I.R. NO. 88-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MARLBORO,

Respondent,

-and- Docket No. CO-88-7

COMMUNICATION WORKERS OF AMERICA,
LOCAL 1044, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee temporarily restrains the Township of Marlboro from unilaterally altering the entry level salary of a position represented by the Charging Party, CWA during the pendency of negotiations.

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Appearances:

For the Respondent
Pachman & Glickman
(Steven S. Glickman, of counsel)

For the Charging Party
John Loos, Representative

INTERLOCUTORY DECISION

On July 8, 1987, the Communications Workers of America, Local 1044, AFL-CIO ("CWA") filed an Unfair Practice Charge, accompanied by an Application for an Order to Show Cause for Interim Relief, with the Public Employment Relations Commission ("Commission"). The Charge alleges that the Township of Marlboro violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 *et seq*. ("Act") when it hired Linda Sansome into a position of clerk typist at a starting salary of $5 per hour. The CWA is currently in negotiations for a collective bargaining agreement covering white collar employees of the Township. Until the hiring of Sansome, the starting salary of a

clerk typist was $4.15 an hour. This increase in salary was made without negotiating with the CWA.

The Order to Show Cause was executed and made returnable for July 16, 1987. On that date, I conducted a show cause hearing, having been delegated to hear such matters by the Commission. Both parties were given an opportunity to submit affidavits, briefs and argue orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.[1/]

There is no dispute that in December 1986, the CWA was certified by the Commission as the majority representative of the white collar employees of the Township. The title of clerk typist is included in the certified unit. The CWA and the Township have yet to reach a collective negotiations agreement for these employees although negotiations are continuing.

1/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

On June 1, 1987, the Township hired a new employee, Linda Sansome, as a clerk typist at a starting salary of $5 per hour. Although the attorney for the Township made a representation in his argument at the hearing that the starting salary for clerk typists is no longer $4.15 per hour. The Township did not submit any certifications in support of this factual claim. By contrast, certifications of Township employees submitted by the CWA state that the starting salary for clerk typists is $4.15 per hour. The certifications stand as undisputed and, accordingly, for the purposes of this interim proceeding I find that the starting salary of a clerk typist was $4.15 an hour prior to the hiring of Sansome.

It is also undisputed that the issue of altering the starting salary for the clerk typist position was never negotiated with the CWA.

It is well settled that an employer may not by-pass the Union in establishing salaries for the individuals it represents.

The Commission held in City of New Brunswick, P.E.R.C. No. 87-68, 13 NJPER 11 (¶18008 1986):

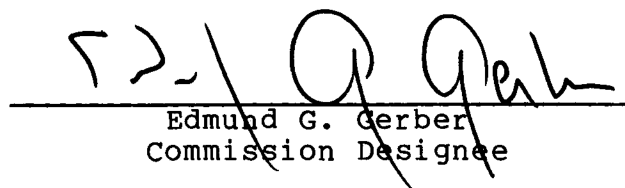
> Negotiations over compensation with individual employees rather than their majority representative strikes at the heart of our Act: the exclusivity doctrine.

Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 426 (1970); North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985). There is no allegation that the parties reached a negotiations impasse which would have permitted the unilateral granting of a salary increase. A wage increase during negotiations can easily been seen as a deliberate attempt by an employer to

convince employees that benefits come solely from the employer. The fact that this employee is a new hire makes no difference. The CWA represents positions as well as individuals. See Galloway Township Board of Education, 78 N.J. 1 (1978).

The CWA here has a substantial likelihood of prevailing on the facts and law at a full plenary hearing. A unilateral change of a term and condition of employment, during negotiations and prior to the exhaustion of the Commission's dispute resolution procedures undermines the ability of an Association to properly represent employees in ongoing negotiations. This harm is irreparable. See CWA v State of New Jersey, I.R. No. 82-2, 8 NJPER 425 (¶13197 1982); Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975) and Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975). Here, in balancing the relative hardship to the parties I find the conduct of the employer undermines the position of the Union in negotiation, however, the suspension of the disputed salary increase for the position would cause no significant harm to the employer.

Accordingly, it is hereby ordered that the salary of Linda Sansome be temporarily reduced to $4.15 per hour to comply with the existing salary for the entry level clerk typist.



Edmund G. Gerber
Commission Designee

DATED: July 24, 1987
Trenton, New Jersey