

I.R. NO. 90-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GARFIELD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-151

GARFIELD FEDERATION OF TEACHERS,
LOCAL 3977, NJSFT, AFT, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee orders the Garfield Board of Education to implement the terms of a collective negotiations agreement which it previously ratified. When the Board ratified the agreement, eight of the nine Board members were present; four voted in favor of ratification, one member voted no, two other votes were split and one member abstained. Since a quorum of the Board voted in favor of the resolution, the resolution was binding.

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Appearances:

For the Respondent

Tomar, Seliger, Simonoff, Adourian & O'Brien, Esqs.
(Mary L. Crangle, of counsel)

For the Charging Party

Ruderman & Glickman, Esqs.
(Mark S. Ruderman, of counsel)

INTERLOCUTORY DECISION

On November 28, 1989, the Garfield Federation of Teachers, Local 3977, NJSFT, AFT, AFL-CIO ("Union") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging the Garfield Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(1), (5) and (6)^{1/}

^{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. (5) Refusing to

when on October 4, 1989 the Board and Union entered into a Memorandum of Agreement and on November 9, 1989 the Board ratified the Agreement, but since that time has refused to implement the Agreement.

The unfair practice charge was accompanied by an Order to Show Cause seeking an order restraining the Board from refusing to implement the Agreement and seeking the salary increment specified therein or, in the alternative, restraining the status quo with respect to the salary increment.

The Show Cause Order was executed and made returnable on December 8, 1989. A hearing was conducted on that date, at which time both parties had an opportunity to argue orally, submit evidence and briefs.

The facts are not in dispute. The Union is the majority representative of a unit of teachers and other professional employees of the Board. The most recent agreement expired on June 30, 1989. On October 4, 1989, the parties entered into a Memorandum of Agreement for a new contract. The Union ratified the agreement and on November 9, 1989, the contract's ratification was before the Board at its regularly scheduled meeting and appeared on the Board's agenda as Resolution No. 16.

1/ Footnote Continued From Previous Page

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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

Eight of nine members of the Board were present at that meeting. When the Resolution was brought before the Board, four members voted in favor of ratification, one cast a negative vote and two other votes were split; one voting yes on salaries and no on the rest of the package; the other voting yes on salaries and abstaining on the rest of the package. The eighth board member abstained.

At the Board's reorganization meeting on April 11, 1989, it adopted Robert's Rules of Order and under those rules the Resolution was adopted. However, the Board has refused to acknowledge that the Agreement was ratified and implemented by the November 9, 1989 vote. Nevertheless, the Board has failed to pay the increments contained in the recently expired agreement.

ANALYSIS

In Matawan-Aberdeen Regional Teacher Assn. vs. Matawan-Aberdeen Regional School Dist., 223 N.J. Super 504 (A.D. 1988), the Court held that where the statutes are silent with respect to the number of votes necessary to conduct the business of a Board of Education, the common law rule applies and a majority vote of the members of the Board constituting a quorum shall be sufficient.

Here, since a quorum was present on November 9, 1989 and a majority of the votes cast were in favor of adoption of the Memorandum of Agreement (four out of the seven votes cast), the Resolution passed and the contract was ratified.

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.^{2/}

The law in this area is well settled. The Commission, as confirmed by the courts, has consistently held that automatic salary increments contained in an expired contract must be paid while the parties are negotiating for a new collective agreement. Galloway Tp. Bd.Ed. v. Galloway Tp. Ed.Assn., 78 N.J. 25 (1978); Union Cty. Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson Cty. Bd.Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order


2/ 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).

enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); Newark Public Library, I.R. No. 84-9, 10 NJPER 321 (¶15154 1984); Belleville Bd.Ed., I.R. No. 87-5, 12 NJPER ____ (¶ ____ 1986).

Here, the Board argued only that any interim order issued on this matter should be limited to the payment of increments under the most recently expired contract and not to the enforcement of the new agreement.

Accordingly the scope of the order is the only issue in dispute. Given the Board does not challenge the facts or legal conclusion of the Union as to the ratification and its consequences, it would be unduly artificial to limit the remedy to the payment of increments only to have to order the enforcement of the contract at a future time. The purpose of ordering the payment of increments is to ensure a measure of equality in bargaining. Here, there is nothing to bargain. To refuse to honor a ratified contract, chills the entire labor relations process. Any order entered must cause the least overall disruption to the parties. It follows that the contract must be enforced. Similarly, labor stability calls for the enforcement of the new contract.

Therefore, it is hereby ordered that the Board implement the Memorandum of Agreement as ratified by it on November 9, 1989.



Edmund G. Gerber
Commission Designee

DATED: December 22, 1989
Trenton, New Jersey