

P.E.R.C. NO. 99-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-97-69

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Middletown Township Board of Education. The Complaint was based on an unfair practice charge filed by the Middletown Township Education Association. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act by refusing to pay for graduate work and for longevity after the parties' three-year collective negotiations agreement expired. Applying the analysis in Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996), the Commission finds that a school board is not required to pay a new or higher longevity payment pursuant to the salary schedule of an expired three-year agreement. Also applying Neptune, the Commission finds that a school board is not required to pay higher compensation for educational attainment under the expired salary guide.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-97-69

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Kenney & Gross, attorneys (Malachi J. Kenney, of counsel; Mark S. Tabenkin, on the briefs)

For the Charging Party, Zazzali, Zazzali, Fagella & Nowak, attorneys (Kenneth I. Nowak, of counsel)

DECISION

On August 30, September 16 and October 25, 1996, the Middletown Township Education Association filed an unfair practice charge and amended charges against the Middletown Township Board of Education. On March 21, 1997, a Complaint and Notice of Hearing issued. On October 27, the Association withdrew all allegations except those alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} by refusing to pay for graduate

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

work and for longevity after the parties' three-year collective negotiations agreement expired.

On January 26, 1998, the parties filed stipulated facts, together with documents. They later filed briefs.

On June 9, 1998, Hearing Examiner Jonathon Roth recommended dismissing the Complaint. H.E. No. 98-30, 24 NJPER 330 (¶29155 1998). He found that Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n, 144 N.J. 16 (1996), prohibits the payment of wage increases to teachers for educational attainment and for longevity based on the salary schedule in an expired three-year contract. He so concluded based on Neptune's holding that N.J.S.A. 18A:29-4.1,^{2/} prohibits school boards from paying

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the 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."

2/ N.J.S.A. 18A:29-4.1 states:

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 policy or schedules nor the adoption of policies or schedules providing for higher salaries, increments or adjustments.

increments pursuant to expired three-year contracts. That statute limits salary schedules to one, two or three years.

On June 22, 1998, the Association filed exceptions. It argues that Neptune does not bar certified teaching staff from receiving recognition of increased graduate credit and longevity on the salary schedule in the expired three-year contract pending negotiation of a successor contract. It points to the fact that the Board hired a number of new teachers and placed those teachers on the expired guide at the level which reflects all graduate credits earned, even if earned after the June 30, 1996 expiration of the contract. The Association further argues that Neptune does not justify the creation of different classes of similarly situated and educated teachers, with different benefits depending on whether they were employed in the district at the time of the last contract. As for longevity payments, the Association relies on its post-hearing submissions. There it argued that longevity payments are non-accumulative and not part of a salary guide increment for purposes of N.J.S.A. 18A:29-4.1.

On July 13, 1998, the Board filed an answering brief urging adoption of the recommended decision.

We have reviewed the record. We incorporate the stipulated facts (H.E. at 3-7, 24 NJPER at 330-331).

We begin with the Board's decision not to pay longevity payments that had not commenced before June 30, 1996, the date the parties' three-year contract expired. Under Neptune, N.J.S.A.

18A:29-4.1 prohibits salary increases pursuant to expired three-year salary schedules. The Court's rationale was that N.J.S.A. 18A:29-4.1 authorizes only one, two or three year contracts and that if increments are paid under the salary schedule of an expired three-year contract, tenure rules will render those increments beyond recall and therefore binding for a fourth year.

The Commissioner of Education considers longevity payments not yet received by teaching staff members to be increments that may be withheld for inefficiency or other good cause under N.J.S.A. 18A:29-14. South Harrison Tp. Bd. of Ed., P.E.R.C. No. 96-84, 22 NJPER 242 (¶27126 1996); Rosania v. Middlesex Bor. Bd. of Ed., 1987 S.L.D. 1873 (Comm'r of Ed.) on rem'd 1988 S.L.D. 78 (ALJ), 1988 S.L.D. 81 (Comm'r of Ed.); Hillman v. Caldwell-W. Caldwell Bd. of Ed., 1977 S.L.D. 218 (Comm'r of Ed.). Because an increment withholding may not reduce a tenured teacher's salary, a longevity payment already received may not be taken away. But a new or higher longevity payment may be withheld under N.J.S.A. 18A:29-14. Rosania (withholding may not reduce salary below previous year's level, inclusive of longevity payment).

