

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAHWAH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-98-100

MAHWAH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission order the Mahwah Board of Education to pay its employees increments after the expiration of a two-year collective negotiations agreement with the Mahwah Education Association. The Hearing Examiner rejects the Board's argument that a three-year salary policy was in effect and therefore, pursuant to N.J.S.A. 18A:29-4.1 increments could not be paid. The recently expired agreement was executed at a time when a prior agreement still had a year to run. Accordingly, the Board contends these two contracts should be read together to establish one, three year salary policy.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Sullivan & Sullivan, attorneys  
(Mark G. Sullivan, Esq.)

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

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On September 19, 1997, the Mahwah Education Association filed an unfair practice charge against the Mahwah Board of Education. The charge alleges that the Board violated 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by refusing to pay automatic increments

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<sup>1/</sup> 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."

to teachers after the expiration of a two year collective negotiations agreement with the Mahwah Education Association.<sup>2/</sup>

A Complaint and Notice of Hearing issued on October 24, 1997 and a hearing was conducted on November 25, 1997. Both parties filed post hearing briefs by December 22, 1997.

Based upon the entire record, I make the following:

#### FINDINGS OF FACT

1. On April 14, 1994, the Association and Board were parties to a three year agreement (R-1) which, by its terms, was in effect from July 1, 1992 through June 30, 1995.

2. On April 14, 1994, before the expiration of the 1992-1995 agreement, the parties executed a new agreement (CP-1) which, by its terms, was in effect from July 1, 1995 to June 30, 1997.

3. The only changes between the 1992-1995 and 1995-1997 agreements are in the salary guides. The recognition clauses of both agreements include all teachers, secretarial personnel, nurses, custodial/maintenance employees, aides and drivers.

4. The 1995-1997 agreement contains two salary guides for teachers. Teachers advance on the guide by years of service

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<sup>2/</sup> The Association also filed an application for interim relief, which was granted on October 17, 1997, I.R. No. 98-8, 23 NJPER 593 (¶28290 1997). The Board moved for reconsideration of that decision. Reconsideration was denied on January 29, 1998, P.E.R.C. No. 98-105, 24 NJPER 133 (¶29067 1998).

and move on the educational columns based upon the earning of an advanced degree and/or the completion of educational requirements. The salary guide in the agreement went into effect July 1, 1995.

5. In March 1997, negotiations began for a successor to the 1995-1997 agreement. Although there have been seven negotiations sessions, the parties have yet to reach an agreement.

6. One week before the start of the 1997-1998 school year, the Superintendent of Schools, H. Murray Blueglass, notified the President of the Association, Kathleen Schal, teachers would not be paid increments. On September 12, 1997, Superintendent Blueglass notified the entire teaching staff that increments will not be paid until a new agreement is negotiated (CP-2).

7. To date, increments have not been paid nor have salaries been adjusted for movement on the education guide. However, non-professional staff have received their increments.

8. In both 1992 and 1987, the parties were without a current agreement and the Board teachers paid salary increments and paid for movement on the education guide.

#### **ANALYSIS**

The Board argues that as of April 18, 1994, it was contractually bound to the Association as to both the salary policy expressed in the 1992-1995 agreement and the salary policy expressed in the 1995-1997 agreement. Accordingly, the Board was contractually bound to the MEA until June 30, 1997.

N.J.S.A. 18A:29-4.1 states:

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.

The Board notes that this statute does not refer to contract lengths; it restricts local boards of education from establishing salary policies greater than three years in duration.

The Board argues that Board of Education of the Township of Neptune v. Neptune Township Education Assn., et al., 144 N.J. 16 (1996), interprets N.J.S.A. 18A:29-41 to limit the board's authority to create salary policies which bind future boards to a maximum of three years.

Because the legislature has never explicitly authorized the Board to adopt schedules beyond the term of N.J.S.A. 18A:29-4.1, reading that statute to prohibit the contract from being binding for more than three years supports that principal of limited board power. Neptune @ 27.

Pursuant to Neptune, the obligation to pay increments pursuant to an expired contract is part of the three year salary policy period. The Board contends that as of April 18, 1994, it had contractually bound itself through June 30, 1997. The balance of the 1992-1995 contract has to be read together with the 1995-1997 contract period to create one salary policy.

Accordingly, the Board argues if it were to pay increments as demanded by the MEA, it would extend the salary policy beyond three years.

The Association relies on long standing Commission precedent to argue that the Board had an obligation to maintain the status quo during negotiations for a new agreement. The status quo includes the payment of increments while negotiation for a new agreement are pending.

