

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL
DISTRICT OF THE CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2011-220

NEWARK TEACHERS UNION,
LOCAL 481, AFT, AFL-CIO,

Charging Party.

STATE-OPERATED SCHOOL
DISTRICT OF THE CITY OF NEWARK,

Petitioner,

-and-

OAL DOCKET NO. EDU 01620-11
AGENCY DOCKET NO. 725-12/10

NEWARK TEACHERS UNION,
LOCAL 481, AFT, AFL-CIO,

Respondent.

SYNOPSIS

The Chair of the Public Employment relations Commission and the Assistant Commissioner of Education issue a Joint Order consolidating for hearing a petition filed by the employer with the Commissioner of Education and an unfair practice charge filed by the teacher's union. The Chair and Assistant Commissioner further hold that PERC has the predominant interest and appoint a PERC Hearing Examiner as a temporary Administrative Law Judge to issue a recommended decision to both agencies.

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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AND
COMMISSIONER OF EDUCATION

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Appearances:

For the Respondent/Petitioner, Charlotte Hitchcock,
General Counsel (Jeffrey Reiner, Senior Associate
Counsel)

For the Charging Party/Respondent, Zazzali, Fagella,
Nowak, Kleinbaum & Friedman, attorneys (Colin M. Lynch,
of counsel)

DECISION

On November 30, 2010, the Newark Teachers Union Local 481,
AFT, AFL-CIO ("NTU") filed an unfair practice charge with the

Public Employment Relations Commission against the State-Operated School District of the City of Newark ("NPS"), together with an application for interim relief, a proposed Order to Show Cause, a certification, exhibits, and a brief. The charge alleges that on or after November 2, 2010, NPS failed to respond to the NTU's demand that automatic salary increments be paid to employees in the teacher/clerk negotiations unit and in the aide-per diem substitute unit. Both units are covered by collective negotiations agreements with NPS extending from July 1, 2009 through June 30, 2010. The charge alleges the increments, based upon salary guides, were payable in either the first paycheck in July or September 2010, depending on whether the unit positions were for 12 months or 10 months. The teacher/clerk agreement also provides increments for longevity and educational attainment. The aide/per diem substitute agreement provides for longevity payments. The charge alleges that the parties are in negotiations for successor agreements and that NPS's failure to pay the salary increments violates 5.4a(1), (2), (3) and (5)^{1/} of

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. . . .(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. . . .[and] (5) Refusing to negotiate in good faith
(continued...)

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{2/3/}

On December 29, 2010, NPS filed a Petition for a Declaratory Ruling with the Commissioner of Education. The Commissioner was requested to render a declaratory ruling concerning the application of N.J.S.A. 18A:29-4.1^{4/} to the controversy between

1/ (...continued)
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/ On May 11, 2012, the PERC Commission designee denied in part, and granted in part the NTU's application for interim relief. The designee denied the application for the unit including teachers and clerks, based upon a balancing of hardships to the parties and harm to the public interest, as set forth in Bloomfield Tp. Bd. of Ed., P.E.R.C. No. 2011-55, 37 NJPER 2 (¶2 2011). The application was granted for the separate negotiations unit representing aides and per diem substitutes largely because the increments, representing an increase in salary of about 1.75%, could be recouped in the event that the negotiated wage increase for the 2010-2011 school year was less than the cost of the increments. State-Operated School District of the City of Newark, I.R. No. 2011-43, 37 NJPER 188 (¶59 2011).

3/ On January 6, 2012, the PERC Director of Unfair Practices issued a Complaint in the unfair practice case finding that the allegations contained in NTU's charge, if true, may constitute an unfair practice. The Complaint was assigned to a PERC Hearing Examiner for hearing.

4/ N.J.S.A. 18A:29-4.1 provides:

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 which shall not be less than those required by law. Such policy

(continued...)

the parties. NPS and NTU are in ongoing collective negotiations for a successor collective agreement and NPS's petition seeks an order that the statute does not require it to pay salary increments to teaching staff members. On February 14, 2011, the Department of Education Bureau of Controversies and Disputes transmitted this matter to the Office of Administrative Law (OAL), to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13, for the purpose of issuing a declaratory judgment.