Applying Neptune's analysis to longevity payments, we hold that a school board is not required to pay a new or higher longevity payment pursuant to the salary schedule of an expired three-year agreement. Accordingly, the Board did not violate the Act by not making the disputed longevity payments after the

expiration of the parties' three-year agreement. We dismiss that aspect of the Complaint.

Despite the disparity of treatment the Association points to, Neptune requires a similar result for teachers seeking higher compensation for educational attainment under the expired salary guide. While payments linked to educational attainment are not increments under N.J.S.A. 18A:29-14, see South Harrison Bd. of Ed., they are part of salary schedules and thus covered by N.J.S.A. 18A:29-4.1. Under the Supreme Court's analysis, tenure rules would make any increased salaries irreversible and thus would extend the three-year salary schedule beyond the limit set by N.J.S.A. 18A:29-4.1. The Association argues that teachers have taken courses at their own expense in reliance upon an agreement that their extra education would be recognized economically. However, that economic recognition, lateral movement to a new position on the salary schedule, was not scheduled to occur until after the expiration of the three-year contract. Such payments come within the general holding of Neptune.


We hold only that Neptune prohibits extension of a three-year salary schedule into a fourth year and that the salary increases sought by the Association for veteran teachers flow solely from the expired three-year salary schedule adopted by a previous school board. We do not consider whether the current Board and the Association could agree to the payment of educational degree and longevity increases pending a final

agreement. We also do not determine the legality of the Board's payment of higher salaries to new teachers under either N.J.S.A. 18A:29-4.1 or the status quo doctrine. Neither of these issues is before us. While the disparity in salary guide placement between veteran and new teachers troubles us because it results in non-uniform treatment of negotiations unit members, see East Hanover Bd. of Ed., P.E.R.C. No. 99-71, 25 NJPER ____ (____ 1999), that disparity does not afford a basis, given Neptune, for requiring the only relief sought -- increased salaries for veteran teachers. Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: February 25, 1999
Trenton, New Jersey
ISSUED: February 26, 1999

H.E. NO. 98-30

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-97-69

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that the Board's refusal to pay wage increases to teachers for "educational attainment" and for longevity after a three-year agreement expired violates 5.4a(5) and (1) of the Act. The Hearing Examiner finds that Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Assn., 144 N.J. 16 (1996) preempts the dynamic status quo for salary guide increases during the interim between the expiration of a three-year contract and the signing of its successor or the implementation of a last best offer.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 98-30

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-97-69

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Kenney & Gross, attorneys
(Malachi Kenney, of counsel)
(Mark Tabenkin, on the brief)

For the Charging Party, Zazzali, Zazzali, Fagella &
Nowak, attorneys
(Kenneth I. Nowak, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On August 30, September 16 and October 25, 1996, the Middletown Township Education Association filed an unfair practice charge and amended charges against the Middletown Township Board of Education. The charge and first amended charge alleged that beginning in June 1996, the Board engaged in bad faith collective negotiations and "other unlawful conduct", such as using the internet for anti-union editorials, and "making false representations and libelous statements." The Association also alleged that the Board refused to negotiate and refused to meet

without a mediator, and on August 27, 1996, passed a resolution unilaterally altering terms and conditions of employment, violating 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The second amended charge alleges that on September 15, 1996, the Board unilaterally changed and imposed terms and conditions of employment concerning "pay for graduate work and for longevity" and that the Board "improperly charged Association officers for Association time." The second amended charge also alleged that on and after October 11, 1996, the Board attempted to "chill and restrain" Association members engaged in lawful picketing and leafletting by suing them individually and by issuing statements that the membership does not support the Association. These actions allegedly violate 5.4a(1), (3) and (5) of the Act.

