

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST HANOVER BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-98-42

EAST HANOVER EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the East Hanover Board of Education. The Complaint was based on an unfair practice charge filed by the East Hanover Education Association alleging that the Board violated the New Jersey Employer-Employee Relations Act by refusing to pay annual incremental salary increases to non-certificated personnel after the expiration of the parties' collective negotiations agreement. A Hearing Examiner, applying precedent requiring an employer to maintain the status quo during successor contract negotiations, and rejecting the argument that Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996) should be extended to non-certificated employees, concluded that the failure to pay increments violated the Act.

The Commission finds that this case asks whether Neptune's holding should be extended to non-professional employees in a negotiations unit with teaching staff members. The Commission finds, applying labor relations principles in the aftermath of the Supreme Court's decision, that a school board cannot be compelled, after a three-year contract expires, to pay automatic increments to non-professional employees in a mixed unit with teaching staff members. The Commission thus extends Neptune's holding to all three-year contracts involving employees in a mixed unit with teaching staff members.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Joseph R. Morano, of counsel)

For the Charging Party, Bucceri & Pincus, attorneys (Sheldon Pincus, of counsel)

DECISION

On August 4, 1997, the East Hanover Education Association filed an unfair practice charge against the East Hanover Board of Education. The Association alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4(1) and (5),^{1/} by refusing to pay annual incremental salary increases to non-certificated personnel after the expiration of a three-year collective negotiations agreement covering both certificated and non-certificated employees. The Association also requested interim relief.

^{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."

On September 9, 1997, a Commission designee granted interim relief, ordering the payment of increments to non-certificated employees. I.R. No. 98-4, 23 NJPER 537 (¶28264 1997). The Chair denied a request for a stay of the interim relief order.

On September 24, 1997, a Complaint and Notice of Hearing issued. The parties waived a hearing and stipulated these facts:

1. Charging Party, East Hanover Education Association (hereinafter "the Association") is an employee representative within the meaning of N.J.S.A. 34:13A-1 et seq.

2. Respondent, East Hanover Board of Education (hereinafter "the Board") is a public employer within the meaning of N.J.S.A. 34:13A-1 et seq.

3. The Association is the exclusive majority representative for collective negotiations concerning terms and conditions of employment of a unit comprised of the following full and part-time employees (those employed 20 or more hours per week):

- a) Teachers
- b) Basic Skills Instructors
- c) Special Teachers
- d) Nurses
- e) Librarians
- f) Social Workers
- g) School Psychologist
- h) Secretaries
- i) Bookkeepers-Receptionist
- j) Clerk-Typists
- k) Maintenance
- l) Custodians
- m) Groundsmen

All other Board employees are excluded from the Association's representation and include:

- a) Supervisor of Buildings and Grounds
- b) Principals
- c) Assistant Principals

- d) Secretary to the Board Secretary
- e) Teacher Aides
- f) Executive Secretary to Superintendent
- g) Bus Drivers
- h) Administration Secretary
- i) Transportation Coordinator
- j) Cafeteria Personnel

4. The bargaining unit consists of 118 total members. Specifically, there are 97 certificated staff members and 21 non-certificated members (8 secretary, clerk-typists and 13 custodial-maintenance employees).

5. The certificated teaching staff unit members are employed on a ten (10) month basis. The non-certificated staff unit members are employed on both ten (10) and twelve (12) month bases.

6. The term of employment for a twelve (12) month employee runs from July 1 to June 30. The term of employment for a ten (10) month employee runs from September 1 to June 30.

7. The Association and the Board were parties to a collective negotiations agreement for the period July 1, 1994-June 30, 1997. This collective negotiations agreement sets forth the negotiated terms and conditions of employment of the aforesaid certificated and non-certificated staff members.

8. Negotiations for a successor collective negotiations agreement commenced on April 10, 1997. Additional sessions took place on May 15, 1997, June 5, 1997, August 6, 1997 and August 28, 1997.

