

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF  
TOWNSHIP OF WILLINGBORO,

Respondent,

-and-

Docket No. CO-84-150-115

WILLINGBORO EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Board of Education of the Township of Willingboro violated the New Jersey Employer-Employee Relations Act when, after five tenured teachers who had been the subject of a reduction in force were recalled, it denied these teachers the salaries and benefits due tenured teachers and instead paid them as substitute teachers until it formally ratified their appointments.

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Charging Party.

Appearances:

For the Respondent, Barbour & Costa, P.A.  
(John T. Barbour, of Counsel)

For the Charging Party, Selikoff & Cohen, P.A.  
(Joel S. Selikoff, of Counsel)

DECISION AND ORDER

On December 6, 1983, the Willingboro Education Association ("Association") filed an unfair practice charge against the Board of Education of the Township of Willingboro ("Board") with the Public Employment Relations Commission. The charge alleges that the Board violated subsections 5.4(a)(1) and (5)<sup>1</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A 34:13A-1 et seq., when, after five tenured teachers who had been the subject of a reduction

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<sup>1</sup>These subsections 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; 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."

in force were recalled, it denied these teachers the salaries and benefits due tenured teachers under the parties' collective negotiations agreement and instead paid them as substitute teachers until it formally ratified their appointments.

On March 8, 1984, the Administrator of Unfair Practice Proceedings, pursuant to N.J.A.C 19:14-2.1, issued a Complaint on the unfair practice charge.

The Association also filed a petition on behalf of the five teachers with the Commimssioner of Education. That petition asserted that the Board violated N.J.S.A 18A:6-10, which protects tenured teachers against reductions in compensation without just cause, when it refused to pay the five recalled teachers as regular tenured teachers instead of substitute teachers.<sup>2</sup>

The Board moved to consolidate the unfair practice charge and the petition. Administrative Law Judge Lillard E. Law granted this motion for the purpose of holding a single evidentiary hearing. He also held, however, that both the Commission and the Commissioner of Education should retain final authority to decide, based on the common facts found at the consolidated hearing, whether the particular statute each agency administered had been violated.

On June 5, 1984, Judge Law conducted a hearing. Both parties entered stipulations, examined witnesses and introduced exhibits.

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<sup>2</sup>The petition was subsequently amended to include a sixth teacher.

On October 2, 1984, Judge Law issued his decision (copy attached). With respect to the claimed violations of education law, Judge Law concluded that the Board did violate N.J.S.A. 18A:6-10 when it refused to compensate the tenured teachers it recalled in accordance with the collective negotiations agreement and instead paid them as substitutes until the Board formally ratified their appointments. He ordered the Board to pay the six affected teachers, effective retroactively to September 1, 1983, the salary due tenured teachers at the appropriate salary guide step and all other benefits and emoluments given regular teaching staff members. He denied the Association's request for interest on the money improperly withheld because the Commissioner of Education lacks statutory authority to award interest. With respect to the claimed violation of the New Jersey Employer-Employee Relations Act, Judge Law concluded that the Board violated subsection 5.4(a)(1), but not subsection 5.4(a)(5), when it unilaterally changed the negotiated terms and conditions applicable to the affected teachers as regular teaching staff members. He ordered the same remedy -- full back pay -- with respect to the violation of N.J.S.A. 34:13A-5.4(a)(1) as he ordered with respect to the violation of N.J.S.A. 18A:6-10. He did not consider whether the affected teachers were entitled to interest under the New Jersey Employer-Employee Relations Act on the amount withheld illegally.

Judge Law served a copy of his report on the parties and on the Commissioner of Education and this Commission. He informed them

that his decision would become final if neither the Commissioner nor the Commission took action or received an extension of time within 45 days. This Commission then requested and received an extension of time so that it could consider the recommended decision at its next meeting.

The Association has filed exceptions with the Commission. It accepts the facts the Administrative Law Judge found and the conclusions he reached with respect to N.J.S.A. 34:13A-5.4(a)(1). It contends, however, that the Judge erred in failing to find a violation of N.J.S.A. 34:13A-5.4(a)(5) and to award interest.

The Board has also filed exceptions. These exceptions allege that the Administrative Law Judge erred in: (1) finding that the legal issues were severable and could be presented to the Commissioner of Education and this Commission separately; (2) finding that the Board violated the education laws; and (3) ruling that the Board violated the New Jersey Employer-Employee Relations Act.<sup>3</sup>

We have reviewed the record. We accept the Administrative Law Judge's findings of fact (pp. 6-9). We also accept his ruling that the two legal issues to be decided on a common set of facts were severable and could each be separately presented to the Commissioner of Education and this Commission so that each agency

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<sup>3</sup>The Commission received the Board's exceptions on October 25, 1984. Pursuant to N.J.A.C. 19:14-7.3, they are untimely since filed more than ten days after service of the report.

could apply its expertise in interpreting and administering its own statutes. In light of this ruling, we express no opinion on whether the Board violated the education statutes of New Jersey.