On March 21, 1997, a Complaint and Notice of Hearing issued.

^{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. (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. (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."

On October 27, 1997, the Association filed a letter withdrawing the charge and amended charges except that portion of the second amended charge concerning "adjustments and 'horizontal movement' (i.e., longevity and graduate degree/credit)..." The Association essentially alleges that the Board has refused to pay longevity and "educational attainment" increases after the expiration of a three year contract. The parties agreed to stipulate a record.

On January 26, 1998, the Association and Board filed stipulated facts, together with documents. All briefs and reply briefs were filed by March 31, 1998.

VERBATIM STIPULATION OF FACTS

1. The Middletown Township Board of Education (the Board) is a public employer within the meaning of the Act.
2. The Middletown Township Education Association (the MTEA) is a public employee representative organization within the meaning of the Act and represents a bargaining unit composed of non-supervisory teaching staff members and secretaries employed by the Board.
3. The Board and the MTEA were parties to a collective negotiations agreement which ran for the period from July 1, 1993 through June 30, 1996, a copy of which is attached hereto and made a part hereof as Exhibit J-1.

4. The parties have not yet reached a settlement for a successor agreement, and are currently engaged in the Fact-Finding process.

5. The 1993-1996 collective negotiations agreement incorporated salary guides for professional staff for each of the three school years covered by the agreement including Schedule A: 1993-1994 Professional Staff Guide (at p. 57 of J-1), Schedule A: 1994-1995 Professional Staff Guide (at p. 58 of J-1), and Schedule A: 1995-1996 Professional Staff Guide (at p. 59 of J-1).

6. During the life of the agreement, professional staff members were placed on the appropriate step of the guide established for each year of the agreement, such placement having taken into account all appropriate salary adjustments and increments in each year. These adjustments were made at the beginning of each semester, that is, in September and February of each year. However, since the expiration of the agreement on June 30, 1996, no professional staff member has received any salary adjustment or increment.

7. The professional staff guides each consist of 21 steps and 11 vertical columns. The columns are designated B, B10, B20, B30, M, M10, M20, M30, M45, M60 and D, respectively. Each column reflects a different level of educational attainment as measured by degrees and by graduate credits earned beyond a degree level. The parties had a procedure for salary recognition and lateral movement for additional degrees attained and courses and

credits earned (p. 51 of J-1). The contract and salary guide also provide for additional payments for longevity (Article 3.2 and Schedule A).

8. During the life of the 1993-1996 agreement, professional staff members who earned the appropriate degree and/or graduate credit levels were moved to the appropriate salary guide column reflecting the attainment of an additional educational level, thereby receiving an additional salary increment, and staff members who qualified for longevity received such payments.

9. Since June 30, 1996, no professional staff member has received a salary adjustment or column movement for attaining additional educational levels as reflected on the professional staff guide although a number of professional staff members have attained higher educational attainment levels in that time. Nor has any professional staff member received any longevity payments which had not commenced before June 30, 1996.

10. Since the expiration of the agreement, the Board has hired a significant number of new teachers for both the 1996-97 and 1997-98 school years. These newly hired teachers, who hold positions represented by the MTEA, were all appointed at salaries that reflected steps on the 1995-96 Professional Staff Guide. The guide steps so reflected include many representing prior teaching experience and/or educational levels higher than the BA degree. The Board acknowledges that salary guide credit may have been

given to some of the above-referenced new hires for teaching experience gained and/or graduate credits earned after June 30, 1996 but before their dates of hire in Middletown. In any case, the Board took no steps to deny salary guide credit for either post-June 30, 1996 teaching experience or post-June 30, 1996 graduate credits when hiring new staff for the 1997-1998 school year. A list of teachers hired for the 1997-98 school year, with their respective salaries, steps and columns, is attached as Exhibit J-2. A list of teachers hired for the 1996-1997 school year, with their respective salaries, steps and columns, is attached as Exhibit J-3.

