P.E.R.C. NO. 88-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-88-81

BELLEVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Belleville Education Association against the Belleville Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it refused to pay salary increments during collective negotiations for a successor agreement. The Commission finds that the case is moot because the parties reached agreement on the day the unfair practice charge was filed and before a complaint issued.

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Charging Party.

Appearances:

For the Respondent, Schwartz, Pisano, Simon & Edelstein, Esqs. (Nathanya G. Simon, Esq.)

For the Charging Party, Zazzali, Zazzali & Kroll, Esqs. (Paul L. Kleinbaum, Esq.)

DECISION AND ORDER

On September 17, 1987, the Belleville Education Association ("Association") filed an unfair practice charge against the Belleville Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] when it refused to pay salary increments during collective

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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."

negotiations for a successor agreement. The Association sought interim relief, the award of interest and attorney fees.

On October 1, 1987, following a hearing, Commission designee Alan R. Howe granted interim relief and ordered the payment of automatic increments under the salary guide, but declined to award interest.

On October 8, 1987, a Complaint and Notice of Hearing issued. On October 19, 1987, the Board filed its Answer. It admitted that increments were not paid in September, but states that it will pay increments since the parties reached agreement on a new contract on September 17, 1987. It also asserted that the teachers had engaged in minor job actions. It contends the matter is moot and that the Commission does not have authority to award attorney fees or interest.

On November 15, 1987, the parties waived a hearing and entered into stipulations of fact. They also filed briefs, limited to the issue of whether interest should be awarded.

On December 24, 1987, the Hearing Examiner issued his recommended decision. H.E. No. 88-29, 14 NJPER ___ (¶_____ 1987). Relying on Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978), he determined that the Board's failure to pay salary increments in September 1987 violated the Act. He also determined that interest should be awarded on the monies that should have been paid.

On January 8, 1988, the Board filed exceptions. It contends the award of interest would be unduly punitive and notes

that the parties entered into a memorandum of agreement resolving their contract on September 17, 1987 -- the day the unfair practice charge was filed. It further notes that the Board complied with the interim relief order and made retroactive payment for the unpaid increments in the October 1987 paychecks.

As it now stands, this case is moot. The parties reached agreement on the day the unfair practice charge was filed and before a Complaint issued. In Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-90, 5 NJPER 229 (¶10126 1979) we approved the Director's refusal to issue a Complaint under similar circumstances where the only issue was whether interest should have been awarded. We would have done the same here. It would not serve the Act's purposes to decide the only issue that remains in dispute: the payment of interest. The underlying dispute is resolved. The contract is settled and all increments have been paid. Whether the Board violated the Act by refusing to pay increments is academic at this point. See State of New Jersey, P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
January 21, 1988
ISSUED: January 22, 1988

H.E. NO. 88-29

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

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-88-81

BELLEVILLE EDUCATION ASSOCIATION,

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally withheld the automatic salary increments from its teaching staff during the period September 1, 1987 through September 30, 1987. A violation of the Act was clearly established given the precedent of the Courts and the Commission since the decision of the Supreme Court in Galloway Twp. Board of Education v. Galloway Twp. Education Association, 78 N.J. 25 (1978). The Association sought additionally an award of 7.5% interest upon the monies due and payable for the four-week period from September 1, 1987. This the Hearing Examiner granted, citing the many decisions of the Commission and the Courts since 1980.

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.

H.E. NO. 88-29

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

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Charging Party.

Appearances:

For the Respondent
Schwartz, Pisano, Simon & Edelstein, Esqs.
(Nathanya G. Simon, Esq.)

For the Charging Party
Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 17, 1987 by the Belleville Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Belleville Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the collective negotiations agreement between the Board and the Association expired on June 30, 1987, and that the Board thereafter

refused and continues to refuse to pay step increments on the existing salary guide; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) of the Act.[1/]

On September 22, 1987, the undersigned, as a Commission designee, conducted a hearing and heard oral argument on an application for Interim Relief by the Association. On October 1, 1987, he issued an Interlocutory Decision and Order (unpublished) wherein it was directed that the Respondent forthwith resume payment of automatic increments under the existing salary guide, retroactively to on or about June 30, 1987, but without interest. Thereafter, on October 8, 1987, it appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on that date.

Pursuant to the Complaint and Notice of Hearing, a hearing was scheduled for November 17, 1987, at the Commission's offices in

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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; (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; (7) Violating any of the rules and regulations established by the commission."

Newark, New Jersey. Prior thereto, however, the parties agreed to waive a hearing, stipulate the relevant facts and submit to the undersigned Hearing Examiner the issue of whether or not the award of interest is appropriate.[2/] As agreed, the parties submitted a stipulation of facts and their respective supporting briefs by November 18, 1987. There was no oral argument in connection with these latter submissions.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after consideration of the stipulation of facts submitted by the parties and their post-hearing briefs, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the jointly stipulated record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Belleville Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Belleville Education Association is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2/ On October 15, 1987, the Board paid to each teaching staff employee the increment due for the 1987-88 school year, retroactive to September 1, 1987, infra.