We adopt the Administrative Law Judge's conclusion that the Board violated subsection 5.4(a)(1) of our Act when it unilaterally altered the negotiated terms and conditions of employment covering tenured teaching staff members and instead paid the teachers in question as substitutes until their appointments were formally ratified.<sup>4</sup> We believe, however, that the Board's actions also violated subsection 5.4(a)(5). The obligation to negotiate in good faith which that subsection imposes incorporates an obligation not to repudiate collectively negotiated commitments. In re Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (Para. 12011 1980), aff'd App. Div. Dkt. No. A-1818-809-T8 (5/25/82); In re Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (Para. 14066 1983); In re Maywood Bd. of Ed., P.E.R.C. No. 85-36, 10 NJPER \_\_\_\_ Para. \_\_\_\_ 1984); In re Liberty Twp. Bd. of Ed., P.E.R.C. No. 85-37, 10 NJPER \_\_\_\_ (Para. \_\_\_\_ 1984).<sup>5</sup>

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<sup>4</sup>We disagree with the Board's contention that it had a reserved legal and contractual right to treat tenured teachers recalled to duty after a reduction in force as substitutes until it formally ratified their appointments.

<sup>5</sup>Contrast In re State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER \_\_\_\_ (Para. \_\_\_\_ 1984) which involved a mere breach of contract claim centering on competing interpretations of ambiguous contract language instead of a repudiation of all  
(Footnote continued on next page)

We also adopt the Administrative Law Judge's order that the Board retroactively reimburse the affected teachers for the salaries and benefits they lost when illegally paid and treated as substitute teachers. Under N.J.S.A. 34:13A-5.4(c) and Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Educational Secretaries, 78 N.J. 1 (1978), we have remedial authority to make employees whole for actual losses attributable to unfair practices. That authority encompasses the power to award interest on salaries and benefits illegally denied employees. See In re Salem County Bd. for Vocational Ed., P.E.R.C. No. 82-115, 8 NJPER 355 (Para. 10135 1979), aff'd in pt., rev'd in pt., App. Div. Docket No. A-3417-78 (9/29/80); In re Bergen Pines County Hospital, P.E.R.C. No. 82-117, 8 NJPER 3609 (Para. 13164 1982), appeal dismissed App. Div. Docket Nos. A-117-82-T1 and A-5942-81-T2; In re Logan Twp. Bd. of Ed., P.E.R.C. No. 82-23, 8 NJPER 546 (Para. 13251 1982), aff'd App. Div. Docket No. A-696-82-T2 (10/4/83).<sup>6</sup> Accordingly, we will award interest on the salaries and benefits illegally withheld.

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(Footnote continued from previous page)  
negotiated terms and conditions of employment concerning the affected teachers.

<sup>6</sup>The Association asserts that a recent unreported Appellate Division case, Law v. Bd. of Ed. of Township of Parsippany-Troy Hills, App. Div. Docket No. A-280-82-T2 (10/25/83) empowers the Commissioner of Education to award interest when monies are withheld illegally under the education laws. This contention is outside of our power of review in this case.

ORDER

The Board of Education of the Township of Willingboro is ordered to:

A. Cease and desist from unilaterally altering the negotiated terms and conditions of employment covering recalled tenured teachers by paying and treating these teachers as substitute teachers, thus interfering with these teachers' rights guaranteed by the New Jersey Employer-Employee Relations Act and violating its obligation to negotiate in good faith with the teachers' majority representative.

B. Take the following affirmative action:

1. Retroactive to September 1, 1983, and until such time as their appointments were formally ratified, pay tenured teaching staff members Beverly Davis, Barbara McLaughlin, Margaret Mudrick, Vickie Eades, Barbara Jane Offidani, and Jackie Capers, all salaries, benefits, and other emoluments afforded regular teaching staff members at comparable steps on the negotiated salary guide minus any salaries, benefits and emoluments these six teachers were paid as substitutes, together with 12% interest on the difference between what they should have been paid and what they were paid;

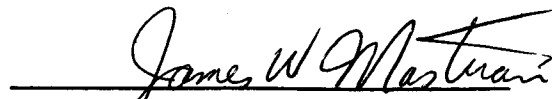
2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A.". Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Township's authorized representative shall be maintained by it for at least sixty (60) consecutive days.



Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by other materials.

Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Board has taken to comply with this order.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, reading "James W. Mastriani", written over a horizontal line.

James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioners Graves and Wenzler were not present.

DATED: Trenton, New Jersey  
November 29, 1984  
ISSUED: November 30, 1984

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from unilaterally altering the negotiated terms and conditions of employment covering recalled tenured teachers by paying and treating these teachers as substitute teachers, thus interfering with these teachers' rights guaranteed by the New Jersey Employer-Employee Relations Act and violating its obligation to negotiate in good faith with the teachers' majority representative.

WE WILL, retroactive to September 1, 1983, and until such time as their appointments were formally ratified, pay tenured teaching staff members Beverly Davis, Barbara McLaughlin, Margaret Mudrick, Vickie Eades, Barbara Jane Offidani, and Jackie Capers, all salaries, benefits, and other emoluments afforded regular teaching staff members at comparable steps on the negotiated salary guide minus any salaries, benefits and emoluments these six teachers were paid as substitutes, together with 12% interest on the difference between what they should have been paid and what they were paid.

BOARD OF EDUCATION OF TOWNSHIP OF WILLINGBORO

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,

429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.