9. Negotiations for the non-certificated unit members and certificated teaching staff members have been conducted jointly with the Board. Both groups are represented by the Association's negotiating team at each negotiation session and jointly negotiate with the Board. There have been proposals advanced by the Association on behalf of its members. Some of the proposals pertained solely to the certificated members. Some of the proposals pertained solely to the non-certificated members. Some of the proposals pertained to both the certificated and non-certificated members.

10. The 1994-97 collective negotiations agreement contains separate salary guides for teachers, secretaries and custodian/maintenance employees. The 1994-95, 1995-96 and 1996-97 teacher salary guides are set forth as Schedule A of the Agreement. The 1994-95, 1995-96 and 1996-97 secretary salary guides are set forth as Schedule B of the Agreement. The 1994-95, 1995-96 and 1996-97 custodian/maintenance salary guides are set forth as Schedule C of the Agreement.

11. The payment of increments to unit members is tied to years of service within the district. Each year, a unit member moves one (1) step up on the applicable salary guide (e.g., Step 1 to Step 2). The salary level applicable to that step is further changed to reflect the negotiated adjustment to that step's value from one year's salary guide to the next (e.g., Step 2 on the 1994-95 guide to Step 2 on the 1995-96 guide). An individual unit member may further have his/her salary further adjusted in the event they qualify for longevity. Longevity payments are also based upon years of service within the district.

12. Prior to July 1, 1997, the payment of increments to unit members had been made pursuant to the process outlined in paragraph 10 above, unless an individual member had had his/her increment(s) withheld by the Board for performance reasons and pursuant to the Board's authority set forth under the Education Law (N.J.S.A. Title 18A).

13. Prior to July 1, 1997, twelve (12) month employees received their incremental salary increases annually, effective with the commencement of services beginning July 1 of a given school year. Ten (10) month employees received their incremental salary increases annually, effective with the commencement of services beginning September 1 of a given school year. In each instance, the increments were included and paid at the first pay period.

14. In or about July 1997, the Board determined that it would not pay the annual salary increases to either the twelve (12) month or ten (10) month unit members.

15. Twelve (12) month unit members did not receive their annual salary increases upon the passage of the first pay period of the 1997-98 school year (i.e., July 15, 1997).
16. Ten (10) month unit members did not receive their annual salary increases upon the passage of the first pay period of the 1997-98 school year.
17. As of the date of this Stipulation, the Board has not paid annual salary increases to any of the ten (10) or twelve (12) month unit members.
18. As a result of the Board's refusal to pay the annual salary increases, the employees in the unit are being paid at the same salary level as was received for 1996-97.
19. As a result of the Board's failure and refusal to pay the salary increases, the Association filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Board committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).
20. An application for interim relief and an order to show cause w[ere] filed with the charge. The show cause order was executed and made returnable for August 25, 1997. A hearing was conducted on that date by Commission Designee, Edmund G. Gerber.
21. On September 9, 1997, Commission Designee Gerber issued an Interlocutory Decision (Docket No. CO-98-42). The decision ordered the Board to pay to all non-certificated employees covered by the July 1, 1994 to June 30, 1997 collective negotiations agreement incremental pay increases due on July 1, 1997 for twelve (12) month employees and September 1, 1997 for ten (10) month employees.
22. On or about September 16, 1997, the Board requested a stay of the September 9, 1997 Order pursuant to R. 2:9-7. The Association filed timely opposition to the request for a stay.
23. On September 26, 1997, Chairperson Millicent A. Wasell, denied the Board's request to stay the designee's interim relief order.

24. On September 3, 1997, the Board filed a Joint Notice of Impasse with the Commission (Docket No. I-98-75).

25. The parties are scheduled to engage in a mediation session before PERC mediator Richard Gwin on November 20, 1997 at 7:30 p.m.

The parties also stipulated into evidence their expired collective negotiations agreement, the Complaint and Notice of Hearing, I.R. No. 98-4, and the Chair's denial of the Board's stay request. They also stipulated that these facts constitute the complete record.