11. None of the teachers hired for the 1996-1997 school year received any salary adjustment or increment beyond their initial salary placement, for service, longevity or additional educational credits or degrees in either the 1996-1997 or 1997-1998 school years.

12. One of the proposals made by the Board in the current negotiations calls for a restructuring of the Professional Staff Salary Guide to eliminate seven of the educational level columns on that guide, thereby reducing the number of columns to four, specifically the BA, BA+30, MA and MA+30 columns. A copy of page 11 of the Board's final proposals submitted to the Fact-Finder in August 1997, which includes the proposal described in this paragraph is attached as Exhibit J-4, and the Association's response is attached as Exhibit J-5.

13. The parties agree that the stipulated facts constitute the complete record. The charging party acknowledges that to the extent the stipulated facts are insufficient to sustain its burden of proof by a preponderance of the evidence, the Complaint may be dismissed. Similarly, the respondent acknowledges that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted, or to rebut or disprove the prima facie case established by the charging party.

ANALYSIS

N.J.S.A. 34:13A-5.3 requires that mandatorily negotiable employment conditions be negotiated before they are changed or implemented. "Stated negatively, this rule, known as the pr[o]scription against unilateral change of the status quo, prohibits an employer from unilaterally altering the status quo concerning mandatory bargaining topics, whether established by expired contract or by past practice, without first bargaining to impasse." Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Assn., 144 N.J. 16, 22 (1996).

In general, an employer's withholding of automatic increments to employees after a collective agreement expires changes the (dynamic) status quo and violates 5.4a(5) and (1) of the Act. Hudson Cty. and Hudson Cty. PBA Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd NJPER Supp.2d 62 (¶44 App.

Div. 1979); Rutgers, the State University and Rutgers University Coll. Teachers Assn., et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp.2d 96 (¶79 App. Div. 1981); City of Vineland and Vineland PBA Local 266, I.R. No. 81-1, 7 NJPER 324 [lv. to app. den. App. Div. Dkt. No. AM-1037-80T3 (7/15/81); enf. granted Mot. No. M-3982-80 (7/15/81)]; Camden Housing Auth., P.E.R.C. No. 88-5, 13 NJPER 639 (¶18239 1987).

Neptune Tp. Bd. of Ed. holds that although an employer has a duty to maintain the status quo pending successor contract negotiations, N.J.S.A. 18A:29-4.1 prohibits a school board from paying increments after the expiration of a three year contract. School boards may adopt only one, two or three year salary schedules and the payment of increments after a third year would unlawfully create a binding fourth year. See Bogota Bd. of Ed., P.E.R.C. No. 98-19, 23 NJPER 498, 499 (¶28240 1997).

N.J.S.A. 18A:29-4.1 states:

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 policy or schedules nor the adoption of policies or schedules providing for higher salaries, increments or adjustments.

The Association asserts that payments to teachers for "educational attainment" (i.e., obtaining additional credits toward

a graduate degree) and for "longevity" maintain the status quo. It advocates a narrow definition of "increments" in Neptune Tp. Bd. of Ed. The Board contends that such payments after a three year contract expires are proscribed by N.J.S.A. 18A:29-4.1. It advocates a broad definition of "increments."

The expired three year collective agreements in Neptune Tp. Bd. of Ed. had "various salary guides providing for increments in pay as employees gained additional years of service." Id. at 20. The Court specified that such "increments accrue, or vest, contractually and become operative in the various stages of time spaced by the schedule" Id. at 26. The Court warned that,

any increments granted become binding pursuant to the tenure statute [N.J.S.A. 18A:28-5]. Thus, the practice of automatically paying an increment will limit a board's ability to respond to ever-changing economic conditions of the district. Schools that need to cut budget growth will face serious problems....
[Id. at 28]

See also, East Hanover Tp. Bd. of Ed., I.R. No. 98-4, 23 NJPER 537 (¶28264 1997), notice of app. dism. App. Div. Dkt. No. A-000345-97T2 (12/15/97).

