I.R. NO. 2024-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY PINELANDS COMMISSION,

Respondent,

-and- Docket No. CO-2024-029

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Charging Party.

SYNOPSIS

"A Commission Designee grants an interim relief application on an unfair practice charge filed by the Communications Workers of America, AFL-CIO (CWA) against the New Jersey Pinelands Commission (NJPC). The charge alleged the NJPC violated section 5.4a(5) of the Act by unilaterally discontinuing the payment of merit pay to eligible employees after the parties' collective negotiations agreement expired. The Designee found the NJPC's unilateral action was a breach of it statutory duty to negotiate with CWA over changes to merit pay and irreparably harmed the collective negotiations process insofar as the change had a chilling effect on ongoing negotiations."

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Charging Party.

Appearances:

For the Respondent,
Lum, Drasco & Positan, attorneys
(Daniel M. Santarsiero, of counsel)

For the Charging Party,
Weissman & Mintz, attorneys
(Rosemarie Cipparulo, of counsel)

INTERLOCUTORY DECISION

On September 12, 2023, the Communications Workers of America, AFL-CIO (CWA or Charging Party) filed an unfair practice charge accompanied by an application for interim relief and temporary restraints against the New Jersey Pinelands Commission (NJPC or Respondent). The charge alleges the NJPC violated section 5.4a(5) and, derivatively, (a)(1)[1/] of the New Jersey

1/ 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"; and "(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
(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by unilaterally discontinuing merit pay increases to CWA unit employees during collective negotiations for a successor collective agreement.

In support of its application for interim relief and temporary restraints, the CWA submitted a brief, a certification with exhibits from Richard Dann ("Dann Cert."), a CWA Staff Representative, and a copy of a collective negotiations agreement between CWA Local 1040 and NJPC extending from July 1, 2019 through June 30, 2023. In its proposed Order to Show Cause (OTSC), the CWA seeks interim relief and "temporary restraints . . . directing the Respondent to":

1. Maintain "the dynamic status quo";

2. Pay the "merit increases due on July 1, 2023, to the members of the three negotiations units represented" by the CWA;

3. Pay "pre-judgment interest" to those workers entitled to receive the merit increases;

4. Cease and desist from "committing unfair labor practices";

5. "Negotiate in good faith with the" CWA; and

1/ (...continued)
refusing to process grievances presented by the majority representative."

6. Any other remedy the Chair or his Designee deems appropriate.

On September 14, 2023, I signed the OTSC without temporary restraints and set a return date for oral argument on October 3, 2023.[2/] The OTSC set a deadline of September 22, 2023 for NJPC's response to the OTSC and September 27, 2023 for the CWA's reply to NJPC's response.[3/]

On September 26, 2023, the NJPC filed a brief and certification from Susan R. Grogan ("Grogan Cert."), the NJPC's Executive Director. On October 4, 2023, the CWA filed a reply brief.[4/]

Based on the parties' submissions, the following facts appear:

The CWA is the exclusive majority representative of three negotiations units of NJPC employees: a Professionals Unit, a Supervisory Unit, and Non-Supervisory unit.[5/] Historically, the three units jointly negotiate collective agreements with the

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2/ After reviewing the parties' written submissions, I determined oral argument was unnecessary.

3/ The Respondent requested and the Charging Party consented to an extension of Respondent's deadline for submissions to September 26, 2023. The Charging Party, in turn, requested an extension of its deadline to file a reply until October 4, 2023, which the Respondent consented to and I granted.

4/ The parties also exchanged settlement proposals after filing their submissions but were unable to reach agreement.

5/ Dann Cert., Para. 3.

NJPC.[6/] With the exception of their recognition clauses, all three units are governed by identically worded collective negotiations agreements that extend from July 1, 2019 through June 30, 2023 ("CWA Agreement").[7/] The parties are currently in negotiations for a successor agreement.[8/]

Article 4 of the CWA Agreement, entitled "Salaries", describes methods of compensation for unit employees. It provides:

> A. Salary
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> (1) The annual salary of each full-time employee will be in accordance with the salary range corresponding to his or her title (see Appendix A).[9/] Salaries will be pro-rated for part-time employees. New employees will be hired at the minimum of their range, except that the Employer may place a new employee on a higher level if

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6/ Id.

