

I.R. NO. 96-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE HUDSON COUNTY  
AREA VOCATIONAL-TECHNICAL SCHOOLS,

Respondent,

-and-

Docket No. CO-96-50

HUDSON COUNTY AREA VOCATIONAL-TECHNICAL  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

Upon the expiration of the parties' collective negotiations agreement, the Board of Education of the Hudson County Area Vocational-Technical Schools refused to pay increments to its employees. The Hudson County Area Vocational-Technical Education Association sought an interim order.

A Commission Designee ordered the Board to pay increments to employees whose salary schedule was based on the number of years worked, but declined to order the payment of increments to employees whose contract did not provide a salary schedule based on the number of years worked.

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EDUCATION ASSOCIATION,

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Appearances:

For the Respondent,  
Brownstein, Booth & Barry, attorneys  
(Alexander W. Booth, Jr., of counsel)

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

INTERLOCUTORY DECISION

On August 15, 1995, the Hudson County Area Vocational-Technical Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board of Education of the Hudson County Area Vocational-Technical School Board committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when

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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

after the expiration of the parties negotiations agreement, and while the parties were negotiating for a successor agreement, the Board of Education declined to pay increments.

An order to show cause was filed with the unfair practice charge seeking an interim order requiring the Board to pay increments. The order was executed and a hearing on the order was conducted on September 19, 1995.

The Board maintains that it has never contractually agreed to pay salary increments until a successor agreement is negotiated. In 1993, the parties signed an agreement extending the contract which expired in June 1993 to June 30, 1994. A provision in that agreement states:

3. The Board takes the position that salary guides are not legally binding beyond the term of any contract. On the other hand the Association takes the position that the salary guides are binding beyond the term of any contract. The parties have been unable to amicably resolve this dispute except they hereby agree that entering this Agreement is without prejudice to either position.

It is not disputed that the Board has not paid increments upon the expiration of prior agreements when a new contract was not yet in place.

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1/ Footnote Continued From Previous Page

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."

Neither the 1991-1993 contract nor the 1994 memorandum contains an incremental structure. Rather, the 1991-1993 contract makes reference to salary schedules. Those salary schedules vary from title to title. The number of steps on the salary schedules vary from year to year as well.

According to Joseph Mantineo, President of the Association, only the salary guides for teaching positions, Principals, Vice-Principals, Directors of Instruction and Supervisors of Instruction have steps that are directly related to years of service. However, the salary steps for non-instructional administrators are not related to years of service. The record before me does not demonstrate how the salary schedules for non-instructional unit members work.

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>2/</sup>

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<sup>2/</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 Commission, as affirmed by the Courts, has consistently held that it is an unfair practice for an employer to unilaterally alter the status quo<sup>3/</sup> concerning employment conditions during negotiations; one cannot act unilaterally and simultaneously negotiate about the same issue. Any alteration of a term and condition of employment before impasse impermissibly interferes with the negotiation process. This interference is irreparable in nature and can only be remedied by the granting of an interim order. Galloway. 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); State of New Jersey; 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).

If a salary schedule is based on the number of years worked, the status quo is maintained by the payment of a salary which corresponds to the number of years worked. To the extent that movement on a salary schedule does not directly correspond to the number of years worked, movement on the salary guide cannot be considered part of the status quo.

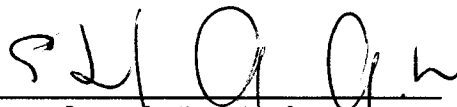
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<sup>3/</sup> Terms and conditions of employment, rather than contractual provisions themselves constitutes the status quo. Although they may have been created by a contract, contract rights do not survive the life of the contract, only terms and conditions of employment remain in effect during negotiations. Galloway; State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12142 1981).

On the basis of the record before me, only movement on the salary guides for instructional positions is part of the status quo and therefore a term and condition of employment.<sup>4/</sup>

Accordingly, the application for interim relief as to non-instructional administrative staff is denied. Interim relief is granted for instructional employees on the salary guide. It is hereby ORDERED that the Board pay increments to instructional staff in the affected unit.<sup>5/</sup>

BY ORDER OF THE COMMISSION

  
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Edmund G. Gerber  
Commission Designee

DATED: September 22, 1995  
Trenton, New Jersey

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<sup>4/</sup> It is noted that several of the guides have compression steps. Those compression steps continue as terms and conditions of employment.

<sup>5/</sup> The record is not clear as to whether Chapter I Grant Administrators are instructional administrators entitled to increments. If the parties cannot agree as to their entitlement, the Association may move to reconvene the hearing to present evidence as to these employees.