

I.R. NO. 96-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF WATCHUNG HILLS,  
REGIONAL HIGH SCHOOL,

Respondent,

-and-

Docket No. CO-96-84

WATCHUNG HILLS REGIONAL EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee orders the Board of Education of Watchung Hills Regional High School to pay teachers represented by the Watchung Hills Regional Education Association increments after the contract between the parties expired, pending negotiations for a new contract.

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ASSOCIATION,

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Appearances:

For the Respondent,  
Wills, O'Neill & Mellk, attorneys  
(Arnold M. Mellk, of counsel)

For the Charging Party,  
Savage & Serio, attorneys  
(Thomas J. Savage, of counsel)

INTERLOCUTORY DECISION

On September 27, 1995, the Watchung Hills Regional Education Association filed an unfair practice charge alleging that the Board of Education of Watchung Hills Regional High School engaged in unfair practices within the meaning of the N.J.S.A. 34:13A-5.4(a)(1), and (5).<sup>1/</sup> The Association alleges that it is

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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.

the exclusive majority representative for classroom teachers and other professionals employed by the Board of Education. The most recent collective negotiations agreement between the parties which expired on June 30, 1995 provides for annual salary increments and salary adjustments. The parties are engaged in negotiations for a successor agreement. The Board nevertheless has declined to pay increments.

The Association also filed an Order to Show Cause which was executed and made returnable for November 28, 1995 and a telephone hearing was conducted on that date.

The Board does not deny that it refused to pay the increments. It argues, however, that since N.J.S.A. 18A:29-4.1 has been revised by the Legislature, it is no longer obligated to pay increments.

Although N.J.S.A. 18A:29-4.1 no longer requires the payment of increments it is also true that section 4.1 does not prohibit the creation of a contractual obligation to pay automatic increments. The Commission, as affirmed by the Courts, has consistently ruled that when a contract provides for the automatic payment of increments, payment is part of the status quo which must be maintained during negotiations. See Evesham Tp. B/E, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).


The very act of unilaterally modifying a particular term and condition of employment contradicts the meaning of collective

negotiations, since ordinarily (before impasse) one cannot unilaterally act and still collectively negotiate about the same subject. Having demonstrated a unilateral change in the status quo, the Association has also proven a per se illegal refusal to negotiate in good faith which so interferes with the negotiations process and adversely affects the ability of a majority representative to represent unit members that a traditional award at the conclusion of this case would not effectively remedy the violations of the Act. See Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶14007 1977).

The Board's arguments fail to persuade me to deviate from long-standing Commission and Court precedent.

Accordingly, I ORDER the Respondent, Board of Education of Watchung Hills Regional High School, to immediately pay to those eligible employees the salary increment due to them pursuant to the incremental salary structures in the parties' collective negotiations agreement which expired on June 30, 1995.

BY ORDER OF THE COMMISSION

  
Edmund G. Gerber  
Commission Designee

DATED: December 1, 1995  
Trenton, New Jersey