7/ Dann Cert., Para. 3. By email dated September 19, 2023 from the CWA counsel to the undersigned and NJPC counsel, the CWA confirmed there are three separate collective negotiations agreements with identical contract language. The NJPC does not dispute this fact. When referencing provisions of the 2019-2023 collective negotiations agreement, the provisions should be understood to apply to all three units represented by the CWA.

8/ Dann Cert., Para. 6.

9/ Appendix A contains five tables each with "minimum" and "maximum" salaries for the 2019-2020, 2020-2021, 2021-2022 and 2022-2023 contract years. The salary range tables cover the following groups of employees: "Support Assistants: Custodial and Clerical", "Support Assistants: Business and Maintenance"; "Technical Assistants: Land Use, Planning, Legal , Public Programs", "Specialists: Planning, Environmental, Public Programs, GIS, MIS" and "Research Scientists."

the employee's education and experience significantly exceed the minimum requirements.

(2) All employees will receive accross-the-board salary increases as follows: 2% as of July 1, 2019, 2% as of July 1, 2020, 2% as of July 1, 2021, and 2% as of July 1, 2022.

B. Merit Increases

Beginning as of 2019, each employee with at least one year of service who is not at the maximum of his or her salary range and **whose overall performance in the most recent evaluation meets or exceeds expectations will receive an annual merit increase in salary effective July 1 of each year. The amount of the merit increase will be equal to the lesser of (a) 2.25% of the employee's base salary or (b) the amount needed to reach the maximum of the range.**

C. Retroactive Payments

In order to receive any retroactive salary adjustments required by this Article, employees must be on the payroll at the time of ratification.

[Article 4 of the CWA Agreement, emphasis added]

Article 31 of the CWA Agreement, entitled "Performance Evaluations" sets out timelines and procedures for conducting evaluations of unit employees. Article 31(A) provides:

> Written evaluations shall be conducted at least once a year for employees except provisional employees. Approximately six months between annual evaluations the supervisor shall have a conference with the employee and advise the employee of his/her performance and review established objectives. There will be three categories of ratings for performance evaluations, as follows:
>
> - Exceeds expectations, which will equate to a numeric value of three (3).
> - Satisfactory, which will equate to a numeric value of (2)

- Unsatisfactory, which will equate to a numeric value of one (1).

Under Article 31(B), "each employee shall be notified of his/her performance evaluation and shall have the opportunity to review such evaluation and the supervisor shall confer with the employee regarding the evaluation." While there is a process for review and discussion between supervisor and employee over evaluations, "Performance evaluations and/or merit increases are grievable but not arbitrable." Article 31C of the CWA Agreement.

NJPC Personnel Policies also provide for "performance evaluations and merit increases where the evaluated employee "meets expectations" or "exceeds expectations."[10/] Consistent with Article 4 of the CWA Agreement and NJPC Personnel Policies, NJPC made merit pay increases to qualified employees in 2019, 2020, 2021 and 2022.[11/] And "while the [NJPC] has conducted several satisfactory performance evaluations, it has not made the [merit] payments for 2023."[12/]

Susan Grogan currently serves as NJPC's Executive Director.[13/] She served in several managerial positions for NJPC between 2003 and the present, including as NJPC's Acting

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10/ Dann Cert., Para. 10 and Exhibit B.

11/ Dann Cert., Para. 11.

12/ Id. It is unclear from the record how many unit employees received satisfactory performance evaluations in 2023.

13/ Grogan Cert., Para. 1.

Executive Director, Planning Director and NJPC's Chief Planner.[14/] According to Grogan, these positions "are considered managerial positions" and from her managerial experience she is "familiar with the Commission's collective negotiations agreements with CWA" and "management's understanding of the intent of such provisions."[15/]

The CWA and NJPC have negotiated four collective negotiations agreements since 2007.[16/] Grogan certifies that each of the agreements addressed merit pay increases in the following ways[17/]:

> 1. The 2007-2011 agreement with the CWA "provided for a merit pool of 2.5% of the total annual salaries of eligible bargaining unit employees and merit was distributed based on an employee's performance evaluation rating on a scale of 1-5;
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> 2. The 2011-2015 agreement "provided that there would be no merit increases for the terms of the contract, and that merit would remain a negotiable item as part of the next contract term;
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> 3. The 2015-2019 agreement also provided that there would be no merit increases during the term of the agreement; and
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> 4. The 2019-2023 agreement provides for merit pay increases of "2.25% of an employee's salary or the amount needed for the employee to meet the maximum level of the salary range for his/her position", but

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14/ Grogan Cert., Paras. 2-4.