3. The prior collective negotiations agreement of the parties was effective during the term July 1, 1984, through June 30, 1987, and contained on page 16 thereof a salary guide (Exhibit "A") for the 1986-87 school year with 20 steps.[3/]

4. The representatives of the parties met to negotiate a successor collective negotiations agreement beginning in January 1987. Numerous sessions were held without reaching an agreement, a joint notice of impasse was filed with the Commission and a mediator was appointed. Thereafter, several mediation sessions were held without reaching an agreement as of September 1, 1987.

5. All teaching staff members employed by the Board during the period September 1, 1987 through September 30, 1987, were paid salaries in accordance with the 1986-87 salary guide, supra. However, during the time period between September 1st and September 30, 1987, the teaching staff members were not given credit for an additional year of teaching experience over and above that provided for in the prior school year.

6. On September 17, 1987, at a special negotiations session between the parties without the services of the mediator, a memorandum of agreement was reached on a successor agreement. A successor collective negotiations agreement has been ratified, but

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3/ The Hearing Examiner has not attached to this Decision the said Exhibit "A," supra, as it is not necessary in determining the issue at hand.

not executed, by both parties. This successor agreement will be effective during the term July 1, 1987 through June 30, 1990.

7. On or about September 15, 1987, when the first paychecks were issued by the Board, the Association made demands upon the Board to provide each individual teaching staff member with his or her employment increment during the pendency of negotiations for a successor agreement. This demand by the Association was refused by the Board.

8. On October 15, 1987, the Board paid each teaching staff member his or her employment increment for the 1987-88 school year, retroactive to September 1, 1987.

9. Without prejudice to the position of the Board, both parties have agreed that if interest is to be awarded by recommendation of this Hearing Examiner, the interest would cover the period from September 1, 1987 through September 30, 1987.

DISCUSSION AND ANALYSIS

The Respondent Board Violated §§5.4(a)(1) And (5) Of The Act When It Unilaterally Withheld Normal Salary Increments From Its Teaching Staff Between September 1, 1987 And September 30, 1987 And The Award Of Interest Is Appropriate.[4/]

The Charging Party correctly contends that the Board herein violated the Act as alleged when it unilaterally withheld salary

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4/ Because no evidence appears in the stipulated record, which would indicate that the Respondent Board violated §§5.4(a)(3) and (7) of the Act, the Hearing Examiner will recommend dismissal as to these allegations in the Complaint.

increments from its teaching staff between September 1 and October 15, 1987. The Supreme Court of New Jersey in 1978 agreed with the Commission that the withholding of automatic, as opposed to discretionary, salary increments is a unilateral change in terms and conditions of employment, i.e., an alteration of the status quo, and ordered payment of increments due, notwithstanding that the collective negotiations agreement had expired: Galloway Twp. Board of Education v. Galloway Twp. Education Association, 78 N.J. 25. The state of the law has remained unchanged since Galloway and there are numerous Commission decisions ordering payment of automatic salary increments, many of which have arisen in the interim relief context where a plenary hearing had not taken place: City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); Jersey City Board of Education, I.R. No. 83-6, 8 NJPER 593 (¶13277 1982); Alexandria Twp. Board of Education, I.R. No. 84-5, 10 NJPER 1 (¶15000 1983); Carteret Board of Education, I.R. No. 85-2, 10 NJPER 492 (¶15223 1984); and Belleville Board of Education, I.R. No. 87-5, 12 NJPER 692 (¶17262 1986).

Notwithstanding, that this Hearing Examiner in his Interlocutory Decision and Order of October 1, 1987, supra, (unpublished) granted only the Charging Party's request that the Respondent Board be ordered forthwith to resume payment of automatic increments under the then existing salary guide, retroactive to on or about June 30, 1987 "...but without interest...," he has, upon

further reflection, decided to grant the Charging Party's request for interest. The basis for this reversal, regarding the grant of interest, is a rereading of this Hearing Examiner's decision in Howell Township Board of Education, H.E. No. 86-4, 11 NJPER 561 (¶16196 1985) aff'd P.E.R.C. No. 86-44, 11 NJPER 634 (¶16223 1985) where the Charging Party's request for interest was granted.

In Howell, the Charging Party there had argued for the award of interest, based upon seven years of consistent judicial and Commission precedent obligating boards of education and other public employers to maintain as part of the status quo the payment of automatic increments during the pendency of negotiations during a successor agreement. The Howell decision, having issued in 1985 and there having being two additional years of decisions where the payment of automatic increments has been ordered, inter alia, in interim relief proceedings, the instant case is even more compelling than Howell as to the obligation of this Respondent to pay interest. To hold otherwise, as this Hearing Examiner initially did, on October 1, 1987, would be to provide the Association herein with a totally inadequate remedy, namely, the posting of a notice by the Respondent Board.