The Association contends that the 1992-1995 and 1995-1997 contracts were separate legal documents and that the expired 1995-1997 contract was for only two years. Therefore, neither the statutory limitations of N.J.S.A. 18A:29-4.1 nor Neptune limit the payment of increments. Neptune holds N.J.S.A. 18A:29-4.1 "prohibits the Board from paying increments on the expired contract because that would make the contract binding for a fourth year, beyond the statutory term." Id at 33.

I am not persuaded by the Board's argument. If, as the Board argues, as of April 18, 1994, there was one comprehensive salary policy in effect, there would be a three-year, two month policy, (from April 18, 1994 to June 30, 1997) which would be illegal under Title 18A. If both contracts were read together, there would be a five year salary policy in effect. However, the Board has not argued that the 1995-1997 contract itself was illegal or that the Board exceeded its own authority when it

entered into the 1995-1997 contract. The 1992-1995 and 1995-1997 contracts must be read separately. If the Commission were to find two such consecutive contracts must be read together to create one policy, no employee representative would be willing to sign a three year agreement prior to the expiration of an existing agreement. Such a result would undermine labor relations stability and be contrary to the policy of the Act.

Here, the 1995-1997 contract created a salary policy for two years. It contains both a salary increment structure based upon years of service and column movement on the salary guide through the acquisition of additional educational credits and degrees.

The refusal to pay increments is a unilateral alteration of the status quo and a per se illegal refusal to negotiate in good faith. Hudson Cty Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt No. A-2444-77 (4/9/79) aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978); Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd and modified App. Div. Dkt No. A-1572-79 (4/1/81); Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3, 4 (¶26001 1994); Ramapo-Indian Hills Bd. of Ed., I.R. No. 97-8, 22 NJPER 386 (¶27207 1997); Wildwood City Bd. of Ed., I.R. 98-13, 24 NJPER 32 (¶29018 1997); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); City of Vineland, I.R. No. 81-1, 7 NJPER 234 (¶12142 1981), interim order enforced and leave to

appeal denied App. Div. Dkt No. A-1037-80T3 (7/15/81); Belleville Bd. of Ed., I.R. No-87-5, 12 NJPER 629 (¶17262 1980); Hunterdon Cty Bd. of Social Services, I.R. No. 87-17, 13 NJPER 215 (¶18091 1987); Township of Marlboro, I.R. No. 88-2, 13 NJPER 662 (¶18250 1987); Borough of Palisades Park, I.R. No. 87-21, 13 NJPER 260 (¶18106 1987); Sheriff of Middlesex Cty., I.R. No. 87-19, 13 NJPER 251 (¶18101 1987); County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); County of Sussex, 17 NJPER 234 (¶22100 1991); Burlington County, I.R. No. 93-2, 18 NJPER 405 (¶23184 1992); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993).

Accordingly, I make the following:

#### CONCLUSIONS OF LAW

The Board violated subsections 5.4a(1) and (5) of the Act by refusing to pay salary increments and make salary adjustments based upon the acquisition of educational credits and degrees during negotiations for a successor agreement to the 1995-1997 collective negotiations agreement.

#### RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Mahwah Board of Education cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by



the Act, particularly by refusing to pay salary increments and make salary adjustments based upon the acquisition of educational credits and degrees during negotiations for a successor agreement.

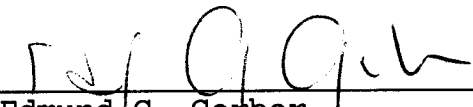
2. Refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit by refusing to pay salary increments and make salary adjustments based upon the acquisition of educational credits and degrees during negotiations for a successor agreement.

B. That the Board take the following action:

1. Negotiate in good faith for a successor agreement to the 1995-1997 collective negotiations agreement with the Mahwah Education Association. Specifically, maintain the status quo by paying to all its certificated employees salary increments and make salary adjustments based upon the 1995-1997 agreement pending the conclusion of negotiations.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

  
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Edmund G. Gerber  
Hearing Examiner

Dated: March 18, 1998  
Trenton, New Jersey



RECOMMENDED



# NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,  
AS AMENDED,**

**We hereby notify our employees that:**

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to pay salary increments and make salary adjustments based upon the acquisition of educational credits and degrees during negotiations for a successor agreement.

WE WILL NOT refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit by refusing to pay salary increments and make salary adjustments based upon the acquisition of educational credits and degrees during negotiations for a successor agreement.

WE WILL Negotiate in good faith for a successor agreement to the 1995-1997 collective negotiations agreement with the Mahwah Education Association. Specifically, maintain the status quo by paying to all its certificated employees salary increments and make salary adjustments based upon the 1995-1997 agreement pending the conclusion of negotiations.

Docket No. CO-H-98-100

Mahwah Board of Education

(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"