15/ Grogan Cert., Para. 5.

16/ Grogan Cert., Para. 7.

17/ Grogan Cert., Para. 8.

> such an increase "was dependent upon the employee's performance rating, an employee was required to achieve a performance rating of a 3 (exceeds expectations) or 2 (satisfactory) to be eligible for a merit increase."

Grogan certifies that the NJPC "never paid merit increases during the time between the expiration of a CNA [collective negotiations agreement] and conclusion of the negotiations for a new CNA."[18/]

Grogan asserts that the merit increases under Article 4 of CWA "are not automatic" but are rather "directly determined by an employee's performance evaluation." Grogan certifies that that evaluation process is "extensive", involving an employee's self-appraisal, multiple layers of employee consultation with supervisors about the evaluation, and finally consultation with and review by the Executive Director of the evaluation.[19/] Citing Article 4 of the CWA Agreement, Grogan maintains the CWA Agreement "makes clear that whether or not an employee receives a merit increase is completely dependent on his/her annual evaluation and that certain performance ratings must be met to qualify for a merit increase."[20/] Grogan further certifies that while the NJPC "continues to pay its employee salaries during the time between expiration of the CNA and conclusion of negotiations for the new CNA", merit pay increases are not paid during this

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18/ Grogan Cert., Para. 9.

19/ Grogan Cert., Paras. 10-11.

20/ Grogan Cert., Para. 14.

period under the CWA Agreement, which, Grogan maintains, "supersedes" any NJPC Personnel Policies to the contrary.[21/] However, there is no language in the CWA Agreement providing for the discontinuance of merit pay increases during collective negotiations.[22/]

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); Whitmeyer 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). I find the CWA has a substantial likelihood of success on its claim that the NJPC violated sections 5.4a(5) and (derivatively) (a)(1) of the Act by

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21/ Grogan Cert., Para 19. Grogan also certifies that the 2023 "annual performance evaluation process is ongoing." Grogan Cert., Para. 13. However, NJPC does not dispute the facts certified to by Dann that a certain number of unit employees have received satisfactory performance evaluations in 2023 but have not received merit pay increases in 2023.

22/ See generally the CWA Agreement and Grogan and Dann Certifications.

unilaterally discontinuing merit pay increases under Article 4 of the CWA Agreement during negotiations with the CWA over a successor collective agreement. I also find that the NJPC's unilateral change irreparably harmed the collective negotiations process with the CWA, that granting interim relief would serve the public interest, and that the relative hardships to the parties weigh in favor of granting interim relief to CWA.

A public employer has a statutory duty to negotiate in good faith with a majority representative over mandatorily negotiable terms and conditions of employment. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-5.4a(5); State of New Jersey (Corrections), H.E. No. 2020-2, 46 NJPER 195, 204 (¶49 2019), aff'd P.E.R.C. No. 2020-49, 46 NJPER 509 (¶113 2020). An employer breaches this statutory duty when it unilaterally changes prevailing, negotiable terms and conditions of employment during collective negotiations. N.J.S.A. 34:13A-5.3; Galloway Tp. Bd. of Ed. v. Galloway Tp. Educ. Ass'n, 78 N.J. 25, 48 (1978); State of New Jersey (Corrections), 46 NJPER at 204. This "inviolate" labor relations principle is known as the "unilateral change doctrine." 46 NJPER at 204; Honeywell International Inc. v. NLRB, 253 F.3d 125,131 (D.C. Cir. 2001).

To determine whether there was a unilateral change, we must first define the "status quo": i.e., *what* terms and conditions of employment existed prior to the unilateral change. 46 NJPER at

206. Under an expired collective negotiations agreement, the status quo[23/] is defined by the terms of the expired agreement.[24/] N.J.S.A. 34:13A-59(f); Perth Amboy Bd. of Ed., P.E.R.C. No. 2021-9, 47 NJPER 193 (¶42 2020); State of New Jersey (Corrections), 46 NJPER at 205; Laborers Health and Welfare Trust v. Advanced Lightweight Concrete Co., 484 U.S. 539, 544 (fn. 6) (The U.S. Supreme Court holds that "an employer's failure to honor the terms and conditions of an expired collective bargaining

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23/ The CWA describes the status quo under an expired collective negotiations agreement as "dynamic." But that position implies there can be more than one "status quo" under an expired agreement, i.e. a "dynamic" or "static" status quo. However, as explained in State of New Jersey (Corrections), there can be only one status quo under an expired collective negotiations agreement, and that status quo is defined by the terms of that agreement. 46 NJPER at 209.