On January 12, 1998, the Hearing Examiner issued his report and recommendations. H.E. No. 98-20, 24 NJPER 102 (¶29051 1998). Applying precedent requiring an employer to maintain the status quo during successor contract negotiations, and rejecting the argument that Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996), should be extended to non-certificated employees, the Hearing Examiner concluded that the failure to pay increments violated the Act.

On January 23, 1998, the Association filed exceptions. It argues that the employer should be required to pay interest on the increments not paid.

On February 9, 1998, the Board filed exceptions. It argues that the Hearing Examiner erred by: disregarding that these non-certificated employees are tenured and may not be reduced in salary; concluding that Commission precedent on the dynamic status quo tracks traditional labor law policy; ignoring the legal implications of Essex Cty. Voc. Tech. Bd. of Ed., I.R.

No. 97-4, 22 NJPER 343 (¶27178 1996); failing to address the negative effects of continuing the practice of paying increments to non-certificated unit members in a mixed unit; and concluding that extending Neptune to non-certificated employees would destabilize labor relations.

On February 13, 1998, the Association filed an answering brief urging adoption of the Hearing Examiner's report, amended to include the payment of interest. On February 17, the Board filed an answering brief.

This case asks whether, after the expiration of a three-year collective negotiations agreement covering both certificated and non-certificated employees, a school board must pay automatic increments to non-certificated school employees in a mixed unit with certificated employees. Some context to this dispute is helpful.

N.J.S.A. 34:13A-5.3 provides, in part: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This provision incorporates the accepted principle in both public and private sector labor relations that the unilateral alteration of terms and conditions of employment during successor contract negotiations constitutes an illegal refusal to negotiate. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975); see also NLRB v. Katz, 369 U.S. 736 (1962).

After we gained unfair practice jurisdiction in 1974, we were asked to consider how the unilateral change doctrine applied to negotiated salary systems calling for the payment of annual increments for each additional year of service. Would such payments be required during successor contract negotiations?

There were two approaches to choose from. Under the first, the focus is on the individual employee and maintenance of the status quo requires that salary levels for each individual employee remain the same. Under the second, the focus is on the salary guide system and the status quo includes the extension of automatic increments beyond the life of the agreement because the salary guide system calling for such increments is a term and condition of employment. Scott, The Status Quo Doctrine: An Application to Salary Step Increases For Teachers, 83 Cornell L. Rev. 194 (1997). Put another way, the parties agreed on a salary system providing that an employee with a specified number of years of service would be paid a specified amount. Paying an employee with an extra year of service an extra increment of value maintains a status quo that ties compensation to experience. We chose the second view. That view is shared by a majority of labor relations agencies. Id. at 222.

In Galloway Tp. Bd. of Ed., P.E.R.C. No. 76-32, 2 NJPER 186 (1996), we held that the board's unilateral determination not to pay any increments after the expiration of a contract negated the teacher's additional year of service and thus altered the existing salary guide system. The Appellate Division reversed.

149 N.J. Super. 346 (App. Div. 1977). It held that settlement of the contract in that case had mooted the parties' dispute. The Supreme Court in turn reversed. 78 N.J. 25 (1978). The Court discussed the status quo doctrine, noting that it was a fixture in the private sector and incorporated in section 5.3, id. at 48. But the Court ultimately held that N.J.S.A. 18A:29-4.1, an education law, required the board to pay the disputed increments. The parties had entered into a one-year agreement. N.J.S.A. 18A:29-4.1 required that salary schedules be binding for two years. Accordingly, as a matter of statutory compulsion, the salary schedule had to be construed to cover two years and the payment of scheduled increments in the second year constituted an element of the status quo. From that time forward, we required the continuance of automatic increment systems after contract expirations.^{2/}

