I. R. NO. 85-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CARTERET BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-21

CARTERET EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Designee of the Public Employment Relations Commission grants interim relief in an unfair practice proceeding based on a charge the Carteret Education Association filed against the Carteret Board of Education. The charge alleged that the Board violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused, during successor contract negotiations, to pay longevity increments allegedly due under the collective negotiations agreement to members of the Association's unit. Finding that the Association had established a substantial likelihood of success on the merits and irreparable harm, the Designee ordered the Board to pay eligible employees the increments owed them in accordance with the prior collective negotiations agreement and the monetary difference between the amount they would have received had the increments not been unilaterally withheld from the amounts they were in fact paid after June 30, 1984.

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Appearances:

For the Respondent, O'Dwyer & Malone, Esqs.
(Jeremiah D. O'Dwyer, of counsel)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, Esq.)

INTERLOCUTORY DECISION

On July 24, 1984, the Carteret Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Carteret Board of Education ("Board") violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), 1/ by failing and refusing to pay each employee in the bargaining unit with his/her longevity increment which they allegedly were entitled pursuant to the parties collective agreement.

1/ 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; (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 conjunction with the charge the Association, pursuant to N.J.A.C. 19:14-9.2, also filed an application for interim relief with supporting brief and exhibits together with a proposed order to show cause why an interlocutory order should not be issued requiring the Board to pay eligible employees salary increments as required by the recently expired collective negotiations agreement pending the final disposition by the Commission of the unfair practice charge.

The Order to Show Cause was executed on July 24, 1984 and made returnable on August 9, 1984. The Board submitted a brief in opposition to the request for interim relief on August 8, 1984. On the return date the undersigned conducted a hearing on the interim relief application, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. At the conclusion of the hearing the parties were advised that pursuant to N.J.A.C. 19:14-9.5(a), a written decision would issue on the interim relief application.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are well settled. The test is twofold: the Charging Party must establish that it has a substantial likelihood of success in the final Commission decision on the legal and factual allegations, and, it must also establish that irreparable harm will occur if the requested relief is not granted. 2/

The following facts were considered in determining whether the application for interim relief should be granted.

2/ See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of N. J. (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and, In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

1. The parties' three year collective agreement (Exhibit C-4) expired on June 30, 1984, and the Board admitted that at the outset of negotiations for a new agreement it informed the Association that it did not intend to pay scheduled automatic increments until a new agreement was reached.

2. The Board further admitted that the increments in the instant matter were automatic, and, in fact, were of the same automatic category as those increments involved in Galloway Twp. Bd. Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978)("Galloway-Teachers").

3. The unit of employees represented by the Association includes teachers and other professional employees, but also includes non-professional employees such as clerical, custodial, and aides employees.

Given these undisputed facts the application for interim relief should be granted. This Commission has clearly found that the refusal to pay automatic salary increments during negotiations represents irreparable harm because it has a "chilling effect" that destroys the laboratory conditions of the negotiations process and adversely affects the ability of the majority representative to negotiate. See In re Union County Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977). 3/

In addition, this Commission, in application of the New Jersey Supreme Court's decision in Galloway-Teachers, supra, has frequently and consistently held that automatic salary increments contained in expired agreements must be paid during the period of negotiations for a new agreement. See In re Rutgers, The State

3/ See also, In re State of N.J. (and CWA), I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); and, In re City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981).

University, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd App. Div. Docket No. A-1572-79 (4/1/81); In re State of N.J. (and CWA), supra; In re City of Vineland, supra; and, In re Alexandria Twp. Bd.Ed., I.R. No. 84-5, 10 NJPER 1 (¶15000 1983).

The reason for the refusal to pay the increments in this case is that the Board has argued that the Supreme Court in Galloway-Teachers ordered the payment of the increments therein because of the application of N.J.S.A. 18A:29-4.1, rather than finding that the payment of increments constitued part of the status quo. 4/ The

4/ The language in Galloway-Teachers relied upon by the Board is as follows:

> We need not consider the general issue of whether the terms and conditions of employment which prevailed under a previous collective agreement constitute the status quo after its expiration because in this case a specific statute applies to command that conclusion with respect to the payment of increments according to the salary schedule. By entering into the 1974-75 collective agreement with the Association, the Board adopted the salary schedule contained therein. N.J.S.A. 18A:29-4.1 authorizes boards of education to adopt salary schedules for its full-time teachers and further provides:
>
> > Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of two 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 subsequent adoption of policies or schedules providing the higher salaries, increments or adjustments.
>
> Pursuant to this statute, the salary schedule adopted by the Board in 1974 for the 1974-75 school year was binding upon it for the 1975-76 school year or until the schedule was modified as provided in the statute....11/
>
> 11/ The language of N.J.S.A. 18A:29-4.1 is mandatory and binds a board of education to the terms of the salary schedule for the two year period. See Cliffside Park Bd.Ed. v. Mayor and Council of Cliffside Park, 100 N.J. Super. 490, 493 (App. Div. 1968).