24/ Where a collective agreement is silent on a given subject, the status quo may be defined by other sources, such as past practices, employer policies or agreements separate and apart from a collective negotiations agreement "provided those sources do not conflict with the provisions of the collective agreement." Hammonton Tp., H.E. No. 2021-7, 47 NJPER 444, 448 (fn. 3)(¶106 2021); see also Borough of Watchung, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981) (Commission finds employer did not change status quo on disability leave as defined by a practice established through a long-standing employer disability leave policy); Mt. Laurel Tp. Bd. of Ed., H.E. No. 88-12, 13 NJPER 736 (¶18277 1987), adopted at P.E.R.C. No. 88-70, 14 NJPER 135 (¶19053 1988) (Employer did not change status quo as defined by a side-bar agreement on stipend payments that was negotiated separate and apart from the parties' collective negotiations agreement); Irvington Bd. of Ed., H.E. No. 2002-13, 28 NJPER 210 (¶33072 2002), adopted at P.E.R.C. No. 2003-5, 28 NJPER 334 (¶33116 2002)(Commission finds employer violated the Act by repudiating terms of an unfair practice charge settlement).

agreement pending negotiations on a new agreement constitutes bad faith bargaining in breach of sections 8(a)(1), 8(a)(5) and 8(d) of the National Labor Relations Act")[25/]; Litton Financial v. NLRB, 501 U.S. 190, 203 (U.S. Supreme Court notes that the duty not to change terms and conditions of employment after a CNA expired derives from the statutory duty to bargain in good faith).[26/] And the statutory obligation to "honor" terms and conditions of an expired collective agreement extends to salary and wage provisions, whether they be "incremental" and/or "merit based" in structure. 46 NJPER at 218 (fn. 28)(payment of increments to corrections officers conditioned on "satisfactory work performance" annually); Borough of Fanwood, I.R. No. 85-5, 10 NJPER 606 (¶15284 1984)(Salary increment conditioned on

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25/ The "experience and adjudications" under the National Labor Relations Act (NLRA) are an appropriate guide forinterpreting our Act. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Educational Secretaries, 78 N.J. 1, 9 (1978). This is particularly true with respect to the Act's unfair practice provisions, since these provisions ". . . parallel the unfair labor practice provisions of the [NLRA] in many respects." Id.; In Re Bridgewater Tp., 95 N.J. 235, 240 (1984) (Supreme Court explained that the ". . . language and intent of the Act and the [NLRA] are substantially the same").

26/ See also Wilkes-Barre Hospital v. NLRB, 857 F.3d 364, 374 (D.C. Cir. 2017) ("[T]he unilateral change doctrine requires employers to honor the terms and conditions of an expired collective bargaining agreement"); accord In Re Atlantic County, 230 N.J. 237, 252 (2017) (New Jersey Supreme Court notes that "employers are barred from unilaterally altering . . . mandatory bargaining topics, whether established by expired contract or by past practice, without first bargaining to impasse.")

satisfactory work performance defined status quo); Sussex County, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982)(Annual, discretionary merit-pay increases defined the status quo despite being varied in amount and not limited to specific time frames).

An expired CNA's salary or wage provisions continue in effect during collective negotiations if they are "automatic" in the sense they are paid to unit employees based on length of service and/or merit based criteria in a regular, periodic manner. 46 NJPER at 207; see also Daily News of L.A. v. NLRB, 73 F.3d 406 (D.C. Cir. 1996) (Court held that three year practice of awarding annual, merit-based salary increases must be preserved during collective negotiations for a first contract even though employer retained discretion over the *amount* of increases). If the increases, however, are not based on any criteria linked to an employee's length of service or periodic evaluations, but are instead largely discretionary and not consistent with any pattern, practice or procedure, then the increases are not required under the doctrine. East Orange Community Charter School, I.R. No. 2021-2, 47 NJPER 74 (¶20 2020); Advanced Life Systems v. NLRB, 898 F.3d 38 (D.C. Cir. 2018). However, salary guide payments or structures that permit some degree of discretion by the employer as to the amount or eligibility for a salary increase are subject to the doctrine and must be preserved during collective negotiations. Fanwood; County of Sussex;

Daily News; Eastern Maine Medical Center v. NLRB, 658 F.2d 1 (1st Cir. 1981) (The Court notes that "indefiniteness" and a "flavor of discretion" as to the amount of a wage increase does not prevent the practice of periodic evaluations of employees for wage increases from becoming a condition of employment subject to the unilateral change doctrine).

