

I.R. NO. 97-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ISLAND HEIGHTS,

Respondent,

-and-

Docket No. CO-97-383

ISLAND HEIGHTS PBA LOCAL 352,

Charging Party.

SYNOPSIS

A Commission Designee orders the Borough of Island Heights to restore salaries of its patrol officers. During the course of negotiations for a new contract, the Borough unilaterally reduced the salary of its four patrol officers by reducing them on the contract's salary guide claiming it was reducing them in rank or grade pursuant to N.J.S.A. 40A:14-143. The Designee held that a reduction on the salary guide here does not constitute a reduction in grade or rank as envisioned by Title 40A:14-143. But rather, is nothing more than a unilateral reduction in salary during the course of negotiations.

This is an interim order only and the matter will go forward to a full plenary hearing.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ISLAND HEIGHTS,

Respondent,

-and-

Docket No. CO-97-383

ISLAND HEIGHTS PBA LOCAL 352,

Charging Party.

Appearances:

For the Respondent,
Citta, Holzapfel, Millard, Zabarsky & Leahey, attorneys
(Matthew A. Leahey, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On May 14, 1997, Island Heights PBA Local 352 filed an unfair practice charge with the Public Employment Relations Commission alleging the Borough of Island Heights committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (4), (5) and (7)^{1/} by refusing to meet and negotiate with Local 352, by

^{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. (2) Dominating or interfering with the formation, existence or administration

refusing to supply information required for collective bargaining to Local 352 and by unilaterally reducing compensation for bargaining unit members.

The unfair practice charge was accompanied by an application for interim relief. A show cause order was executed and made returnable for June 9, 1997. A hearing was conducted on that date. At the hearing, the charging party withdrew its allegation concerning the refusal to meet and negotiate from its interim relief application.

The facts are not in dispute. The most recent contract between the parties expired on December 31, 1996.

The Borough sent letters to bargaining unit members dated April 22, 1997 announcing a special council meeting to take place on May 1, 1997. The letter states that "During that time, your employment with the Borough and the term and conditions of that employment will be discussed." Unit members did not attend the

1/ Footnote Continued From Previous Page

of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

meeting. At that meeting, the Borough passed a resolution which quoting N.J.S.A. 40A:14-143, reduced the Chief of Police in rank to sergeant, reduced the one sergeant on the force to patrol officer, [he was at step four of the sergeant's salary guide; the Borough moved him to step four of the patrol officer's guide] and reduced the three patrol officers on the force from step four on the salary guide to step three.

N.J.S.A. 40A:14-143 states:

Decrease of Force for Reasons of Economy

The governing body of any municipality, if they shall deem it necessary for reasons of economy, may decrease the number of members and officers of the police department or force or their grades or ranks...

The contract, at Article 17, Salaries, contains 2 salary guides, one for patrol officers and one for sergeants. Paragraph C provides "Movement to each successor step in the guide shall recur on the annual anniversary date of the officer's completion of his/her probationary period." Paragraph D provides that a salary for sergeant "has been established as five percent (5%) higher than the equivalent step on the patrol officer's guide. Any officer appointed as a sergeant shall move to the equivalent step on the sergeant's salary guide that as (sic) officer was on the patrolman's guide; thereby receiving a five percent (5%) increase in his/her salary based upon the promotion."

The Borough contends that N.J.S.A. 40A:14-143 grants it a non-negotiable right to reduce the grade/rank of all members of its police force.

Local 352 concedes that the Chief of Police was not a member of its unit and further concedes the City had the right under Title 40A to demote the sergeant to patrolman.

However, it contends that reducing the patrol officers placement on the salary guide is not a reduction in grade or rank, it is nothing more than a unilateral reduction in salary.

The Borough does not dispute its obligation to provide information to the PBA. It contends only that it is a small town with limited resources and it will take time for it to gather all the information requested.

The City argues that its April 22, 1997 letters to unit members notifying them that their term and condition of employment would be discussed were not meant as an attempt to negotiate directly with unit members. Rather, the letters were to satisfy its notice obligation under Rice v. Union County Reg. H.S., 155 N.J. Super. 64 (App. Div. 1977).

To obtain interim 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. De Gioia, 90 N.J. 126, 132-134 (1982); 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).

The Borough's reduction of patrol officer salaries was not a reduction in rank or grade within the meaning of 40A:14-143. It was solely a reduction in salary. Nothing in the record establishes that the placement of a patrolman on the salary guide was based upon assignment or duties. In fact, all three patrolmen were on the same step of the salary guide. Salary is a mandatorily negotiable term and condition of employment. Englewood Bd. of Ed. v. Englewood Teachers, 64 N.J. 1, 6-7 (1973). Similarly, movement on a salary guide is mandatorily negotiable. Galloway Tp. Bd. of Ed. v. Galloway Township Education Association, 78 N.J. 25 (1978); Evesham Township, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).


Here, the employer simply reduced the salaries of its employees without negotiations. A unilateral alteration without negotiation creates an impermissible chilling effect on negotiations. Galloway; Evesham; State of New Jersey.

Accordingly, I hereby ORDER the Borough to restore the salaries of the patrolmen to step four of the patrol officer's salary guide.

The Borough has not raised any defense as to its failure to provide information. I hereby ORDER the Borough to provide the requested information without delay.

I will not enter an order as to the reduction of the sergeant to patrolman. This reduction is apparently pursuant to the Borough's right under N.J.S.A. 40A:14-143 and his placement on the patrolmen's salary guide seems to correspond to the contractual provision for a promotion to sergeant. The PBA failed to show it has a substantial likelihood of prevailing before the Commission as to the reduction in compensation of the sergeant. Similarly, the Association failed to meet its heavy burden as to the issue of direct dealing and I will not enter an order on that issue.

This is an interim order only. This matter will go forward to a plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: June 13, 1997
Trenton, New Jersey