

I.R. No. 2011-17

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2011-073

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based upon an unfair practice charge alleging that a State-operated school district refused to pay automatic salary increments, longevity payments and payments for advanced degrees, following the expiration of a two-year collective negotiations agreement.

The Designee observed that the expired agreement included salary guides and a provision governing payments for advanced degrees obtained by certificated staff. The Designee held that the majority representative demonstrated a substantial likelihood of succeeding on that portion of the charge alleging that salary increments were unlawfully withheld during successor collective negotiations. The Designee denied that portion of the application seeking payment for longevity and advanced degrees, finding that the standard for relief had not been met.

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Appearances:

For the Respondent, Robert Murray, attorney and
Schenck, Price, Smith & King, attorneys (Paul H. Green,
of counsel)

For the Charging Party, Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

INTERLOCUTORY DECISION

On August 16, 2010, the Paterson Education Association (PEA) filed an unfair practice charge against the State-Operated School District of the City of Paterson (District), together with an application for interim relief, a certification, supporting documents and a brief. The charge alleges that after July 1, 2010, following the expiration of a collectively negotiated "modification of a collective bargaining agreement" extending from July 1, 2008 through June 30, 2010, the District refused to pay salary increments to certificated staff. The parties are allegedly in negotiations for a successor agreement. The charge alleges that before June 30, 2010, certificated 12-month and 10-

month employees received incremental salary increases each year on July 1 and September 1, respectively, and were paid in the first pay period. The charge alleges that the District's omission is "a unilateral alteration of the status quo and a per se illegal refusal to negotiate in good faith," violating 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The application seeks an Order requiring the District to pay salary, longevity and advanced degree/equivalency increases, based upon salary guides in the expired two-year agreement; to pay back pay and interest retroactive to July 1, 2010; and directing the District to negotiate in good faith.

On August 27, 2010, I signed an Order to Show Cause, specifying September 22, 2010, as the return date for argument on the application in a telephone conference call. I also directed the District to file an answering brief, together with opposing certification(s) and proof of service upon the PEA by September

^{1/} 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

15, 2010. On September 20, the PEA filed a reply. On the return date, the parties argued their cases in a conference call. The following facts appear.

The Paterson School District employs about 2770 teaching staff members. The PEA and the District signed a collective agreement setting forth terms and conditions of employment, including salary guides for certificated and non-certificated staff extending from July 1, 2008 through June 30, 2010. The teacher guides in particular provide 16 steps with incremental increases in compensation across 5 levels of educational achievement. Unit members move up on the salary guide as their years of service increase. Salaries may also be adjusted by longevity payments, based upon years of service with the District. Finally, unit member salaries may be adjusted by "equivalency credits and/or advanced degrees." Article 12:4-1 provides for increased compensation for a teacher's acquisition of "an advanced degree or equivalency" in "his/her particular field in the schools, in accordance with schedule A [teacher salary schedule] of this agreement."

Before June 30, 2010, unit employees received increment payments annually, commencing July 1 for 12-month employees and September 1 for 10-month employees. Increments were paid at the first pay period, as were increases for "equivalency credits

and/or advanced degrees." PEA has requested that the increments be paid but the District has refused to pay them.

The parties are in negotiations for a successor collective negotiations agreement. From January through April, 2010, the District repeatedly attempted to schedule negotiations with the PEA. A negotiations session lasting about 90 minutes was conducted on April 30, 2010. At a second negotiations session, the District offered to exchange proposals with the PEA, which the majority representative declined. The parties scheduled a third session before June 30, 2010, which the PEA cancelled. The PEA submitted no negotiations proposal before June 30.

The District Payroll Supervisor certifies that the cost of increments for certificated staff will exceed \$4m, representing a salary increase of 2.13% over the previous academic year. The cost of increments for non-certificated staff is about \$774,000 for the 2010-2011 school year.

The State had reduced the District's budget \$81m in the 2010-2011 school year, from the allocation in the previous year. On May 12, 2010, the District issued reduction in force notices to 432 tenured teachers and 482 non-tenured teachers. On June 17, 2010, the District rescinded reduction in force notices to 280 tenured teachers and issued reduction in force notices to 120 other teachers. On July 29, 2010, the District recalled the employment of 135 teachers.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The PEA contends that the recently-expired two-year collective agreement sets forth salary guides with incremental salary increases. It argues that the payment of increments is a "dynamic status quo," which must be maintained during collective negotiations (brief at p. 6).

New Horizons Community Charter School, I.R. No. 2006-10, 31 NJPER 380 (¶149 2005), sets forth the legal standard for the payment of increments during negotiations. The Designee wrote:

The payment of an experienced-based salary increment to a teaching staff member who has satisfactorily completed an additional year of teaching is part of the dynamic status quo that must be preserved during collective negotiations for a new agreement. See

Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n., 144 N.J. 16 (1996); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978). Thus, failure to pay increments at the start of a new school year is a unilateral change in the terms and conditions of employment of teaching staff. [31 NJPER 381]

In New Horizons, the Board of Trustees was ordered to pay salary increments to teaching staff following the expiration of a two-year collective agreement with a 12-step salary guide for each contractual year.