Here, the NJPC breached its statutory duty to negotiate over merit pay increases by unilaterally discontinuing the payment of merit pay to CWA unit employees under Articles 4 and 31 of the CWA Agreement. Article 4 of the CWA Agreement clearly provides for the payment of merit pay increases to CWA unit employees who "meet" or "exceed" performance expectations under Article 31 of the CWA Agreement. While the payment of these salary increases are dependent upon NJPC's evaluation of unit employee performance and a unit employee's satisfactory work performance (as determined by the NJPC)are conditions precedent to any merit based payment, those conditions do not render the merit pay system "discretionary." Rather, they are automatic payment systems that must be maintained during collective negotiations under Commission and National Labor Relations Board precedent. Fanwood; State of New Jersey (Corrections); Daily News.[27/]

27/ NJPC emphasizes throughout its brief and Grogan's certification that the evaluation process is imbued with numerous discretionary decisions by the unit employee and his or her supervisors and, as such, ordering merit pay

(continued...)

NJPC's unilateral discontinuance of the merit payment system also caused irreparable harm to the collective negotiations process. A unilateral change to a term and condition of employment during collective negotiations has a chilling effect and undermines labor stability. Rutgers, the State University and Rutgers University Coll. Teachers Ass'n, et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp. 2d 96 (¶79 App. Div. 1981); Fanwood, 10 NJPER at 607 (Unilateral discontinuance of salary increment payments conditioned on satisfactory work peformance during negotiations "has a chilling effect that destroys the laboratory conditions of the negotiations process and adversely affects the ability of the majority representative to negotiate"). And restoring the negotiated merit pay system under Article 4 during collective negotiations serves the public interest by advancing the "core policy of the Act to require parties to engage in collective negotiations prior to changing terms and conditions of employment", thereby promoting labor stability. Clinton-Glen

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27/ (...continued)
increases would interfere with that process. But the status quo here does not concern *how* employees are evaluated, but rather, *once* evaluated, what the evaluated employee (s) should be paid under Article 4. This decision does not change the evaluation process prescribed in Article 31 nor NJPC supervisors' decision-making process for completing evaluations under Article 31.

Gardner School District, I.R. No. 2014-1, 40 NJPER 121, 123 (¶46 2013).

Finally, the relative hardships to the parties in granting interim relief weighs in favor of the CWA. The CWA has a duty to negotiate on behalf of *all* of its unit employees. Everyday that goes by where a unit employee does not receive the merit pay he or she is entitled to under Article 4 interferes with the CWA's ability to negotiate effectively for its units as a whole. Clinton-Glen Gardner School District,40 NJPER at 123. The NJPC, moreover, can factor in the payment of merit pay increases during negotiations as part of its collective negotiations strategies and budgetary process in deciding what, if any, additional benefits it can agree to provide CWA unit employees in a successor agreement.

For these reasons, I grant CWA's request for interim relief.

NJPC'S Arguments

To the extent not already addressed in this decision, I will address NJPC's remaining contentions in this section.

First, NJPC contends that the CWA will not suffer irreparable harm if denied interim relief because CWA seeks money (i.e. merit pay increases), and monetary losses can be remedied in a final Commission decision. NJPC relies on Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (¶28225 1997), in support of this position. NJPC's reliance on Montclair Tp. is misplaced.

In Montclair Tp., a Commission Designee denied interim relief on an unfair practice charge alleging an employer breached a collective negotiations agreement *after* such agreement was ratified by not paying retroactive salaries to unit employees. There, the issue concerned the payment of moneys *during* the term of an existing collective negotiations agreement. The Designee found that the claim concerned solely monetary damages and could be resolved through the parties' negotiated grievance procedures. 23 NJPER 475.

