

I.R. NO. 87-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-87-40

BELLEVILLE MAINTENANCE & CUSTODIAN ASSN.,

Charging Party.

SYNOPSIS

A Commission Designee grants the Charging Party's request for interim relief based upon the refusal of the Respondent to continue payment of non-discretionary salary increments on and after the expiration of the most recent collective negotiations agreement.

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Appearances:

For the Respondent
Schwartz, Pisano, Simon & Edelstein, Esqs.
(Nathanya G. Simon of counsel)

For the Charging Party
Oxford, Cohen & Blunda, Esqs.
(Sanford R. Oxford of counsel)

INTERLOCUTORY DECISION

On August 4, 1986 the Belleville Maintenance and Custodian Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Belleville Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-5.4 et seq.; specifically, subsections 5.4(a)(1), (3), (5) and (7).^{1/} It

^{1/} 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees

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was alleged that the contract between the Board and the Association expired on June 30, 1986 and the Board has refused and continues to refuse to pay the step increments on the existing salary guide. On August 8, 1986, the Association filed an application for interim relief. An Order to Show Cause was signed by the undersigned and made returnable for August 14, 1986. A hearing was held and both parties were given an opportunity to argue orally.

The standards that were developed by the Commission for evaluating the appropriateness of interim relief are similar to those applied by the Courts when confronted with similar applications. The test is two fold: The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegation in the final Commission decision and the harm alleged will be irreparable if the requested relief is not granted.^{2/}

1/ Footnote Continued From Previous Page

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; (7) Violating any of the rules and regulations established by the commission."

2/ See, Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

The Commission has consistently held that salary increments contained in an expired contract must be paid while the parties are negotiating for a new contract.^{3/}

As stated in State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), where the employer was ordered to pay salary increments which were due to employees pursuant to the terms of the parties' expired contract:

It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional period of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide must remain in effect requires that they move up one step and receive the appropriate salary increment. State of New Jersey, supra, at NJPER 536.

The Board has argued that the relief sought here is not appropriate since there is a possibility that the salaries

^{3/} Galloway Twp. Bd/Ed v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978); Union County Reg. H.S. Bd/Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson County Bd/Chosen Freeholders v. Hudson County PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81 aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81).

ultimately paid on a new contract may very well be lower than the salaries which employees would receive if increments under the expired contract were paid. It was further argued that the salary structure paid in the contract is not a true incremental structure and relies on the decision of Ocean County Board of Chosen Freeholders and Ocean County Sheriff v. Ocean County Sheriff's Department, P.B.A., Local 258, I.R. 84-14, 10 NJPER 574 (¶15268, 1984).

The Board's defense that this years salaries may be ultimately lower than the existing salaries if the increment were paid is not persuasive. While the end result of the ongoing negotiations might very well be the lowering of salaries or other givebacks, the law is clear and unequivocal that the status-quo must be maintained in negotiations, at least to the point that the parties reach a post-factfinding impasse. See Rutgers University, supra.

The Board correctly points out that there are several unique features of the salary structure in question. The guide for 1985-86 went from one where the individual steps on the guide were numbered to one where the steps were lettered. In a few places on the guide an employee moved back from the second step in 1984-85 to the first step for 1985-86. Also, at a few places, the guide increase gave members disproportionately large increases. However, only approximately 7 employees of a 57 member unit are affected by these anomalies.


However, in Ocean County, there were no existing increments prior to the disputed salary schedules of the expired contract. Here, increments were paid at least as far back as the 1980-81 school year. Moreover, in Ocean County there were two salary schedules in the contract, one for each school year and these schedules were identical with each other except that there was an extra step at the top of the second year guide. The salary increase going up one step on the first years' guide was identical to the salary increase moving from the first years' guide to the second years' guide. The way the salary guide worked in Ocean County, there was no distinction between a salary increase and a true increment. However, in the instant salary structure, the difference between salary raises and increments is quite clear. The increases in the salaries from year to year is far greater than the increments when moving up on the guide in the same year.

Here I am satisfied that there is a genuine increment structure in the expired contract and Ocean County is not controlling.

Accordingly, I hereby ORDER, that the Belleville Board of Education pay to eligible employees in the units represented by the Belleville Maintenance & Custodian Association the normal salary increments as determined by the salary schedule in effect for the school year 1985-86 under the 1984-86 collective negotiations agreement, said increments to be paid during the course of negotiations with the said employee organization for successor agreements or until

further order of this Commission made in the course of this proceeding.

IT IS FURTHER ORDERED that the Belleville Board of Education pay the affected employees in the above-mentioned units the monetary difference between the amount the eligible employees would have received had their increment not been unilaterally withheld, and the amounts they were in fact paid subsequent to July 1, 1986.



Edmund G. Gerber
Commission Designee

DATED: September 8, 1986
Trenton, New Jersey