^{2/} See, e.g., Hudson Cty., P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd NJPER Supp.2d 62 (¶44 App. Div. 1979); Rutgers, the State Univ., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp.2d 96 (¶79 App. Div. 1981); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981), enf'd Mot. No. M-3982-80 and lv. to app. den. App. Div. Dkt. No. AM-1037-80T3 (7/15/81); Belleville Bd. of Ed., I.R. No. 87-5, 12 NJPER 629 (¶17262 1980); Hunterdon Cty., I.R. No. 87-17, 13 NJPER 215 (¶18091 1987); Marlboro Tp., I.R. No. 88-2, 13 NJPER 662 (¶18250 1987); Borough of Palisades Park, I.R. No. 87-21, 13 NJPER 260 (¶18107 1987); Middlesex Cty. Sheriff, I.R. No. 87-19, 13 NJPER 251 (¶18101 1987); Bergen Cty., I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); Sussex Cty., I.R. No. 91-14, 17 NJPER 232 (¶22100

N.J.S.A. 18A:29-4.1, as originally enacted, authorized a school board to:

adopt a salary policy, including salary schedules for all teachers which shall not be less than those required by law. Such policy shall be binding upon the adopting board of education and upon all future boards of education in the same district for a period of two years from the effective date of such policy....

The original bill was entitled an "Act to authorize boards of education to adopt salary policies for teachers." Senate Bill 248 (1965). However, the Sponsor's Statement indicates that the bill was intended to address the broader concern that "teachers and other school employees" had no assurances under then-existing law that their salaries, even though adopted by boards of education, would actually be funded and paid. According to the sponsors, "this bill would give school employees the same status now enjoyed by all other public employees in New Jersey." Statement to S. 248 (1965).

In 1987, the Legislature amended N.J.S.A. 18A:29-4.1 to authorize a school board to adopt a one, two or three-year salary policy, including salary schedules for all full-time teaching

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1991); Burlington Cty., I.R. No. 93-2, 18 NJPER 406 (¶23185 1992); Somerset Cty., I.R. No. 93-15, 19 NJPER 259 (¶24129 1993); Hudson Cty. Voc. Tech., I.R. No. 96-7, 21 NJPER 366 (¶26228 1995); Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., I.R. No. 97-8, 22 NJPER 386 (¶27207 1996); Essex Cty. Voc. Tech. Bd. of Ed.; Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3, 4 (¶26001 1994); Morris Cty. Prosecutor, I.R. No. 96-18, 22 NJPER 146 (¶27076 1996).

staff members. The amendment was designed to allow three-year contracts as well as one or two year contracts to give school boards more flexibility in determining the duration of salary schedules.

Years later, the impact of that amendment on the payment of increments was raised in a case involving the Neptune Board of Education and the Neptune Education Association. The board paid increments to certificated and non-certificated employees according to the salary schedule of an expired three-year contract, but sought a declaration from the Commissioner of Education that N.J.S.A. 18A-29-4.1 prohibited payment. An Administrative Law Judge ruled for the board. The ALJ reasoned that the amended education law statute authorizing a three-year salary schedule prohibited the board from extending the contract's terms for a fourth year. The Commissioner reversed. She concluded that the education law neither prohibited nor mandated the payment of increments set forth in salary schedules in an expired contract. Instead, she found that the issue was controlled by the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., over which we have exclusive jurisdiction. The State Board of Education affirmed substantially for the reasons expressed by the Commissioner. The Appellate Division affirmed based on the Commissioner's opinion. The Supreme Court reversed. The Supreme Court reaffirmed that the Act prohibits an employer from unilaterally altering the status quo without negotiating to impasse. The Court further recognized that we have

interpreted the Act to require a dynamic status quo, including the payment of increments under an automatic increment system tying the amount of compensation to the amount of experience. But the Court held that under education law, a school board could not pay automatic increments under a three-year salary schedule to teaching staff members after the three-year contract expires. The Court concluded that N.J.S.A. 18A-29-4.1 provides that no contract can be binding beyond the third year. Education law tenure statutes require that tenured teaching staff members shall not be reduced in compensation except for inefficiency, incapacity, or unbecoming conduct. N.J.S.A. 18A:29-14; N.J.S.A. 18A:28-5. According to the Court, because tenure statutes prohibit salary reductions, compelling the payment of increments to tenured teachers under the salary schedule of an expired three-year contract would render the increases binding for a fourth year and hence violative of N.J.S.A. 18A:29-4.1. But having found that N.J.S.A. 18A:29-4.1 applies to teaching staff only, the Court limited its holding to teaching staff members and stated that contracts with other employees should be governed by labor law.

