

I.R. NO. 2019-8

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFFSIDE PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2019-075

CLIFFSIDE PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee enters an interim order directing the Cliffside Park Board of Education to pay a collective negotiations unit of certificated employees increments following the expiration of a three-year agreement with the Cliffside Park Education Association. The Designee relied on County of Atlantic, 230 N.J. 237 (2017).

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Appearances:

For the Respondent  
Meyerson, Fox, Mancinelli & Conte, P.A., attorneys  
(Douglas M. Bern, of counsel)

For the Charging Party  
Bucceri & Pincus, attorneys  
(Louis P. Bucceri, of counsel)

INTERLOCUTORY DECISION

On September 13, 2018, Cliffside Park Education Association (Association) filed an unfair practice charge against Cliffside Park Board of Education (Board), together with an application for interim relief, certification, exhibits and brief. The charge alleges that on or about June 15, 2018 and September 14, 2018, the Board refused and then failed to pay salary increments to unit employees, following the expiration of the parties' 2015-2018 collective negotiations agreement. The Board's conduct

allegedly violates 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq.

On September 21, 2018, an order to show cause issued, setting a return date of October 11, 2018. On October 4, 2018, the Board filed a brief and exhibits opposing the application. On the return date, the parties argued their cases in a telephone conference call. The following facts appear.

The Association represents a unit of all regularly employed certificated personnel, excluding substitute teachers and various administrators. The parties' most recent agreement extended from July 1, 2015 through June 30, 2018. Article II (Negotiation of Successor Agreement) C. Duration, provides:

This Agreement shall continue in full force and effect with all attendant benefits and obligations until a successor Agreement is ratified by the Board and Association.

Article V (Compensation) C. Procedures for Advancement on Salary Guide and/or Withholding of Salary Increases, provides:

Progress along the pattern of increases is not automatic:

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<sup>1/</sup> 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. (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."

The Board expressly reserves the right to withhold, for inefficiency or other good cause, all or any part of a Salary increase, defined as follows: (a) for any teacher not at the maximum of any degree level of the Teacher Salary Guide, the annual increment and the negotiated salary adjustment, if any; and (b) for any teacher at the maximum of any degree level of the Teacher Salary Guide, the negotiated salary adjustment, if any . . .

Article XVII (Miscellaneous Provisions) F. Continuation of Agreement, provides:

This Agreement shall continue in full force and effect, with all attendant benefits and responsibilities to the Board and Association, until a successor agreement is ratified by the Board and Association.

Schedules A, B and C provide "Teacher Salary Guides" of each respective year of the agreement, followed by a "Salary Guide Movement Chart" for each of the three years.

The parties have engaged in collective negotiations for a successor agreement. On May 29, 2018, the Association issued a letter to the Board Superintendent demanding that the Board pay eligible unit employees, salary increments, longevity and column guide advancement on "the first pay period of the 2018-2019 school year," the refusal of which would, ". . . constitute a unilateral alteration of terms and conditions of employment."

On June 15, 2018, Board Counsel issued a reply, disputing that the "existing agreement" provides for additional step increases, ". . . where the agreement may have expired." Board Counsel also wrote that the request is denied, ". . . based on

clear 'non-automatic' language and intent of the agreement to not pay increments unless and until the parties agree to a successor contract that provides for such increments."

On June 29, 2018, the Association filed a Notice of Impasse with the Commission (Dkt. No. I-2018-203). On and after September 14, 2018, the Board did not pay salary increments to unit employees. On October 10, 2018, the parties met with a Commission mediator.

The Board asserts that nothing in the parties' expired agreement provides "express reference to the continuation of benefits;" it instead provides that "increases are not automatic" (p.8). The Board asserts that its contract provisions are distinguishable from those favorably cited by our Supreme Court in County of Atlantic, 230 N.J. 237 (2017), requiring that increments be paid, ". . . during the hiatus between agreements."

The Board also argues that its conduct has not created a "chilling effect" on the negotiations process. It asserts that the Association had demanded the increment payments about one month before declaring an impasse in negotiations. The Board also asserts that it hasn't paid such increments in the past.

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that

irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1992); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

In County of Atlantic,<sup>2/</sup> our Supreme Court held that, ". . . salary step increments is a mandatorily negotiable term and condition of employment because it is part and parcel to an employee's compensation for any particular year." Id., slip. op. at 20. Expressly not reaching the Appellate Division's reaffirmation of the "dynamic status quo," the Court wrote that it needn't, ". . . look beyond the contracts [at issue] themselves to conclude that the step increases continued beyond the expiration of the contracts." Id., slip. op. at 21. Those agreements variously set forth:

[T]his agreement shall remain in full force and effect during collective negotiations between the parties beyond the date of expiration set forth herein until the parties have mutually agreed on a new agreement.

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2/ Atlantic County and FOP Lodge 34 and PBA Local 77, P.E.R.C. No. 2014-40, 40 NJPER 285 (¶109 2013), rev'd, 42 NJPER 433 (¶117 App. Div. 2016), aff'd on other grounds, 230 N.J. 237 (2017).

\* \* \*

All provisions of the Agreement will continue in effect until a successor agreement is negotiated.

\* \* \*

All terms and conditions of employment, including any past or present benefits, practices or privileges which are enjoyed by the employees covered by this Agreement that have not been included in the Agreement shall not be reduced or eliminated and shall be continued in full force and effect. [County of Atlantic, slip. op. at 23-24]

I find that Articles II and XVII of the Board and Association's agreement more deliberately express the parties' intent to continue the payment of step increases beyond the agreement's expiration date (June 30, 2018) than does the second (and most concise) contract provision quoted above and given that effect by our Supreme Court.

I disagree with the Board that Article V's reservation to withhold increment payments for cause (i.e., poor performance) applies in this matter because the increments were withheld from all unit employees. Performance is not averred to have been a factor in the Board's action. Nothing in Article V suggests that payment of increments is not premised upon satisfactory job performance; the payments are "automatic," not "discretionary." See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25, 48-50 (1978); State of New Jersey, I.R. No. 82-2, 7 NJPER 532

(¶12235 1981); Cf. Hawthorne Bd. of Ed., I.R. No. 98-11, 23 NJPER 638 (¶28312 1997).

For these reasons, I believe that the Association has demonstrated a substantial likelihood of success on both the law and facts at a plenary hearing.

Irreparable harm exists when an employer refuses to pay increments during collective negotiations for a successor agreement. The Court in Galloway wrote:

Indisputedly, the amount of an employee's compensation is an important condition of...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-5.4a(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]

Applying the tenets of Galloway to this matter, I find that the Association will suffer irreparable harm as a consequence of the Board's refusal to pay increments.

In balancing the parties' relative hardship, I find that the chilling effect that results from the Board's failure to pay increments and the irreparable harm that is suffered by the employee organization as the result of the Board's unilateral

change in conditions of employment during the course of negotiations outweighs any harm suffered by the Board as the result of maintaining the status quo by granting increments to unit employees. Accordingly, I order the Board to immediately pay increments to unit employees.

ORDER

Cliffside Park Board of Education shall immediately pay all eligible unit employees the salary increment due them, pursuant to the incremental salary structure in the parties expired 2015-2018 collective negotiations agreement.

/s/Jonathan Roth  
Jonathan Roth  
Commission Designee

DATED: October 16, 2018  
Trenton, New Jersey