On November 29, 2011, NTU filed with the OAL a motion for consolidation of the PERC and Department of Education matters and for a predominant interest determination. NTU seeks consolidation of the PERC and DOE matters for hearing and a determination that PERC has the predominant interest. On January

4/ (...continued)

and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of one, two or three years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments. Every school budget adopted, certified or approved by the board, the voters of the district, the board of school estimate, the governing body of the municipality or municipalities, or the commissioner, as the case may be, shall contain such amounts as may be necessary to fully implement such policy and schedules for that budget year.

3, 2012, NPS filed with the OAL a brief in partial opposition to NTU's motion and in support of its cross-motion for consolidation and a predominant interest determination. NPS seeks severance of the teacher/clerk unfair practice charge from the aide/per diem substitute charges and for a determination that the Commissioner of Education has the predominant interest.

On July 11, 2012, Administrative Law Judge Sandra Ann Robinson issued an Order for Consolidation and Determination of Predominant Interest finding the matters should be consolidated and that PERC has the predominant interest. Judge Robinson also ordered that the consolidated matter should be heard before the PERC Hearing Examiner designated as a special administrative law judge.

Both parties were advised that they may file exceptions to the ALJ's decision. On July 23, 2012, NPS filed exceptions to the ALJ's decision. The crux of NPS' exceptions is that the ALJ's recommended decision removes jurisdiction from the Commissioner of Education to interpret N.J.S.A. 18A:29-4.1. NPS also takes exception to the ALJ's interpretation of this statute. NPS requests that we find the Commissioner of Education has the predominant interest and transfer this matter to the Office of Administrative Law with an order interpreting 18A:29-4.1 in its favor.

On July 30, 2012, the NTU filed a brief in opposition to the NPS's exception. It requests that we adopt the ALJ's ruling

consolidating the two agency cases; determine that PERC has the predominant interest; and transfer the consolidated case to the PERC Hearing Examiner designated as a special Administrative Law Judge.

We grant the NPS's exceptions, in part. We find that the ALJ prematurely ruled on the merits of the NPS's Commissioner of Education petition when she interpreted the statute in issue. We vacate that portion of her decision. Having independently evaluated the record, including the parties' exceptions, and considered the Administrative Law Judge's Order, the Chair of the Public Employment Relations Commission on October 4, 2012, acting pursuant to authority delegated to her by the full Commission and the Assistant Commissioner of Education, to whom this matter has been delegated pursuant to N.J.S.A. 18A:4-34, on October 3, 2012, made the following determination in this matter.

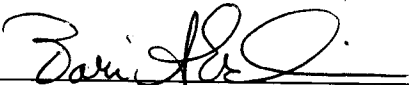
JOINT ORDER

The matters should be consolidated for hearing before PERC Hearing Examiner Gayl Mazuco designated as a Special Administrative Law Judge pursuant to N.J.S.A. 52:14F-6(b). The Public Employment Relations Commission has the predominant interest. The Hearing Examiner will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Commissioner of Education, disposing of all issues in controversy through a

single initial decision under N.J.A.C. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a). Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Public Employment Relations Commission to resolve the unfair practice issues within its jurisdiction. PERC's decision and the complete record will then be sent to the Commissioner of Education who will then decide any remaining education law issues.

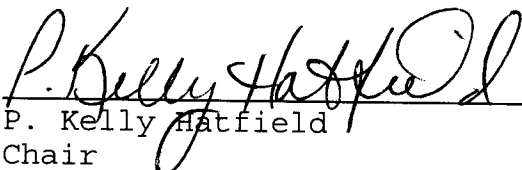
If necessary, the matter will then be returned to the Public Employment Relations Commission for any specialized relief necessitated by the Commissioner of Education's decision.

DECISION RENDERED BY THE
ASSISTANT COMMISSIONER OF
EDUCATION ON
October 3, 2012



Bari Erlichson
Assistant Commissioner
Trenton, New Jersey

DECISION RENDERED BY THE CHAIR
OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION ON
October 4, 2012



P. Kelly Hatfield
Chair
Trenton, New Jersey