78 N.J. at 51.

Board asserted that 18A:29-4.1 could not be relied upon in this case to force the payment of increments because the instant agreement was of a three-year duration, and 18A:29-4.1 only required a board of education to be bound for two years. 5/ The Board further argued at hearing that 18A:29-4.1 only required the payment of increments where, as in Galloway-Teachers, the expired agreement was only a year in duration. Consequently, the Board concluded that since 18A:29-4.1 does not apply herein, and that since the Court in Galloway-Teachers did not actually find that automatic increments are part of the status quo, that it is entitled to refuse to pay such increments in the instant case. 6/

The Association, citing Galloway-Teachers, as well as several of the Commission decisions set forth hereinabove, argued that this case was the same as several cases considered by the Commission where it ordered the payment of increments, particularly In re Alexandria Twp. Bd.Ed, supra, which involved the expiration of a three-year agreement. In addition, the Association argued that

5/ N.J.S.A. 18A:29-4.1 provides as follows:

> A Board of education of any district may adopt a 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 scheduled shall be binding upon the adopting board and upon all future boards in the same district for a period of two 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 subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments. For every 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.

6/ The Board at hearing admitted that the Court in Galloway-Teachers did not reject the Commission's concept that automatic increments constitute part of the status quo.

18A:29-4.1, if anything, applied only to teachers and other professional "tenured" employees and did not affect clerical, custodial or aides employees. Therefore, the Association argued that certainly the non-professional employees were entitled to their increments.

The undersigned has considered the parties' positions and concludes that interim relief must be granted for the entire unit. The undersigned believes that the Board has read Galloway-Teachers too restrictively, and that it has failed to balance the Association's rights safeguarded in our Act with the purpose of 18A:29-4.1.

The Court in Galloway-Teachers did not reject the concept that automatic salary increments constitute part of the status quo, indeed, at the very least, it clearly implied that it was adopting that concept as the one set forth in NLRB v. Katz, 369 U.S. 736, 743-47 (1962). Our Court at 78 N.J. 48 indicated that our Legislature had incorporated into subsection 5.3 of our Act a rule similar to that of Katz, supra. Our Court then held that,

> Indisputably, the amount of an employeee's compensation is an important condition of his employment. If a scheduled annual step increment in an employee's salary is an "existing rul[e] governing working conditions," the unilateral denial of that increment would constitute a modification thereof without the negotiation mandated by N.J.S.A. 34:13A-5.3 and would thus violate N.J.S.A. 34:13A-5.4(a)(5). Such conduct by a public employer would also have the effect of coercing its employees in their exercise of the organizational rights guaranteed them by the Act because of its inherent repudiation of and chilling effect on the exercise of their statutory right to have such issues negotiated on their behalf by their majority representative. 78 N.J. at 49.

Consequently, the undersigned believes that Galloway-Teachers does support the Association's argument herein.

Furthermore, the Board acknowledged that the intent of 18A:29-4.1 was to prevent boards of education from changing salary schedules by resolution after having agreed to salaries with teachers or employee representatives. The purpose of our Act, which was enacted subsequent to 18A:29-4.1, was to expand the rights of employee organizations to negotiate with public employers. The undersigned does not believe that 18A:29-4.1 should prevent, or was intended to prevent, parties from reaching three-year, or two-year agreements. Rather, the undersigned believes that it was intended to require boards of education to honor salary schedules that it did pass, and that, pursuant to Galloway-Teachers, it was then required to live with those schedules, and the automatic increments contained therein, during the period of negotiations for a new agreement.

Finally, the Board's argument that because its position herein created doubt as to the likelihood of the Association's success, that therefore it should result in a denial of interim relief, is without merit. This Commission has consistently granted interim relief in similar cases and the undersigned does not believe that the arguments advanced by the Board herein will result in a different conclusion.

Accordingly, the undersigned finds that the Association has established a substantial likelihood of success on the merits and the requisite irreparable harm if the requested relief is denied. Therefore, the requested relief will be granted.

ORDER

IT IS HEREBY ORDERED that the Carteret Board of Education immediately pay to the eligible employees in the unit represented by

the Carteret Education Association, the salary increment in accordance with the prior collective negotiations agreement as soon as practicable and until further order of this Commission.

IT IS FURTHER ORDERED that the Carteret Board of Education pay the affected employees the monetary difference between the amount the eligible employees would have received had their increment not been unilaterally withheld and the amounts they were in fact paid subsequent to June 30, 1984.

BY ORDER OF THE COMMISSION

Arnold H. Zudick
Commission Designee

Dated: August 14, 1984
Trenton, New Jersey