

P.E.R.C. NO. 2012-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2011-073

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment relations Commission grants the State Operated School District of the City of Paterson's motion for reconsideration of I.R. No. 2011-17. In that decision, a Commission designee granted an application for interim relief that accompanied an unfair practice charge filed by the Paterson Education Association. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to pay salary increments following the expiration of the parties one-year collective negotiations agreement. The Commission grants reconsideration holding that this case meets the extraordinary circumstances and exceptional importance tests finding that the substantial hardship to the District in paying increments outweighs the hardship to the employees in not receiving increments. The Commission also finds that the public interest may be harmed by the paying of irretrievable salary increments.

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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Appearances:

For the Respondent, Robert Murray, attorney and  
Schenck, Price, Smith & King, attorneys (Paul H. Green,  
of counsel)

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

DECISION

On October 10, 2010, the State Operated School District of the City of Paterson moved for reconsideration of I.R. No. 2011-17, 36 NJPER 376 (¶147 2010). In that decision, a Commission designee granted an application for interim relief that accompanied an unfair practice charge filed by the Paterson Education Association. The charge alleges that the District violated the Employer-Employee Relations Act, N.J.S.A. 34:13A-1

et seq., specifically subsections a(1) and (5)<sup>1/</sup>, by refusing to pay salary increments following the expiration of the most recent collectively negotiated agreement. We grant the District's motion for reconsideration and deny interim relief with regard to the District's non-payment of salary increments.<sup>2/</sup>

We summarize the facts as found by the designee. The Paterson School District employs about 2770 teaching staff members. The Association and the District signed a collective agreement setting forth terms and conditions of employment, including salary guides for certificated and non-certificated staff extending from July 1, 2008 through June 30, 2010. The teacher guides provide 16 steps with incremental increases in compensation across five levels of educational achievement. Unit members move up on the salary guide as their years of service increase.

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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. . . [and] (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 District also seeks reconsideration of the designee's denial of its claims that the Association brought unclean hands to the interim relief proceedings and that this matter should be deferred to the Commissioner of Education. We decline to grant reconsideration on these issues.

Before June 30, 2010, unit employees received increment payments annually, commencing July 1 for twelve-month employees and September 1 for ten-month employees. The District refused to pay salary increments after the expiration of the most recent collective negotiations agreement. The parties are in negotiations for a successor collective negotiations agreement.

The District Payroll Supervisor certified that the cost of increments for certificated staff will exceed \$4,000,000, representing a salary increase of 2.13% over the previous academic year. The cost of increments for non-certificated staff is about \$774,000 for the 2010-2011 school year.

The State reduced the District's budget \$81,000,000 in the 2010-2011 school year. On May 12, 2010, the District issued reduction in force notices to 432 tenured teachers and 482 non-tenured teachers. On June 17, the District rescinded reduction in force notices to 280 tenured teachers and issued reduction in force notices to 120 other teachers. On July 29, the District recalled the employment of 135 teachers.

As support for its motion for reconsideration, the District filed a supplemental certification of its Assistant Superintendent for Business Services.<sup>3/</sup> The Assistant

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<sup>3/</sup> Evidentiary material not in the record below will ordinarily not be considered on appeal. New Jersey DYFS v. M.M., 189 N.J. 261, 278 (2007); Middle Dept. Inspection Agency v. Home Insur. Co., 154 N.J. Super. 49, 55 (App. Div. 1977). We  
(continued...)

Superintendent certifies there is no money budgeted or available in the District's budget for a salary increase, and, even without an increment adjustment, the District does not have enough funds in the salary account to maintain the current salaries and staffing for the full 2010-2011 school year. The Assistant Superintendent confirms the \$81,000,000 budget gap and certifies that two significant portions of the budget gap were a \$24,000,000 reduction in state aid and over \$20,000,000 in non-recurring revenues. He further asserts that funds in the surplus account are not available to pay the increment because those funds cannot be used without an emergent need and the approval of the Commissioner of Education. He certifies that the District eliminated large numbers of teaching positions in the areas of the Kindergarten through 8<sup>th</sup> grade general population, High School content areas, bilingual, world language, music and art, and that payment of the salary increment will end any hope of recalling additional staff members for the current school year

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3/ (...continued)  
have considered the District's amended factual assertions because we find that this case warrants the granting of the District's motion for reconsideration. Moreover, the designee's decision was an interlocutory decision and the amended factual assertions implicate the public interest. However, we caution the District and all parties appearing before this agency against this practice. A party seeking interim relief, or seeking to prevent the granting of such relief, should present the most fully developed record possible during the pendency of the application.

and will cause significant line item deficits in the District's financial system.

In determining whether interim relief was appropriate, the designee applied the following standard:

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered.

[36 NJPER at 377-78].

