

P.E.R.C. NO. 2014-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE OPERATED SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2011-073

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a motion for summary judgment filed by the Paterson Board of Education in an unfair practice case filed by the Paterson Education Association. The charge alleges the Board violated the Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)1 and (5), when it refused to pay salary increments to certified staff upon the expiration of a two-year collective negotiations agreement. Relying on its decision in Atlantic County, P.E.R.C. No. 2014-40, the Commission holds that the dynamic status quo doctrine no longer serves to foster the prompt resolution of labor disputes and dismisses the Complaint finding the Board did not violate the Act.

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 (Steven R.
Cohen, of counsel)

DECISION

On August 16, 2010 the Paterson Education Association ("the Association") filed an unfair practice charge together with an application for interim relief alleging that the State Operated School District of the City of Paterson ("the District") had violated N.J.S.A. 34:13A-5.4(a) 1 and (5)^{1/}, by refusing to pay salary increments to certified staff upon the expiration of a two

^{1/} These provisions prohibit public employees from "(1) interfering with, restraining or coercing employees in the exercise of 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."

year collective bargaining agreement which terminated on June 30, 2010. On July 1, 2010 (for twelve month certificated staff) and September 1, 2010 (for ten month certificated staff) the District refused to award salary increments, longevity increases and educational payments for acquisition of an advanced degree or equivalency credits earned in "his/her particular field in the schools" in accordance with a particular schedule in the expired contract.

On September 27, 2010 a Commission designee issued an interlocutory decision wherein he determined that pursuant to the "dynamic status quo" doctrine the Board had violated the Act by refusing to pay the increments and ordered the payment of the increments pending the final ruling of the Commission on the charge. However interim relief was denied as to the longevity and educational credits payments based upon his finding that the dynamic status quo doctrine only applied to automatic salary payments.

On August 11, 2011, the Commission granted a motion for reconsideration filed by the District, and vacated the order granting interim relief.

On May 10, 2013 and June 11, 2013, the Board and the Association, respectively, filed motions for summary judgment in this matter which are now before us for decision.

In this matter the focal point of both parties contentions is the continuing viability of what is known as the "dynamic" status quo doctrine. We recently addressed this issue in Atlantic County, P.E.R.C. No. 2014-40 __ NJPER __ ¶ _____ 2014. After tracing the history of this Commission created doctrine, and its current impact, we held that

"Thus, after thirty years of experience, we find that the dynamic status quo doctrine no longer fulfills the needs of the parties in that it serves as a disincentive to the prompt settlement of labor disputes, and disserves rather than promotes the prompt resolution of labor disputes. While public employers will continue to be bound by the strictures of maintenance of the status quo, that will be defined as a "static" rather than a dynamic status quo."

The instant matter involves a public school district rather than a county government, but the conclusion is no different. In light of its 2% tax levy cap limit the District determined that it could not pay the increments in advance of negotiation of a new agreement. Here the cost of increments equals approximately 4.8 million dollars or over a 2% increase in pay alone, resulting in the following dilemma - pay the increments and incur great difficulty in negotiating any salary increases which if those increments were paid there would be great difficulty in negotiating any salary increases to senior staff who did not have an entitlement to increments, or not pay those increments and have a full measure of funds available for distribution amongst

all employees in negotiations between the parties. Additionally, any alteration in the number of incremental steps or the dollar value of such steps which could be negotiated is circumscribed by the fact that the overwhelming majority of staff will have received the incremental raises based upon the preexisting system making a reality the problem of negotiating a solution pointed out by our Supreme Court in Bd. of Ed. of Neptune Twp., 144 N.J. 16 (1995) when it referred to the decision of the New York Court of Appeals in B.O.C.E.S v. NYPERB, 41 NY2d 753 (1977) (later reversed by legislative action in N.Y.) at p. 28. "To the extent that it provides that such increments must be paid even after the expiration of the contract, the proposition gives an edge and makes negotiation of that point that much more difficult."

Thus, the dynamic status quo instead of serving to foster prompt settlement of labor disputes, now, as we held in Atlantic County, supra serves as a disincentive to that policy and thus, is contrary to the public interest. A "static" status quo leaves all terms and conditions of employment from the expired labor agreement in place, and allows the parties full freedom to negotiate such terms and conditions as they may desire in light of the circumstances in which they find themselves at the time of renegotiation.

In conclusion, we find that the Board did not violate N.J.S.A. 34:13A-5.4(a) (1) or (5) of the Act, and the charges are dismissed.

ORDER

The charges in this case are dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: January 30, 2014

Trenton, New Jersey