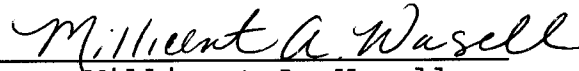
This case asks, as a matter of labor law, whether Neptune's holding should be extended to non-certificated employees in a negotiations unit with teaching staff members. Applying labor relations principles in the aftermath of the Supreme Court's decision, we hold that a school board cannot be compelled, after a three-year contract expires, to pay automatic increments to non-certificated employees in a mixed unit with teaching staff

members. It seems unwise to us, as a matter of labor relations policy, to have separate rules for increment payments for different types of employees within a single, broad-based negotiations unit. That would mean that some employees would have incremental raises already paid while other employees would have to negotiate for those raises. We accordingly extend Neptune's holding to all three-year contracts involving employees in a mixed unit with teaching staff members.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: February 25, 1999
Trenton, New Jersey
ISSUED: February 26, 1999

H.E. NO. 98-20

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST HANOVER BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-98-42

EAST HANOVER EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission order the East Hanover Board of Education to pay salary increments to certain non-certificated personnel which were due pursuant to a recently expired collective negotiations agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 98-20

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(Joseph R. Morano, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Sheldon Pincus, of counsel
Linda Ganz Ott, on the brief)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On August 4, 1997, the East Hanover Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board of Education of the Township of East Hanover committed an unfair practice within the meaning the New Jersey Employer-Employee Relations Act; specifically, N.J.S.A. 34:13A-5.4a(1) and (5)^{1/} when after the

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

collective negotiations agreement between the parties expired on June 30, 1997, the Board refused to pay annual incremental salary increases to non-certificated personnel in the negotiations unit.^{2/}

A Complaint and Notice of Hearing issued on the unfair practice charge on September 24, 1997.

The parties waived a hearing and on November 20, 1997 entered into stipulation.^{3/}

The stipulation, in pertinent part, provides:

1. Charging Party, East Hanover Education Association (hereinafter "the Association") is an employee representative within the meaning of N.J.S.A. 34:13A-1 et seq.

2. Respondent, East Hanover Board of Education (hereinafter "the Board") is a public employer within the meaning of N.J.S.A. 34:13A-1 et seq.

3. The Association is the exclusive majority representative for collective negotiations concerning terms and conditions of

^{1/} Footnote Continued From Previous Page

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."

^{2/} The Association also filed an application for interim relief and after a hearing on this matter, an Interim Relief Order was executed by the undersigned as Commission Designee.

^{3/} Both parties submitted briefs and reply briefs which were received by December 30, 1997.

employment of a unit comprised of the following full and part-time employees (those employed 20 or more hours per week):

- a) Teachers
- b) Basic Skills Instructors
- c) Special Teachers
- d) Nurses
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All other Board employees are excluded from the Association's representation and include:

- a) Supervisor of Buildings and Grounds
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4. The bargaining unit consists of 118 total members. Specifically, there are 97 certificated staff members and 21 non-certificated members (80 secretary, clerk-typists and 13 custodial-maintenance employees).

5. The certificated teaching staff unit members are employed on a ten (10) month basis. The non-certificated staff unit members are employed on both ten (10) and twelve (12) month bases.

6. The term of employment for a twelve (12) month employee runs from July 1 to June 30. The term of employment for a ten (10) month employee runs from September 1 to June 30.

7. The Association and the Board were parties to a collective negotiations agreement for the period July 1, 1994-June 30, 1997. This collective negotiations agreement sets forth the negotiated terms and conditions of employment of the aforesaid certificated and non-certificated staff members.