The designee found that interim relief was appropriate and ordered payment of the increment.<sup>4/</sup> He relied on the "dynamic status quo" standard, and noted that an interim relief application is not an appropriate venue for seeking a change in a legal standard. He also found that the withholding of salary increments during collective negotiations causes irreparable harm. In balancing the harm, he found that the Association suffers a chilling effect from the District's failure to pay automatic increments, and that although any payment arguably harms a public employer, no facts establish that the District

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<sup>4/</sup> The designee denied interim relief for longevity and educational attainment payments also sought by the Association.

cannot pay the increment or that payment shall result in other harm.<sup>5/</sup>

In its motion for reconsideration of the designee's decision, the District asserts that the truly extraordinary circumstances currently impacting public employers are without precedent. It argues that current reports of teacher settlements in New Jersey are hovering at or below 2.0%, and local government employers face a 2.0% limit on the local tax levy increase, and that it is no longer tenable to require the District to pay the salary increment because not doing so might somehow chill the bargaining process.

The Association responds that the District has failed to set forth any extraordinary circumstances warranting reconsideration of the interim relief order. It asserts that the information provided in the Assistant Superintendent's certification is speculative and not supported by any documentation. It also asserts that the dynamic status quo must be preserved and that the District has an obligation to budget for and pay salary increments. It further asserts that the negotiations process will be irreparably harmed if the salary increment is not paid. Finally, the Association contends that the District can pay the increment from the ample funds available in its surplus account

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<sup>5/</sup> In a letter separate from his decision, the designee denied the District's request for a stay of his order directing the District to pay the increment.

or from the 12.9 million dollars that it was awarded from the U.S. Department of Education under the Education Jobs Act.

Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4.

We grant reconsideration as this case meets both the extraordinary circumstances and exceptional importance tests. Pursuant to the Act, an employer is prohibited from unilaterally altering the status quo concerning mandatory negotiations topics, whether established by contract or past practice, without first negotiating to impasse. "Dynamic" status quo requires the payment of previously scheduled increments in an expired contract while the "static" status quo does not. Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 at 22-24 (1996). In Galloway Tp. Bd. of Ed., 78 N.J. 25 (1978), the Court required a dynamic status quo. However, in Bloomfield Bd. of Ed., \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 2011), a case we recently decided addressing the payment of salary increments in the education setting, we denied interim relief and determined that application of the dynamic



status quo was not appropriate in that case.<sup>6/</sup> When weighing the relative hardship to the parties and the harm to the public interest, we considered that Bloomfield's state aid had been reduced by 4.4 million dollars or 7% of its budget, the Board was seeking a wage freeze in negotiations with no increment movement on the salary guide, and any increment paid would be irretrievable since tenure statutes prohibit Boards of Education and majority representatives from negotiating salaries lower than an individual teacher's current salary. Bloomfield.

Here, similar considerations dictate that, after weighing the relative hardship to the parties and the harm to the public interest, interim relief is not appropriate and the dynamic status quo should not be applied in this case. The District is currently facing an \$81,000,000 budget gap. Reduction in force notices were issued to 432 tenured teachers and 482 non-tenured teachers, and, while some of those teachers have been recalled, the Assistant Superintendent certified that payment of the increment would end any hope of recalling additional staff members. The Assistant Superintendent also certified that there is no money budgeted for a salary increase to Association members and the District will have to reallocate funds to maintain its current staffing and salaries. Given the District's assertion

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<sup>6/</sup> The interim relief decision in this case issued on September 27, 2010, prior to our issuance of Bloomfield on February 3, 2011.

regarding its inability to pay a salary increase, it is unlikely that the amount of any increment paid can be a factor worked out through the regular negotiations process. Moreover, the negotiations process could be chilled by the irretrievable nature of any increment that is paid to tenured staff members. We also note that State-Operated districts are subject to the tax levy cap and may not adopt a budget with an increase exceeding the 2.0% tax levy growth limitation. N.J.S.A. 18A:7F-38. While the Association members may incur hardship by not immediately receiving the increment, it is outweighed by the hardship the District will incur if it has to immediately pay the increment. Given these same considerations, the interests of the public would also be harmed if interim relief were granted. The assertions by the Association that the District has the ability to pay the increment from its surplus fund, or from the 12.9 million dollars that it was awarded from the U.S. Department of Education under the "Education Jobs Act", should be more fully borne out during a full evidentiary hearing. However, we encourage the parties to actively attempt to work out through the regular negotiations process and use of impasse resolution procedures the amount of any increase that may be received by Association members.

ORDER

The State Operated School District of the City of Paterson's motion for reconsideration is granted and the Order granting interim relief is vacated. The case is transferred to the Director of Unfair Practices for processing.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson and Wall voted in favor of this decision. Commissioners Jones, Krengel and Voos voted against this decision.

ISSUED: August 11, 2011

Trenton, New Jersey