

I.R. No. 2006-21

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
(DIVISION OF STATE POLICE),

Respondent,

-and-

Docket Nos. CO-2006-220,  
CO-2006-221, CO-2006-222

STATE TROOPERS NCO ASSOCIATION,  
STATE TROOPER SUPERIOR OFFICERS  
ASSOCIATION AND STATE TROOPERS  
FRATERNAL ASSOCIATION,

Charging Parties.

SYNOPSIS

A Commission Designee denies applications for interim relief seeking to restrain the State of New Jersey from making tuition reimbursement payments from a dedicated fund until an arbitrator can determine an issue over the size of the pool of eligible employees entitled to such reimbursements. The Commission Designee concluded the facts did not support a finding that the Charging Parties had a substantial likelihood of success on the merits of the cases.

I.R. No. 2006-21

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
(DIVISION OF STATE POLICE),

Respondent,

-and-

Docket Nos. CO-2006-220,  
CO-2006-221, CO-2006-222

STATE TROOPERS NCO ASSOCIATION,  
STATE TROOPER SUPERIOR OFFICERS  
ASSOCIATION AND STATE TROOPERS  
FRATERNAL ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent, Zulima V. Farber, Attorney General  
of New Jersey (Sally Ann Fields, Sr. Deputy Attorney  
General, of counsel)

For the Charging Parties, Loccke & Correia, attorneys  
(Merick H. Linsky, of counsel)

INTERLOCUTORY DECISION

On February 28, 2006, the State Troopers Superior Officers  
Association; the State Troopers NCO Association; and, the State  
Troopers Fraternal Association (Charging Parties), filed unfair  
practice charges with the Public Employment Relations Commission  
(Commission) alleging that the State of New Jersey, Division of  
State Police (State), committed unfair practices within the  
meaning of the New Jersey Employer-Employee Relations Act,  
N.J.S.A. 34:13A-1 et seq. (Act), specifically, N.J.S.A. 34:13A-

5.4a(3) and (5).<sup>1/</sup> The charges were accompanied by applications for interim relief which were consolidated for this hearing.

The applications seek to restrain the State from issuing payments for tuition reimbursement until disputes over procedure and employee eligibility can be negotiated and/or arbitrated.

The charges are virtually identical and allege that the State violated the Act by unilaterally changing certain procedures and the application process regarding - and limited employee eligibility to receive - tuition reimbursement. The Charging Parties claim the State violated their collective negotiations agreements by limiting the number of employees who are eligible to receive tuition reimbursement from money made available during fiscal year 2006.

An Order to Show Cause was signed on April 21, 2006, scheduling a return date for May 31, 2006. Both parties submitted documentation and argued orally on the return date.<sup>2/</sup>

---

<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(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."

<sup>2/</sup> After the charge and application for interim relief were filed, the Charging Parties requested the matter be held in abeyance to give them an opportunity to seek a resolution.

(continued...)

The following facts appear:

The State and the respective unions are parties to separate collective agreements each containing an extensive tuition reimbursement clause providing as follows:

- A.
  - 1. Employees may be eligible for tuition reimbursement for post-secondary courses (taken at a properly accredited educational institution) which are directly job related and/or necessary to increase such employee's expertise in his or her area of work, as determined by the Superintendent, provided the employee is not being reimbursed for the same course(s) from other sources, such as L.E.E.P. and/or the VA.
  - 2. The maximum reimbursement per credit shall be equivalent to the tuition at the State Colleges or the actual tuition, whichever is less.
  - 3. Approved courses shall be taken during off duty hours.
- B.
  - 1. Written application must be made through channels to the Fiscal Control Bureau, Administration Section prior to enrollment in a course of study, stating the basis for the request for reimbursement. Within twenty (20) calendar days a response will be made in writing as to whether or not the Division will provide reimbursement subject to the availability of funds.
  - 2. In order to secure reimbursement the employee must complete the course of study and maintain course grade of not less than "C" or equivalent at the undergraduate level, or satisfactory for program completion in

---

2/ (...continued)

When it could not be resolved, the Charging Parties, on April 17, 2006, requested the show cause hearing be scheduled.

graduate study. Written proof of payment of tuition must be submitted to the Division along with a copy of the final grade received.

3. Tuition reimbursement shall ordinarily not exceed twelve (12) credits per year.

C. The operation of this program is subject to the availability of funds. In the event that funds are not sufficient to meet all requests which would otherwise be approvable, the State may provide tuition reimbursement at less than full cost.

