

I.R. NO. 96-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-73

HAMILTON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to order the Hamilton Township Board of Education to pay increments to employees represented by the Hamilton Township Education Association. Although increments have been paid in the past, language in the most recently expired negotiations agreement apparently eliminated the payment of increments.

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Appearances:

For the Respondent,  
Cassetta, Taylor & Whalen  
(Garry M. Whalen, Consultant)

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

INTERLOCUTORY DECISION

On September 21, 1995, the Hamilton Township Education Association filed an unfair practice charge alleging that the Hamilton Township Board of Education committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when, after the expiration of the parties collective negotiations

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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 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."

agreement and during negotiations for a successor agreement, on or about September 1, 1995, the Board refused to advance unit members to the next step of the salary guide and thereby refused to pay salary increments. The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for October 5, 1995. A hearing was conducted on that date.

The Board argues that there was no annual increment salary structure in effect at the expiration of the collective negotiations agreement.

The recently expired multi-year agreement ran from 1991 to 1995. Salaries for each year were paid in accordance with separate annual salary guides. The guides for 1991-92, 1992-1993 and 1993-94 created incremental salary structures; that is the salaries were based on years of experience. At the end of each year, employees who had one more year of experience would be entitled to a salary reflecting that extra year of experience.

However, the salary schedule for 1994-95, states that "in this year, movement will be horizontal, not vertical (each employee will remain on the same step as in 1993-94; 8% added)". Accordingly, this past school year, unit members did not receive salary increments.

The Association argues that the 1994-95 schedule does not survive the life of the contract. It points to the provision in the salary guide Article VIII, D:

1. Notwithstanding any provision to the contrary, a ten (10) month employee must have

been actively at work and/or absent on paid leave for at least 92 workdays and a twelve (12) month employee must have been actively at work and/or absent on paid leave for at least 131 workdays in the prior school year in order to be eligible for an incremental salary step advancement for the following school year. Any employee who is not credited with the minimum number of paid days as defined above shall not advance an incremental step on the salary schedule the following year.

It argues that this provision insures that upon the completion of the 1994-95 school year, an incremental structure would be restored.

The Board opposes this interpretation of Article VIII, D. and argues that its language does not require the payment of increments. Therefore, it claims there is a dispute over the interpretation of the contract language and the Association has not proved it has a substantial likelihood of success in prevailing on the facts in this matter.

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>

Here, I do not believe that the Association has met its heavy burden. At the expiration of the contract, the payment of increments was not part of the status quo. These employees did not receive increments in the 1994-95 school year. Article XIII, D. does not necessarily restore the payment of increments. It might be read to refer only to the three years that increments were paid under the contract.

I am not satisfied that the Association has demonstrated that it has a substantial likelihood of success in proving that the Hamilton Township Board of Education is required to pay increments. See Evesham Township, I.R. 95-10, 21 NJPER 3 (¶26001 1994); Monmouth Cty. Sheriff, I.R. No. 91-13, 17 NJPER 179 (¶22077 1991).

The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber  
Commission Designee

DATED: October 6, 1995  
Trenton, New Jersey

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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).