8. Negotiations for a successor collective negotiations agreement commenced on April 10, 1997. Additional sessions took place on May 15, 1997, June 5, 1997, August 6, 1997 and August 28, 1997.

9. Negotiations for the non-certificated unit members and certificated teaching staff members have been conducted jointly with the Board. Both groups are represented by the Association's negotiating team at each negotiation session and jointly negotiate with the Board. There have been proposals advanced by the Association on behalf of its members. Some of the proposals pertained solely to the certificated members. Some of the proposals pertained solely to the non-certificated members. Some of the proposals pertained to both the certificated and non-certificated members.

10. The 1994-97 collective negotiations agreement contains separate salary guides for teachers, secretaries and custodian/maintenance employees. The 1994-95, 1995-96 and 1996-97 teacher salary guides are set forth as Schedule A of the Agreement. The 1994-95, 1995-96 and 1996-97 secretary salary guides are set forth as Schedule B of the Agreement. The 1994-95, 1995-96 and 1996-97 custodian/maintenance salary guides are set forth as Schedule C of the Agreement.

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have his/her salary further adjusted in the event they qualify for longevity. Longevity payments are also based upon years of service within the district.

12. Prior to July 1, 1997, the payment of increments to unit members had been made pursuant to the process outlined in paragraph 10 above, unless an individual member had had his/her increment(s) withheld by the Board for performance reasons and pursuant to the Board's authority set forth under the Education Law (N.J.S.A. Title 18A).

13. Prior to July 1, 1997, twelve (12) month employees received their incremental salary increases annually, effective with the commencement of services beginning July 1 of a given school year. Ten (10) month employees received their incremental salary increases annually, effective with the commencement of services beginning September 1 of a given school year. In each instance, the increments were included and paid at the first pay period.

14. In or about July 1997, the Board determined that it would not pay the annual salary increases to either the twelve (12) month or ten (10) month unit members.

15. Twelve (12) month unit members did not receive their annual salary increases upon the passage of the first pay period of the 1997-98 school year (i.e., July 15, 1997).

16. Ten (10) month unit members did not receive their annual salary increases upon the passage of the first pay period of the 1997-98 school year.

17. As of the date of this Stipulation, the Board has not paid annual salary increases to any of the ten (10) or twelve (12) month unit members.

18. As a result of the Board's refusal to pay the annual salary increases, the employees in the unit are being paid at the same salary level as was received for 1996-97.

19. As a result of the Board's failure and refusal to pay the salary increases, the Association filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Board committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).

24. On September 3, 1997, the Board filed a Joint Notice of Impasse with the Commission (Docket No. I-98-75).

25. The parties are scheduled to engage in a mediation session before PERC mediator Richard Gwin on November 20, 1997 at 7:30 p.m.

Both parties stipulated that these facts constitute the complete record in this matter.

The Board makes the following arguments.

Prior to July 1, 1997, the payment of increments to unit members had been made pursuant to Education Law (N.J.S.A. Title 18A). However, the holding in Bd. of Ed. of Tp. of Neptune v. Neptune Tp. Ed. Ass'n., 144 N.J. 16 (1996), prohibits it from paying increments to teaching staff members after the end of a three-year agreement. Therefore requiring it to pay increments to non-certificated employees who are in the same unit and covered by the same collective negotiations agreement would also be illegal. Paying increments only to non-certified employees in a mixed unit will have a chilling effect on negotiations; particularly since both teaching staff members and non-certified employees are represented by a single majority representative and both groups are covered by the same collective negotiations agreement. A tension will be created between staff and non-certificated employees, for the

teaching staff will have a much greater incentive to reach an agreement since they were not paid increments.^{4/}

The Board urges that the Commission reconsider Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978) and its progeny in light of the Supreme Court's recent holding in Neptune, and contends Neptune be expanded to include non-certified employees. Finally, it urges the Commission adopt a static definition of status quo.