It is also noted, in connection with ordering the payment of interest, that this Respondent was involved in an interim relief proceeding in 1986, regarding another collective negotiations unit and it was ordered to make payment of automatic increments [see I.R. No. 87-5, 12 NJPER 692 (¶17262 1986), supra].

The Hearing Examiner is not persuaded by the argument of the Respondent Board herein that he should refrain from awarding interest in this case because of the fact that it acted in good faith in its negotiations while members of the Charging Party participated in minor "job actions," which disrupted the status quo in negotiations.[5/] The Respondent argues further that it was it who maintained the status quo by not granting any additional compensation to any teacher pending the outcome of negotiations.

The Hearing Examiner cannot acquiesce in the above argument of the Respondent that interest should not be awarded. The question of good faith conduct in negotiations is not an issue as this case comes before the Hearing Examiner. Rather, the question is whether or not there was any justification whatsoever on the part of the Respondent in having ignored some nine years of judicial and Commission precedent in the payment of automatic increments during the pendency of negotiations for a successor agreement. Counsel for the Respondent acknowledged at the interim relief hearing on September 22, 1987, that there was no question but what the increments involved were automatically due and were not discretionary within the meaning of the dichotomy analyzed by the New Jersey Supreme Court in Galloway, supra.

5/ It is noted that there is nothing in the stipulated facts, supra, regarding allegations that the Respondent "acted in good faith" while the Association participated in minor "job actions," which disrupted the status quo. Accordingly, these allegations are disregarded except as noted hereinafter.

As noted by this Hearing Examiner in Howell, supra, the Commission has been awarding interest at the rate set by the courts of New Jersey since 1980 and the Appellate Division has approved the award of interest in more than one case [Salem Cty. Board for Vocational Education, P.E.R.C. No. 79-99, 5 NJPER 239 (1979), aff'd. in part, rev'd. in part, App. Div. Docket No. A-3417-78 (1980); Bergen Pines Cty. Hosp., P.E.R.C. No. 82-117, 8 NJPER 360 (1982), appeal dismissed App. Div. Docket Nos. A-117-82T1 and A-5942-81T2; and Logan Twp. Board of Education, P.E.R.C. No. 83-23, 8 NJPER 546 (1982), aff'd. App. Div. Docket No. A-696-82T2 (1983).

Additionally, the Hearing Examiner finds sufficient precedent for concluding that an award of interest is appropriate in this case in the decision of the Commission in Willingboro Twp. Board of Education, P.E.R.C. No. 85-55, 11 NJPER 19 (1984) where, in adopting the order of an Administrative Law Judge, the Commission concluded that not only was the Judge correct in retroactively reimbursing teachers for salaries and benefits lost when they were illegally paid and treated as substitutes but he was also correct in having found that the award of interest was also appropriate as to the salaries and benefits illegally withheld (11 NJPER at 20).

Accordingly, given nine years of experience in the award of interest by the Commission, and approved by the Courts, together with the specific precedent of Willingboro, supra, the Hearing Examiner concludes that interest should be awarded in the instant case at the rate of 7.5% per annum (not 12% per annum) on the monies

due and paid to the Board's teaching staff between September 1, 1987 and September 30, 1987.

* * * *

Upon the foregoing, and upon the stipulated record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when it unilaterally withheld the salary increments for its teaching staff in the 1987-88 school year between the dates of September 1, 1987 and September 30, 1987.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(3) and (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from withholding salary increments from its teaching staff, commencing on September 1, 1987 for the 1987-88 school year.

2. Unilaterally changing terms and conditions of employment for its teaching staff, and altering the status quo, particularly, by refraining from withholding salary increments from its teaching staff, commencing on September 1, 1987 for the 1987-88 school year.

B. That the Respondent Board take the following affirmative action:

1. Forthwith make payment to all affected members of its teaching staff with interest at the rate of 7.5% per annum upon the salary increments withheld between September 1, 1987 and September 30, 1987.

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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. That the allegations that the Respondent Board violated §§5.4(a)(3) and (7) of the Act be dismissed in their entirety.

D. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

Alan R. Howe
Hearing Examiner

Dated: December 24, 1987
Trenton, New Jersey

Recommended Posting
Appendix "A"

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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from withholding salary increments from its teaching staff, commencing on September 1, 1987 for the 1987-88 school year.

WE WILL NOT unilaterally change terms and conditions of employment for our teaching staff, and altering the status quo, particularly, by refraining from withholding salary increments from our teaching staff, commencing on September 1, 1987 for the 1987-88 school year.

WE WILL forthwith make payment to all affected members of our teaching staff with interest at the rate of 7.5% per annum upon the salary increments withheld between September 1, 1987 and September 30, 1987.

Docket No. CO-H-88-81 BELLEVILLE BOARD OF EDUCATION
(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, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.