

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-77

BAYONNE TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission Designee restrained the Bayonne Board of Education from refusing to pay increments to its teachers represented by the Bayonne Teachers Association. The Board argued that its bargaining posture would be harmed by the payment of increments. It maintains that in order to comply with an Association demand to reduce the number of steps on the salary guide the Board submitted a settlement proposal to the Association which reduces the number of steps on the guide and grants raises for most teachers. Salaries on two steps of the guide would not receive raises, however. It is argued that the Association would never be able to accept this package even though it otherwise would meet their demands because of those salaries that would have to be reduced immediately after employees received incremental raises. If the Board did not grant increments this problem would be avoided. It is urged that the imposition of increments here would unduly interfere with good faith negotiations. The Commission Designee rejected the Board's arguments and ordered the Board to pay the increments.

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Appearances:

For the Respondent

Apruzzese, McDermott, Mastro & Murphy  
(Frederick T. Danser, III, Of Counsel)

For the Charging Party

Schneider, Cohen & Solomon  
(Bruce D. Leder, Of Counsel)

INTERLOCUTORY DECISION AND ORDER

This matter was opened to the Public Employment Relations Commission ("Commission") by Bruce D. Leder, Esq. for the Charging Party, Bayonne Teachers Association ("Association"). The Association is seeking a restraining order which would bar the Respondent, Bayonne Board of Education ("Board") from deviating from the terms of a recently expired Collective Negotiations Agreement by refusing to pay increments. The application for restraint was submitted with an Unfair Practice Charge and was filed October 2, 1984. Pursuant to the application, a Show Cause Order was signed and made returnable for October 4, 1984. At that time the parties made oral argument and both parties were afforded, on the request of Counsel, the opportunity to file briefs in support of their respective positions. The briefs were received by October 9, 1984.

The Board of Education for the City of Bayonne and the Bayonne Teachers Association were parties to a collective agreement covering the period September 1, 1981 through August 31, 1984. The agreement included salary guides for employees covered thereunder for the years 1981-1982, 1982-1983 and 1983-1984. The contract, by its terms, expired August 31, 1984 and the parties have no agreement on a new contract nor have they agreed to an extension on the expired contract.

The salary guides provided annual increments for all employees covered under the contract and when the Respondent, Board, declined to pay increments, the Association brought the instant action.

The Board does not dispute that the salary guide provision of the contract constitutes an increment structure. Rather, it takes the position that its bargaining posture would be harmed by the payment of increments. Specifically, it alleges that in the negotiations, the Association has demanded that the number of steps on the salary guide, be reduced. To comply with this demand, the Board submitted a settlement proposal to the Association which limits the number of steps on the salary guide and provides raises for most employees. However, when the Board drafted this proposal, they found that they had to reduce the salaries on two steps of the guide. It is argued that forcing the Board to pay increments would effectively eliminate the Association's ability to accept this package. It is argued that the Association would never be able to accept a package on behalf of its members, which reduces the salaries of certain employees immediately after these same employees received incremental raises.

The Association argues that it has never accepted the Board's offer and demands that increments be paid pursuant to established law.

The Commission and the Courts have long held that upon the expiration of a Collective Negotiations Agreement, increments must be paid by the employer.

As stated in In re 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 periods 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. In re State of New Jersey, supra, at NJPER 536.

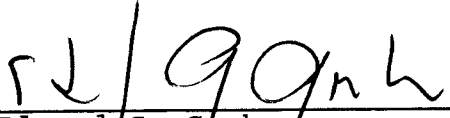
See, Galloway Twp. Bd/Ed v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978); In re Union County Reg. H.S. Bd/Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶ 4007 1977); Hudson County Bd/Chosen Freeholders v. Hudson County PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 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); In re 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).

The arguments raised by the Board here are not persuasive. Although the good faith nature of the bargaining position of the Board is not questioned, if an employer could avoid paying increments by simply placing an offer on the table which would require a reduction in salary the very intent of this body of law would be defeated.

Salary checks are payable in the school district on October 15, 1984.

It is hereby ordered that all employees within the unit represented by the Association be paid increments pursuant to the provisions of the September 1, 1981 through August 31, 1984 contract. Retroactive to the beginning of the current 1984-1985 school year, said payments shall be made commencing October 15, 1984.

BY ORDER OF THE COMMISSION

  
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Edmund G. Gerber  
Commission Designee

DATED: October 15, 1984  
Trenton, New Jersey