ANALYSIS

The Board contends that disparate treatment of similarly situated employees is contrary to PERC precedent. It relies on Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-2, 12 NJPER 599, 600 (¶17224 1986) and Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986). This argument is misplaced. These cases concern disparity of treatment to encourage or discourage the exercise of rights protected by the Act. The Commission has long recognized that competing interests within mixed negotiations units is a normal part of the negotiations process. PBA Local 119, P.E.R.C. No.

^{4/} The Board argues that it based its decision not to pay increments on the holding in Essex County Voc. & Tech. Bd. of Ed., I.R. No. 97-4, 22 NJPER 343, (¶27178 1996) wherein a Commission Designee declined to order the payment of increments to secretaries in a mixed unit with certified personnel. However, the Commission Designee in that decision did not make specific findings on this issue. Rather, he merely declined to grant an extraordinary remedy in interim relief leaving it for the Commission to decide this issue.

84-76, 10 NJPER 41 (¶15223 1983), Ford Motor Co. v. Huffman, 345 U.S. 330 (1953). Belen et al. v. Woodbridge Federation of Teachers Local 822 AFT, AFL-CIO, 142 N.J. Super. 486 (1976), cert. den. 72 N.J. 458 (1976), Hamilton Twp. Ed. Ass'n., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). It is not a per se unfair practice to treat different employees in the same unit differently.

The Board argues that Neptune should be expanded. Prior to Neptune, the Commission consistently held that good faith negotiations require the maintenance of established terms and conditions of employment, that is, an employer must maintain the status quo. The payment of increments is part of the status quo. Therefore, the refusal to pay increments is a unilateral alteration of the status quo and a per se illegal refusal to negotiate in good faith. Hudson Cty. Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt. No. A-2444-77 (4/9/79) aff'g. P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978); Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd and modified App. Div. Dkt. No. A-1572-79 (4/1/81). State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); City of Vineland, I.R. No. 81-1, 7 NJPER 234 (¶12142 1981), interim order enforced and leave to appeal denied App. Div. Dkt. No. A-1037 80T3 (7/15/81); Belleville Bd. of Ed., I.R. No. 87-5, 12 NJPER 629 (¶17262 1980); Hunterdon Cty. Bd. of Social Services, I.R. No. 87-17, 13 NJPER 215 (¶18091 1987); Township of Marlboro, I.R. No. 88-2, 13 NJPER 662 (¶18250 1987); Borough of Palisades Park, I.R.

No 87-21, 13 NJPER 269 (¶18106 1987); Sheriff of Middlesex Cty., I.R. No. 87-19, 13 NJPER 251 (¶18101 1987); County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); County of Sussex, 17 NJPER 234 (¶22100 1991); Burlington County, I.R. No. 93-2, 18 NJPER 405 (¶23184 1992); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993); Bd. of Ed. of the Hudson County Vocational Technical School, I.R. No. 96-7, 21 NJPER 366 (¶26228 1995); Bd. of Ed. of Ramapo-Indian Hills Reg. H.S. Dist., I.R. No. 97-8, 22 NJPER 386 (¶27207 1996); Essex County Vo. Tech. Bd. of Ed., *supra*; Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3, 4 (¶26001 1994); County of Morris Prosecutor, I.R. No. 96-18, 22 NJPER 146 (¶27076 1996).

In these decisions, the Commission relied, in part, upon the Supreme Court's language in Galloway.

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-5.4(a)(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.

Those salary increments that are "automatic" must be paid in order to

continue the status quo in the sense that they perpetuate existing terms and conditions of

employment. Because the employees expect these benefits and readily recognize them as established practice, the increases do not tend to subvert employee's support for their bargaining agent or disrupt the bargaining relationship.

78 N.J. at 50 quoting NLRB v. John Zink Co., 551 F.2d 799, 801 (10th Cir 1977)

However, the Court in Neptune cautioned that "Galloway was not decided on the basis of the Act but on the Court's interpretation of N.J.S.A. 18:29-4.1. Moreover, the Court held in Galloway that the Education Law preempted the Act." at 78 N.J. at 32.