Pursuant to the language in Section C of the tuition reimbursement clause the State, in calendar year 2002 and 2003 (and subsequently in at least fiscal year 2004 and 2005), determined that funds were not available for tuition reimbursement. On December 7, 2004, an arbitrator held that the State did not violate the tuition reimbursement clause by determining that funds were not available for 2002 and 2003.<sup>3/</sup>

Sometime in early 2006, the State concluded that funds were available for tuition reimbursement apparently for fiscal 2006 (July 1, 2005 - June 30, 2006). On February 24, 2006, the Division of State Police issued a fiscal control bureau announcement that it would be processing payments for tuition reimbursement for employees enrolled in classes on July 1, 2005 and thereafter (fiscal 2006).

---

<sup>3/</sup> Presumably, grievances were not filed over the State's decision that funds were not available for tuition reimbursement for 2004 and 2005.

The Charging Parties in this application argue that the above announcement violated the tuition reimbursement article by limiting eligible employees to just those enrolled in courses in fiscal 2006. The Charging Parties claim that all of the employees who qualified for tuition reimbursement in 2002, 2003, 2004 and 2005 but were not reimbursed then because of the unavailability of funds for those years, were eligible for reimbursement from the tuition reimbursement money made available during fiscal 2006. On that basis, the Charging Parties claim that the State unilaterally changed the tuition reimbursement procedures particularly by limiting the employees who were eligible for reimbursement.

The tuition reimbursement clause does not explicitly provide that employees who did not receive reimbursement in prior years because of the unavailability of funds in those years were eligible for reimbursement in a subsequent year when funds were available. Additionally, there is no evidence that the State ever provided tuition reimbursement to employees who were eligible in prior years from funds that were available in subsequent years.

The State argues that there has been no change in the tuition reimbursement procedures; it has never reimbursed employees from funds available in one fiscal/calendar year for tuition that qualified in prior fiscal/calendar years; that it

was acting in accordance with the parties agreement; and at most, the issue here was simply a dispute over the interpretation of the parties agreement.

The Charging Parties concede that the issue here is a dispute over contract interpretation and that an arbitrator, rather than the Commission, should interpret the agreement, but argued that the State should be restrained from paying tuition reimbursement from the available 2006 funds until a determination could be made on employee eligibility because once the funds are spent irreparable harm might result.

The State argues that the standards for interim relief have not been met, and that the application be dismissed.

#### ANALYSIS

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 Charging Parties main concern is that once the State exhausts the tuition reimbursement fund that was available in fiscal 2006, funds may no longer be available for employees who qualified for but were not paid reimbursement in prior years and might be found eligible for reimbursement from the 2006 funds if subsequently so determined by an arbitrator. While I am not convinced that an arbitrator could not fashion an enforceable monetary remedy if he/she determines that employees who qualified for tuition reimbursement in prior years were found eligible for reimbursement from funds available in subsequent years, I recognize that litigation over such an award could result in a holding that the money has been spent. Nevertheless, even if I found that irreparable harm would result from payment of the money in this case, interim relief could not be granted. A grant of interim relief must be based upon both irreparable harm and a substantial likelihood of success on the merits of the case, not just a mere likelihood of success. The facts presented here do not support the finding of substantial likelihood of success.

The fundamental issue here, whether employees who qualified for tuition reimbursement in prior years but were not paid because funds were unavailable those years, are eligible for reimbursement in subsequent years when money is available, requires the interpretation of the parties collective agreements. The Charging Parties concede the issue should be decided by an

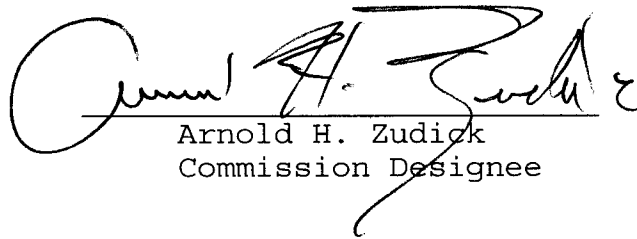


arbitrator, and absent clear language in the agreements regarding such eligibility, and noting the dispute over whether procedures have been changed, I cannot conclude that the Charging Parties have a substantial likelihood of success in this matter.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The applications for interim relief are denied.

  
Arnold H. Zudick  
Commission Designee

DATED: June 6, 2006  
Trenton, New Jersey