Other interim relief decisions have also required the payment of automatic increments to teachers after the expiration of two-year collective negotiations agreements. Waldwick Bd. of Ed., I.R. No. 99-6, 24 NJPER 498 (¶29231 1998); Mahwah Bd. of Ed., I.R. No. 98-8, 23 NJPER 593 (¶28290 1997) (Both decisions followed Neptune Tp. Bd. of Ed., which construed N.J.S.A. 18A:29-4.1^{2/} to limit the duty to pay salary increments to teaching staff under an expired agreement to no more than three years). Although no apparent contract provision in this case governs teacher movement

2/ N.J.S.A. 18A:29-4.1 provides in a pertinent part: 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.

on the salary guides, teachers indisputably advance on those guides ". . . as their years of service increase." No facts suggest that longevity payments were not paid automatically in July or September of each school year. Also, the agreement has a provision governing payment for "an advanced degree or equivalency."

The District contends that the PEA has not demonstrated a substantial likelihood of success on the merits of the unfair practice charge. It derides the continuing validity of the "dynamic status quo" rule in light of the relatively high cost of the disputed increment - about \$4.8m or a 2.2% increase in pay - compared with reports of 2% settlements state-wide in teacher negotiations. It urges application of a "static status quo" standard in order to preserve the ". . . negotiations process on an equal footing." The District also argues that the PEA's claim is preempted by N.J.S.A. 18A:29-4.1; that the PEA is not entitled to relief, based upon the doctrines of "unclean hands/equitable estoppel," i.e., it did not submit any negotiations proposal before the agreement expired; that it has not demonstrated irreparable harm; that a balancing of equities favors the District; and that the Commissioner of Education has primary jurisdiction over the application for relief.

The previously-cited Commission cases reaffirm the "dynamic status quo" standard, as did our Supreme Court in Neptune Tp. Bd.

of Ed. An interim relief application is not an appropriate venue for seeking a change in a legal standard. Similarly, New Horizons reiterated that N.J.S.A.18A:29-4.1 “. . . does not bar the payment of salary increments to [] teachers during successor collective negotiations.” Id. at 31 NJPER 381. The Designee in New Horizons also declined the argument that the Commissioner of Education has primary jurisdiction over applications seeking payment of experience-based salary increments to teachers during negotiations for a successor agreement.

The facts show that the parties conducted two negotiations sessions before the contract expiration date, June 30, 2010. That the District sought more sessions before June 30 does not demonstrate that the PEA brings “unclean hands” to this proceeding. I note parenthetically that the District has not filed an unfair practice charge alleging that the PEA has negotiated in bad faith.

The withholding of automatic salary increments during collective negotiations causes irreparable harm. The Court wrote in Galloway Tp. Bd. of Ed.:

Indisputably, the amount of an employee's compensation is an important condition of his employment. If a scheduled annual step increment in an employee's salary is an 'existing rul[e] governing working conditions,' the unilateral denial of that increment would constitute a modification thereof without the negotiation mandated by N.J.S.A. 34:13A-5.3 and would thus violate N.J.S.A. 34:13A-5.4a(5). Such conduct by a

public employer would also have the effect of coercing its employees in their exercise of the organizational rights guaranteed them by the Act because of its inherent repudiation of and chilling effect on the exercise of their statutory right to have such issues negotiated on their behalf by their majority representative. [78 N.J. at 49.]

The same finding is warranted by the facts in this case. See also, New Horizons, 31 NJPER at 381; Waldwick, 24 NJPER at 499.

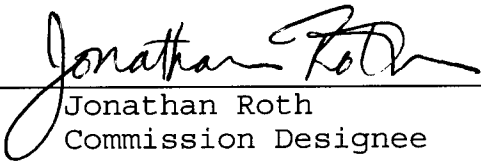
The PEA has not demonstrated how many teachers were denied longevity payments or payment for advanced degrees. In Caldwell-West Caldwell Bd. of Ed., I.R. No. 98-27, 24 NJPER 301 (¶29144 1998), the Designee found no irreparable harm caused by that Board's refusal to move teachers who obtained advanced degrees to the next higher column on the guide during successor negotiations. The Court in Galloway Tp. Bd. of Ed. and Neptune Tp. Bd. of Ed. limited the "dynamic status quo" to automatic salary increment payments. In the absence of facts showing how many unit employees were denied longevity or educational attainment payments, I find that the PEA has not demonstrated harm or a "chilling effect" beyond money damages and deny the application for relief for those items. See Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (¶28225 1997).

I must also balance the relative hardship to the parties. The PEA suffers a chilling effect from the District's failure to pay automatic increments. Although any payment arguably harms a public employer, no facts establish that the District cannot pay

the disputed increment or that payment shall result in other harm.

ORDER

The application for interim relief concerning the payment of automatic increments is granted. The application regarding payment for longevity and advanced degrees is denied. This order shall remain in effect until the underlying charge is resolved.


Jonathan Roth
Commission Designee

DATED: September 27, 2010
Trenton, New Jersey