

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST NEW YORK BOARD OF  
EDUCATION,

Respondent,

Docket No. CO-80-271-91

-and-

WEST NEW YORK EDUCATIONAL  
SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice case which was submitted on stipulated facts, the Commission dismisses a complaint filed against the West New York Board of Education which alleged that the Board violated the Act by failing to maintain the status quo of employees' salaries during negotiations for a successor agreement. The employees' salaries for the 1978-1979 school year were fixed at a specific dollar amount above the 1978-1979 teachers' salary guide. When the teachers reached a new guide for the 1979-1980 school year, the Association alleged that its unit members should automatically receive its 1978-1979 fixed dollar amount above the new teachers' guide. The Association alleged that the instant matter was controlled by Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978).

The Commission found that the instant matter was distinguished from Galloway. The Association herein did not have an automatic salary incremental provision in its contract, nor did it have its own salary guide.

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Appearances:

For the Respondent, Francis X. Hayes, Esquire

For the Charging Party, Goldberg & Simon, Esqs.  
(Louis P. Bucceri, of Counsel)

DECISION AND ORDER

On March 3, 1980, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the West New York Educational Supervisors Association (the "Association") alleging that the West New York Board of Education (the "Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") by failing to maintain the status quo with respect to salaries during negotiations for a successor agreement.

Pursuant to N.J.A.C. 19:14-6.7, the parties, on March 21, 1980, stipulated the facts in this matter and waived an evidentiary hearing and a Hearing Examiner's Recommended Report and Decision and agreed to submit this matter directly to the Commission based upon the formal pleadings, the stipulation of facts, and any affidavits

and briefs. A timetable for the submission of briefs was established and the last brief was received by March 31, 1980.

It appearing that the allegations of the unfair practice charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint was issued herein on April 16, 1980.

Based upon the entire record, including the stipulated facts and the briefs submitted in this matter, the Commission finds the following:

1. The Board is a public employer within the meaning of the Act and is subject to its provisions.
2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.
3. The Association alleges that the Board violated sections (a)(1) and (5) of the Act by failing to maintain the status quo with respect to salaries during negotiations for a successor agreement.
4. The Board alleges that the status quo has in fact been maintained and that the instant complaint should be dismissed.

The facts of this matter show that the parties' collective agreement which expired on June 30, 1979, contained a salary provision that provided for \$5,760 beyond the individual supervisor's salary based on the "Teachers' Salary Guide". The parties apparently used the teachers' guide that was in effect for the 1978-1979 school year. In October 1979, the teachers agreed with the Board to a new collective agreement and developed a new teachers' guide for the 1979-1980 school year. The instant parties stipulated that

subsequent to October 1979, the Board did not calculate the supervisor's salary as \$5,760 above the teachers' 1979-1980 guide, but did continue to pay the supervisors \$5,760 above the 1978-1979 teachers' guide.

The Association argues that in order to maintain the status quo during negotiations, the Board was required to pay the supervisors \$5,760 above the 1979-1980 teachers' salary guide. In support of this contention, the Association cited Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978); P.E.R.C. No. 78-27, 4 NJPER 11 (14007 1977), and argued that the Board's failure to apply \$5,760 to the 1979-1980 teachers' guide was directly on point with the findings in Galloway and Union County<sup>1/</sup> wherein the Court and the Commission, respectively, found that the refusal to pay automatic incremental increases under an expired contract was illegal.

The Board maintains that Galloway and Union County do not apply to the instant facts. The Board argues that its collective agreement with the Association specifically provided that it shall expire on June 30, 1979. The Board indicated that it was still negotiating with the Association for the 1979-1980 school year and that no new salary structure had been finalized,

<sup>1/</sup> Union County Regl. H.S. Bd. of Ed. v. Union County Regl. H.S. Teachers Assn, P.E.R.C. No. 78-27, 4 NJPER 11 (14007 1978).

and therefore the supervisors were being paid the same salary as in the 1978-1979 school year.

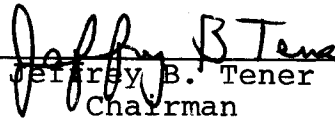
The Commission has reviewed the entire record herein and has carefully considered the parties' positions and finds that the complaint must be dismissed. The instant matter is distinguishable from Galloway and Union County. In those cases, the Court and the Commission, respectively, found that the increases in question were automatic incremental increases that were based upon existing salary guides in their own collective agreements which covered the employees in the unit. What the instant Association is seeking is a retention of the \$5,760 differential based upon the newly negotiated, 1979-1980 teachers' salary guide. Galloway and Union County actually support the proposition that the parties must utilize the salary guide in effect when the contract expired.

The Association can certainly seek to negotiate for a specific dollar amount above the 1979-1980 teachers' salary guide, but it is not automatically and without negotiations entitled to apply an expired salary provision in its last contract to the newly negotiated salary guide of a different negotiations unit.

ORDER

For the foregoing reasons and based upon the entire record, IT IS HEREBY ORDERED that the Association's complaint herein is dismissed in its entirety.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Graves, Newbaker and Hipp were not present.

DATED: Trenton, New Jersey  
May 20, 1980  
ISSUED: May 22, 1980