

P.E.R.C. NO. 2013-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED
SCHOOL DISTRICT OF THE
CITY OF NEWARK,

Respondent/Petitioner,

-and-

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

PERC Docket No. CO-2011-220
Agency Docket No. 725-12/10
OAL Docket No. EDU 1620-11

Charging Party/Respondent.

SYNOPSIS

The Public Employment Relations Commission adopts the Initial Decision of a Special Administrative Law Judge designated pursuant to a Joint Order of Consolidation and Predominant Interest (P.E.R.C. No. 2013-26, 39 NJPER 198 (¶63 2012)) that consolidated an unfair practice charge filed by the Newark Teachers Union, AFT and a declaratory judgment action before the Commissioner of Education filed by the State Operated School District of the City of Newark. The Initial Decision finds that a settlement agreement between the parties meets the requirements of N.J.A.C. 1:1-19. The Commission remands the remaining severable allegations in the NTU's unfair practice charge to the Deputy Director of Unfair Practices for a hearing. The Initial Decision is transferred to the Commissioner of Education for consideration pursuant to the Joint Order.

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/Petitioner, Scarinci Hollenbeck,
attorneys (Ramon E. Rivera, of counsel)

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

DECISION

This case comes to us to issue a final decision after a Public Employment Relations Commission Hearing Examiner designated as a Special Administrative Law Judge issued an Initial Decision on January 24, 2013.^{1/}

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

^{1/} The Initial Decision is attached hereto in the appendix.

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)^{2/} of

^{2/} 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 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 New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{3/4/}

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^{5/} to the controversy between

3/ 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).

4/ 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.

5/ 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 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

(continued...)

the parties. NPS and NTU were in ongoing collective negotiations for a successor collective agreement and NPS's petition sought 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.

A Joint Order of Consolidation and Predominant Interest was issued consolidating the unfair practice charge and the Civil Service appeal for hearing before a PERC Hearing Examiner designated as a Special Administrative Law Judge. P.E.R.C. No. 2013-26, 39 NJPER 198 (¶63 2012). PERC was determined to have the predominant interest. During the course of the proceedings before the Special Administrative Law Judge, the parties engaged in settlement discussions and ultimately entered into a

5/ (...continued)

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.

settlement agreement. As part of the settlement agreement, the charging party withdrew the allegations in the unfair practice charge related to the payment of increments that were interrelated to the Commissioner of Education declaratory judgment action.

The Initial Decision finds that the settlement agreement meets the requirements of N.J.A.C. 1:1-19. We adopt the Initial Decision. We remand the remaining severable allegations in the complaint to the Deputy Director of Unfair Practices for assignment for hearing. This case will now be transferred to the Commissioner of Education for his consideration of the Initial Decision.

ORDER

The Initial Decision of the Hearing Examiner designated as a Special Administrative Law Judge is hereby adopted. The remaining PERC allegations are remanded to the Deputy Director of Unfair Practices for assignment. This matter is transferred to the Commissioner of Education for consideration pursuant to the Joint Order.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: February 28, 2013

Trenton, New Jersey