Here, unlike the Charging Party in Montclair Tp., the CWA's alleged harm is not limited to a monetary loss occurring *during* the term of the CWA Agreement. Instead, CWA claims the NJPC irreparably harmed the collective negotiations process *after* their CWA Agreement expired. And, as discussed previously, that type of harm cannot be remedied at the conclusion of a case. Rutgers, the State University and Rutgers University Coll. Teachers Ass'n, et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp. 2d 96 (¶79 App. Div. 1981); Fanwood, 10 NJPER at 607.

Second, NJPC maintains that it is not obligated to pay merit pay increases during the period between the CWA Agreement's expiration and whenever a successor agreement is ratified by the parties, because, as a matter of "past practice", "the Commission [NJPC] never paid merit increases" following the expiration of

prior collective negotiations agreements.[28/] However, the terms of the 2019-2023 CWA Agreement, and not past practice, is controlling here in defining the status quo. Sussex Cty., I.R. No. 91-15, 17 NJPER 234 (¶22101 1991)(Commission designee rejects employer's past practice argument that salary increments were never paid when past collective agreements expired).[29/] And those terms under Article 4 clearly provide for the payment of merit increases to unit employees who meet or exceed performance expectations under Article 31 of the CWA Agreement.

Third, NJPC asserts it has no obligation to pay merit increases because the CWA Agreement does not contain any "provision mandating that the Commission must allow payment for merit pay after the expiration of the agreement."[30/] However, the CWA's Agreement's "silence on whether [merit pay] must continue to be paid . . . is not enough to establish clear waiver" of NJPC's statutory duty to preserve the merit pay system during collective negotiations. Perth Amboy Bd. of Ed., 47 NJPER at 196-197. Rather, to be an effective waiver of the *statutory* duty to negotiate, the parties would need to negotiate express

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28/ NJPC Brief, p. 13.

29/ See also N.J. Department of Veterans Affairs, P.E.R.C. No. 89-76, 15 NJPER 90, 92 (¶20040 1989); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶14040 1978); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981).

30/ NJPC Brief, p. 4.

language in a collective negotiations agreement *terminating* or otherwise *discontinuing* the payment of merit pay after the expiration of their agreement. Id. No such language exists in the CWA Agreement.

Finally, NJPC contends that the language in Article 4 concerning the "effective" payment of merit pay on July 1 and the "retroactivity" of such a payment to unit employees on the "payroll" as of July 1 provides "clear support that the parties negotiated for the paying of merit increases following the conclusion of negotiations of a new contract retroactively to the July 1 effective date."[31/] I disagree. First, the contract language only establishes that any merit payments must (1) cover a period dating back to July 1, 2023 and (2) be paid to employees still on the payroll as of July 1, 2023. Common sense dictates that employees should not receive benefits of a contract that does not cover them (e.g., because they were never in NJPC's employ during the contract's term). Nowhere does Article 4 reference or prohibit the payment of merit pay *after* the CWA Agreement's expiration.

Perhaps more importantly, NJPC's interpretation of Article 4 would run afoul of a fundamental policy advanced by the Act: to preserve the status quo on terms and conditions of employment and preclude unilateral changes to those terms while parties

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31/ NJPC Brief, p. 14.

negotiate. The word "effective" is read by NJPC to mean they can make any changes to the existing merit pay system until they negotiate a successor agreement with CWA. That would cause the very irreparable harm to the collective negotiations process the Act is designed to prevent. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-59(f); State of New Jersey (Corrections).

ORDER

It is hereby ORDERED that the New Jersey Pinelands Commission shall:

(1) Immediately pay merit pay increases to all CWA Unit employees who met or exceeded performance expectations for the 2023 evaluation period pursuant to Articles 4 and 31 of the parties' 2019-2023 collective negotiations agreements[32/]; and

(2) Immediately cease and desist from unilaterally changing the status quo and refusing to negotiate in good faith with CWA over negotiable terms and conditions of employment, including, but not limited to, the payment of merit pay under Articles 4 and 31 of the 2019-2023 collective negotiations agreement.

32/ I decline to award prejudgment interest because the record is unclear as to what period of time that interest should be assessed.

This ORDER shall remain in place pending further litigation of this case and/or its resolution. This matter shall be assigned for normal processing.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Commission Designee

DATED: October 20, 2023
Trenton, New Jersey