

I.R. NO. 96-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-36

UNION CITY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,  
Patino-Treat & Rosen, attorneys  
(Louis C. Rosen, of counsel)

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

INTERLOCUTORY DECISION

On August 2, 1995, the Union City Education Association filed an unfair practice charge against the Union City Board of Education alleging the Board engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when it failed to maintain terms and conditions of employment for certain 12-month

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<sup>1/</sup> 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."

employees. After the expiration of the July 1, 1992 to June 30, 1995 collective negotiations agreement, the Board failed to pay increments as provided for in the agreement to certain non-instructional 12-month employees.<sup>2/</sup>

The unfair practice charge was accompanied by an order to show cause. The order was executed and made returnable for August 16, 1995 and a hearing was held on that date.

The employer does not dispute that the contract provides for an incremental structure of certain 12-month employees. It argues, however, that it is inappropriate to order the payment of increments here since the Association refused to schedule any negotiations sessions over the summer. It further argues that an interim restraint here should not be imposed pending action on an outstanding petition for certification filed in the Supreme Court in Board of Education of the Township of Neptune v. Neptune Township Education Association and the Neptune Township Principals Association, App. Div. A-1184-93T2, pet. for certification pending. In Neptune, the Appellate Division affirmed a State Board of Education finding that N.J.S.A. 18A:29-4.1 neither prohibits nor mandates the payment of salary increments pursuant to the terms of an expired collective negotiations agreement.

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<sup>2/</sup> These positions include Chapter I Secretaries/Bookkeepers, Business Office Clerks/Specialist Clerks/Administrative Clerks, Maintenance Personnel, Insurance Administrator, Director of Transportation, Cleaning Personnel, Custodians, and Electricians/Plumbers/Carpenters.

The Association disputes it refused to negotiate over the summer. Rather, it claims there were scheduling conflicts among all the parties. It is undisputed that two negotiations sessions have in fact taken place in August and a third is scheduled within several days of the hearing.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>3/</sup>

The Board's arguments are unpersuasive. Negotiations between the parties have not been suspended and the likelihood of the petition for certification in Neptune having an impact on this proceeding is remote. The law in this matter is well established. An employer must maintain the status quo as to terms and conditions of employment during negotiations. One cannot alter the terms and conditions of employment and continue to negotiate in good faith at

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<sup>3/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

the same time. Galloway Tp. Bd. of . v. Galloway Tp. Ass'n. of Ed. Sec., 78 N.J. 25 (1978). The Commission has long held that movement on an automatic salary schedule is part of the status quo; to refuse to pay increments which are due and owing under the existing salary structure here impermissably chills negotiations. See Evesham Township Board of Education, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

Accordingly, the Union City Board of Education is ORDERED to immediately pay increments due to the 12-month employees represented by the Education Association in the non-instructional staff unit, pursuant to the incremental salary structure in the parties expired 1992-1995 collective negotiations agreement.

BY ORDER OF THE COMMISSION

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Edmund G. Gerber  
Commission Designee

DATED: August 17, 1995  
Trenton, New Jersey