In Neptune, the Court again interpreted N.J.S.A. 18A:29-4.1. This time the 1987 amendment (L. 1987, c. 13§1) which now states:

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...

The Neptune Court held that these statutory changes "reveal no indication of any intent to overrule Galloway, but the simple change in language automatically precludes the application of Galloway to this case" @ 78 N.J. 30-31.

Similarly, the Court's policy discussion of static versus dynamic status quo was with reference to Title 18A -- not the Act. The Court held that N.J.S.A. 18A:29-4.1 preempts the application of the general rules of labor law.

Neither Galloway nor Neptune seeks to interpret the Act. The general discussions of labor law in both decisions support respective interpretations of Title 18A. Accordingly, absent a

clear reversal of Galloway, it would seem no more appropriate for the Commission to rely on Neptune to interpret the Act than it would be to rely on Galloway.

To this end, in Neptune, the Court found Title 18A preempts the issue of increments for teaching staff members but,

To the extent that any of the litigants are not "teaching staff members" the prohibition against increments in N.J.S.A. 18A:29-4.1 does not apply. Contracts with those employees should be governed by labor law only since no education law preempts that general rule. 164 N.J. at 30.

The Court affirmed the Appellate Division's finding that increments were owed to non-teaching staff members even while finding at the same time increments were not owed to teaching staff members.

It is significant that the Neptune Court notes that the tenure statute prohibits a Board from reducing teacher compensation. Accordingly, once a teaching staff member receives an increment it cannot be taken away. When the Commission has held that increments were part of the status quo, it has never held that such increments were permanent. Rather, the increments themselves were still subject to good faith negotiations. Such an interpretation is consistent with the Neptune Court's sustaining the payment of increments to non-teaching staff members.

Commission precedent has now been established for 20 years. It tracks traditional labor law policy NLRB v. Katz 369 U.S. 336 (1962); Exchange Parts Co., 139 NLRB 710, 730-734, (enf'd 330 Fed. 829 (CA5 1965); NLRB v. John Zink Co., 551 F.2d 799, 801

supra and has become an integral part of New Jersey public sector labor law.

The policy of the Act is to promote permanent labor peace (Declaration of Policy at N.J.S.A. 34:13A-2). I believe that to change a legal interpretation after a twenty year period would have a destabilizing effect on labor relations and be contrary to the goals of the Act. Accordingly, I urge the Commission to follow its own precedent and Order the East Hanover Board of Education to pay increments to its non-certificated employees pending the resolution of good faith negotiations.

RECOMMENDED ORDER

Accordingly, I recommend the Commission **ORDER:**

A. That the East Hanover Board of Education cease and desist from:

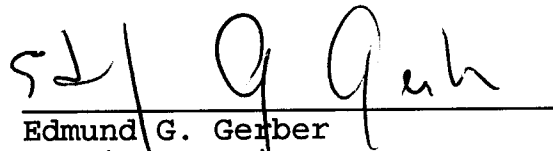
1. Refusing to negotiate in good faith with the East Hanover Education Association by refusing to pay increments to non-teaching staff members, both 10 and 12 month, who are covered by the 1994-1997 collective negotiations agreement between the East Hanover Board of Education and the East Hanover Education Association.

B. That the Board take the following action:

1. Pay increments to all non teaching staff employees, both 10 and 12 month, who are covered by the 1994-1997 collective negotiations agreement between the East Hanover Board of Education and the East Hanover Education Association.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.


Edmund G. Gerber
Hearing Examiner

Dated: January 12, 1998
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL NOT refuse to negotiate in good faith with the East Hanover Education Association by refusing to pay increments to non-teaching staff members, both 10 and 12 month, who are covered by the 1994-1997 collective negotiations agreement between the East Hanover Board of Education and the East Hanover Education Association.

WE WILL pay increments to all non teaching staff employees, both 10 and 12 month, who are covered by the 1994-1997 collective negotiations agreement between the East Hanover Board of Education and the East Hanover Education Association.

Docket No. CO-H-98-42

East Hanover Board of Education
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"