Soon after Neptune Tp. Bd. of Ed. issued, the Commission restrained, in part, a grievance asserting that a board withheld longevity payments to a teacher and failed to advance the teacher to the master's degree level on the salary guide without just cause. In South Harrison Tp. Bd. of Ed., P.E.R.C. No. 96-84, 22 NJPER 242 (¶27126 1996), the Commission restrained that part of the grievance protesting the withholding of longevity payments.

N.J.S.A. 18A:29-14 authorizes a board of education to withhold, for inefficiency or other good cause, the employment increment or the adjustment increment or both, of any teaching staff member. Employment increments are the increases awarded after the successful completion of each year of employment. Probst v. Haddonfield Bd. of Ed., 127 N.J. 518 (1992). Adjustment increments are negotiated increases reflecting an estimated rise in the cost of living for each year or other economic consideration.

Longevity payments are construed by the Commissioner of Education to constitute employment increments. See, e.g., Rosania v. Middlesex Bd. of Ed., C.D. 18t-18 (210-87 1/22/88).
[Id. at 22 NJPER 242]

The Commission then distinguished the Board's failure to advance the teacher to the master's degree level on the guide.

[W]e know of no precedent construing such a failure as an increment withholding under N.J.S.A. 18A:29-14. Advancement to the master's degree level on the guide is not an employment increment based on another year of satisfactory service with a school board nor is it an adjustment increment based on an increase in the cost of living or other economic considerations. Instead it is a negotiated agreement to pay higher salaries to those teaching staff members who have attained academic degrees.
[Id. at 22 NJPER 243]

The Association argues that this portion of South Harrison Tp. Bd. of Ed., indicates that payment to its teachers for "educational attainment" is not an "increment" within the meaning of Neptune Tp. Bd. of Ed. and must be restored.

The Board contends that the Commission wrongly decided that educational attainment was not an "increment" under N.J.S.A. 18:29-14. The precedent, which the Commission assertedly missed,

lies in the legislative history of N.J.S.A. 18A:29-7 (enacted as L.1963, c. 164).^{2/} This provision mandated that the "salary schedule for an academic year" include five vertical columns for educational increments. The Board argues that when section 4.1 was enacted in 1967, the governing statutory "salary policy" provided for both experience increments and educational increments.

N.J.S.A. 18A:29-7 was repealed in 1985 with the enactment of the "Teacher Quality Employment Act" (L. 1985, c. 321). N.J.S.A. 18:29-6, which defined "employment increment" and "adjustment increment" also was repealed at that time. But our Supreme Court employed those statutory definitions in Probst, noting parenthetically that "the original definitions remain relevant as Section 14 still refers to both terms." Id. at 127 N.J. 522.

^{2/} This provision stated,

Except as hereinafter provided, the salary schedule for an academic year in this State:

1. For a member who does not hold a bachelor's degree or its equivalent and who is employed as a school nurse shall be as provided in Column A below;
2. For a member who does not hold a bachelor's degree or its equivalent and is not employed as a school nurse shall be as provided in Column B below;
3. For a member who holds a bachelor's degree or its equivalent shall be as provided in Column C below;
4. For a member who holds a master's degree or its equivalent shall be as provided in Column D below; and
5. For a member who has six years of training or who holds a doctor's degree shall be as provided in Column E below;....

Similarly, Section 4.1 still refers to "salary policy, including salary schedules" and the repealed N.J.S.A. 18A:29-7 remains relevant to that phrase's meaning.

