. Since the TQEA required teacher salaries to be at a minimum of \$18,500, then the 1985-86 salary guide in J-1 was not valid to the extent that it contained salaries below \$18,500. The Board simply complied with the TQEA by upgrading Wright's salary, and was not obligated to negotiate with the Association over the use of the State aid money in 1985-86.

Accordingly, the §5.4(a)(5) allegation should be dismissed.^{7/}

The §5.4(a)(7) Allegation

Since no rules or regulations of the Commission, N.J.A.C. 19:10-1.1 et set., were alleged to be violated, the §5.4(a)(7) allegation should be dismissed.

^{7/} My decision on the negotiability of State aid in the salary guide and the negotiability of residual State aid is limited to 1985-86. I agree with a note the Director used in Roselle Park in that nothing in his decision should be construed to comment on the distribution of or negotiations of residual monies for years beyond 1985-86. That note is applicable here as well.

Conclusions of Law

The Board did not violate N.J.S.A. 34:13A-5.4(a)(5) or (7), or N.J.S.A. 18A:29-5 et seq., by refusing to negotiate over the distribution of State aid money in 1985-86.

Recommendation

Based upon the above findings and analysis I recommend that the Commission ORDER that the Complaint be dismissed.


Arnold H. Zudick
Hearing Examiner

Dated: September 2, 1986
Trenton, New Jersey