

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-56

JERSEY CITY EDUCATIONAL SECRETARIES
ASSN.,

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-70

JERSEY CITY TEACHER'S AIDE ASSN. (a/w
JERSEY CITY EDUCATION ASSN.),

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-71

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Arsenio Silvestri, Secretary
Jersey City Board of Education

For the Charging Parties
Philip Feintuch, Esq.

MODIFICATION OF ORDER

On September 22, 1982, the undersigned ^{1/} issued the following order:

[T]he Jersey City Board of Education, effective with the salary checks to be issued on October 1,

^{1/} The undersigned has been delegated the authority to act upon requests for interim relief on behalf of the Public Employment Relations Commission.

1982, provide salary increments to all its employees in accordance with the prior collective negotiations agreement; and

It is further Ordered, that the Jersey City Board of Education pay the difference between the salaries paid and the salaries properly due its employees pursuant to the most recent contract retroactively to September 1, 1982. Similarly, this retroactive salary shall be paid by October 1, 1982.


In a letter dated September 27, 1982, the Secretary to the Jersey City Board of Education, Arsenio Silvestri, asked for a two-week extension of time, until October 16, 1982, for the retroactive payment of salaries pursuant to the second paragraph of the Order.

Over the objection of the attorney for the Charging Parties and for good cause shown by the Respondent, the Order is modified as follows:

The Jersey City Board of Education, effective with the salary checks to be issued on October 1, 1982, provide salary increments to all its employees in accordance with the prior collective negotiations agreement; and

It is further Ordered, that the Jersey City Board of Education pay the difference between the salaries paid and the salaries properly due its employees pursuant to the most recent contract retroactively to September 1, 1982. This retroactive salary shall be paid by October 16, 1982.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

Dated: October 5, 1982
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of
BOARD OF EDUCATION OF JERSEY CITY,
Respondent,

-and-

Docket No. CO-83-56

JERSEY CITY EDUCATIONAL SECRETARIES
ASSN. (a/w JERSEY CITY EDUCATION ASSN.

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,
Respondent,

-and-

Docket No. CO-83-70

JERSEY CITY TEACHER'S AIDE ASSN. (a/w
JERSEY CITY EDUCATION ASSN.,

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,
Respondent,

-and-

Docket No. CO-83-71

JERSEY CITY EDUCATION ASSOCIATION,
Charging Party.

SYNOPSIS

A Commission designee entered an interim order compelling the Jersey City Board of Education to pay salary increments. The last contract between the parties had an effective date ending September 1, 1982, and it was ordered that the increments provided under that contract be paid in the absence of a genuine post fact-finding impasse.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-56

JERSEY CITY EDUCATIONAL SECRETARIES
ASSN. (a/w JERSEY CITY EDUCATION ASSN.,

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-70

JERSEY CITY TEACHER'S AIDE ASSN. (a/w
JERSEY CITY EDUCATION ASSN.,

Charging Party.

BOARD OF EDUCATION OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-83-71

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Arsenio Silvestri, Secretary
Jersey City Board of Education

For the Charging Parties
Philip Feintuch, Esq.

INTERLOCUTORY DECISION

On September 13, 1982, the Jersey City Educational Secretaries Association, affiliated with the Jersey City Education Association, filed an Unfair Practice Charge with the Public Employment

Relations Commission (Commission) alleging that the Jersey City Board of Education (the Board or Respondent) violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the Act). More specifically, the charge alleged the Board violated subsections 5.4(a)(1) and (5) by refusing to grant increments which were due to its employees in the unit represented by the Charging Party under the terms of the expired collective negotiations agreement. Also on the same date, the Charging Party filed an Order to Show Cause with the Commission asking that the Board show cause why an order should not be entered directing the Respondent to pay the salary agreements required by the expired agreement. The Order was executed and made returnable on September 22, 1982.

On September 22nd the Jersey City Education Association filed two additional charges concerning teachers and teachers aides employed by the Jersey City Board of Education. These charges also alleged that the Board refused to pay increments which were due and owing to these employees. In addition, Orders to Show Cause were filed with these two charges. The Education Association requested further that all three show cause orders be consolidated and heard together. The Respondent Board did not object to the amendments of the charge or having all three applications for interim relief heard on the return date of the 22nd.

The undersigned conducted the show cause hearing, having been delegated the authority to act upon requests for interim relief on behalf of the Commission. Both parties attended the hearing

and were given an opportunity to present affidavits and argue orally.

The Respondent stipulated as to the underlying facts in this matter as to the teachers unit and did not dispute the underlying facts as to the educational secretaries or teachers aides units.

At the conclusion of the hearing, the undersigned entered his reasoning and determinations on the record and the instant decision has been prepared in accordance with the rules of the Commission.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are quite similar to those applied by the courts when confronted with similar applications. The test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted. Both standards must be satisfied before the requested relief will be granted.

It is undisputed that the most recent collective negotiations contract between the Board and the Charging Parties has expired on September 1, 1981. Further, the expired contract contains a salary schedule which provides that employees' salaries are to be paid on the basis of the number of years of service. Therefore effective with the start of the new school year all those employees who had worked the prior year should move up on the salary guide by one year.

It is well settled that when a labor relations contract

expires, no alteration in the provision of the agreement may be altered by the employer prior to the exhaustion of the Commission's impasse procedures. See, In re City of Jersey City, P.E.R.C. No. 78-58, 4 NJPER 158 (¶4075 1978) and In re Rutgers The State University, P.E.R.C. No. 80-114, 6 NJPER 181 (¶11085 1980). This rule has been applied to the withholding of salary increments. See, Galloway Twp. Bd/Ed v. Galloway Ed/Assn, 78 N.J. 25, 4 NJPER 4163 (1978) and Hudson County Bd. of Chosen Freeholders and Hudson Cty P.B.A. Local #51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd per curiam App. Div. Docket No. A-2444-77 (April 9, 1979).

The Commission has recognized the irreparable nature of the harm in the denial of increments during negotiations:

The Commission and the Courts have...recognized that normally the very act of unilaterally modifying a particular term and condition of employment, at least in the absence of a genuine post fact-finding impasse, contradicts in and of itself, the meaning of collective negotiations inasmuch as ordinarily one cannot unilaterally act and still collectively negotiate about the same subjects. (Citing In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977) and NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962). The status quo relating to terms and conditions of employment may be established by relying upon past practice or prior negotiations agreements. (emphasis supplied) In re Union County Reg. H.S. Bd/Ed, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977).

See, also, In re State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981) and City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981).


I therefore find that the Associations here have a substantial likelihood of success on both the law and the facts at a full plenary hearing and further that the Associations will suffer irreparable harm if they are not granted interim relief and,

accordingly, I hereby ORDER,

That the Jersey City Board of Education, effective with the salary checks to be issued on October 1, 1982, provide salary increments to all its employees in accordance with the prior collective negotiations agreement; and

IT IS FURTHER ORDERED, that the Jersey City Board of Education pay the difference between the salaries paid and the salaries properly due its employees pursuant to the most recent contract retroactively to September 1, 1982. Similarly this retroactive salary shall be paid by October 1, 1982.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

Dated: September 29, 1982
Trenton, New Jersey