Of more immediate concern than the matter of statutory construction is the narrow context in which the Commission distinguished an increment withholding from a withholding based on a "negotiated agreement to pay higher salaries." The purpose of Section 14 is to "vest local boards with the ability to withhold increments from teachers who had not performed well during the previous year." Probst at 127 N.J. 526. In South Harrison Tp. Bd. of Ed., the Commission found that the Board was not empowered by Section 14 to "withhold" from a teacher an increase in pay based on an agreement to pay higher salaries for educational attainment.

The purpose of Section 4.1, by contrast, is to "prevent local boards from using the budget process to avoid salary schedules they had already agreed to in collective-bargaining negotiations, thereby providing security to teachers who had negotiated multi-year salary schedules with school boards." Probst at 127 N.J. 526. In Neptune Tp. Bd. of Ed., the Court further explained that, "the language of N.J.S.A. 18:29-4.1 indicates that the Legislature intended to provide that no contract will be binding beyond the third year." Id. at 144 N.J. 26. Responding to the Association argument that Section 4.1 was not intended to limit "the length of the terms and conditions of employment," the Court wrote,

We reject that argument. The statutory reading offered by the unions does not comport with

N.J.S.A. 18A:29-4.1's plain meaning. Whether called a contract or terms and conditions of employment, the result of paying increments after the third year is that provisions of the contract become binding for a fourth year. Under the plain language of that statute, the binding nature of the contract cannot extend into the fourth year.

[Id. at 144 N.J. 26]

On the next page, the Court wrote,

Because the Legislature has never explicitly authorized the Board to adopt schedules beyond the term of N.J.S.A. 18A:29-4.1, reading that statute to prohibit the contract from being binding for more than three years supports that principle of limited board power.

[144 N.J. 27].

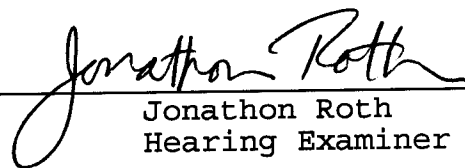
Section 4.1 does not refer to a "contract" and the Court is not concerned with differences between a contract and terms and conditions of employment. In my view, the determination that "provisions of the contract cannot be binding in a fourth year" implicates the continued viability of a "dynamic" status quo for all teacher salary guide payments. All payments on that guide - salary, increments, longevity and even those for "educational attainment" have to be frozen - or else the Board would be bound in an impermissible fourth year. Stated another way, the increase in payments which the Association seeks is rooted in the labor law duty to maintain terms and conditions of employment (dynamic status quo), which the Court has found to be preempted by Section 4.1. See Neptune Tp. Bd. of Ed. at 144 N.J. 24, 31-32. Applied to this case, a "static" status quo requires that all salary guide payments to teachers are frozen on the 1995-96 "professional staff guide" until a successor agreement is reached or a last best offer is implemented.

I agree with the Association that there is nothing "automatic" in paying teachers for "educational attainment." (The same cannot be said of longevity payments which, like automatic increments, require only the passage of time to become due.)^{3/} Nor would such payments appreciably affect the rate of growth in school budgets, the chief policy concern identified by the Court. On the contrary, a freeze on increases for educational attainment seems inconsistent with a goal of retaining highly qualified professional staff.

But I cannot reconcile the Association's narrow definition of "increments" (i.e., automatic) with the blanket prohibition on increases in a fourth year which the Court in Neptune Tp. Bd. of Ed. has assigned to N.J.S.A. 18A:29-4.1.

RECOMMENDATION

Accordingly, I recommend that the Commission dismiss the Complaint.


Jonathon Roth
Hearing Examiner

DATED: June 9, 1998
Trenton, New Jersey

^{3/} Increased longevity payments are not necessarily "increments" subject to tenure rules and therefore "beyond recall." The problem is that such increases would occur "after the expiration of a three-year contract, which violates the plain meaning of N.J.S.A. 18A:29-4.1." Neptune Tp. Bd. of Ed. at 144 N.J. 25, 27.