I.R. NO. 2001-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Respondent,

-and-

Docket No. CO-2000-234

COMMUNICATIONS WORKERS OF AMERICA AFL-CIO,

Charging Party

SYNOPSIS

For twenty years, unit employees received their annual increments on January 1. On or about December 23, 1999, the City advised the CWA that it would not pay annual increments to unit employees on Janaury 1, 2000. The City contends that it was following the directions of the State Department of Community Affairs, Division of Local Finance, which was engaged in oversight procedures due to the City's fiscal condition. The Commission Designee found that increments appeared to be part of an automatic increment program and that the City was not prevented from paying increments to unit employees based on the Department of Community Affairs' oversight. The Commission Designee ordered the City to pay increments.

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Appearances:

For the Respondent
McCormack & Matthews, attorneys
(Thomas M. McCormack, of counsel)

For the Charging Party
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

INTERLOCUTORY DECISION

On February 14, 2000, the Communications Workers of America, AFL-CIO (CWA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of East Orange (City) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(5).[1/] On June 22, 2000, the CWA filed an

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1/ This provision prohibits public employers, their representatives or agents from: "(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."

application for interim relief. On June 23, 2000, an order to show cause was executed and a return date was scheduled for July 28, 2000. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

The CWA represents several separate collective negotiations units: blue collar/skilled craft; transport and maintenance; white collar/clerical and professional; school traffic guards; and library employees.[2/] The City and the CWA are currently engaged in collective negotiations for successor agreements. The collective agreements for the blue collar, white collar and school traffic guards which expired on December 31, 1993, contain identical language concerning annual increments. The agreements provide as follows:

> (a) As of January 1, 1991, January 1, 1992, and January 1, 1993, all full-time employees will be entitled to receive their normal increment earned during and for the years 1990, 1991 and 1992 respectively subject to the usual conditions accompanying said increments and the earning thereof.

2/ Apparently the CWA intended the unfair practice charge and application for interim relief to also apply to the employees which it represents at the East Orange Library. However, it is clear from the collective agreements submitted in this matter that library employees are employed by the East Orange Library Board of Trustees and not the City. The unfair practice charge names only the City as the employer. Consequently, this decision does not directly apply to employees represented by the CWA employed by the Library Board of Trustees. However, assuming a similar factual setting, which is likely to be the case, the outcome set forth in this decision would similarly apply to library employees.

(b) The union acknowledges that the amount of such increments represent an additional cost to the City for salary increases.

Since 1993, the parties have executed memoranda of agreement for each of the respective units which provide that "there shall be no changes in the existing terms and conditions of employment between the parties unless specified below." In the memoranda, the parties did not alter the annual increment language. Apparently, the City has paid annual increments on January 1 of each year to unit employees who have not reached the maximum of their salary range for at least the last twenty years. On or about December 23, 1999, the City advised the CWA that it would not pay the annual increments to unit members on January 1, 2000.

The City contends that several months prior to the filing of this unfair practice charge, municipal officials were advised that due to its fiscal condition an oversight procedure, provided by the State Department of Community Affairs, Division of Local Finance (DCA), would be implemented in the municipality. One of the oversight areas for the DCA was the status of the collective agreements with municipal employee unions. The City asserts that the salary adjustment language contained in the CWA agreements was one of the areas questioned by the DCA. The City argues that the DCA seemed to conclude that the increment language contained in the respective collective agreements provided for increments to be paid

on a discretionary basis. The DCA opined that the increments were not automatic.[3/]

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).

Under Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978), the Commission has consistently held that good faith negotiations requires the maintenance of established terms and conditions of employment, i.e., the "dynamic status quo", and the payment of increments as part of that status quo. The refusal to pay increments has been found under Galloway to constitute a unilateral alteration of the status quo and, thus, a refusal to negotiate in good faith. Historically, the Commission has found that such conduct so interferes with the negotiations process that a

3/ The City submitted no certifications in support of its assertions nor were any orders or directives which may have been issued by the DCA to the City proffered.

traditional remedy at the conclusion of the hearing process would not effectively remedy the violations of the Act. See Rutgers, the State University and Rutgers University College Teachers Association, 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); Hudson Cty and Hudson Cty PBA Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd NJPER Supp.2d 62 (¶44 App. Div. 1979); Camden City Bd. of Ed., I.R. No. 2000-5, 26 NJPER 80 (¶31031 1999); Evesham Tp. Bd. of Ed, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993); Burlington County, I.R. No. 93-2, 18 NJPER 406 (¶23185 1992); County of Sussex, I.R. No. 91-15, 17 NJPER 234 (¶22101 1991); County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); Middlesex Cty. Sheriff, I.R. No. 87-19, 13 NJPER 251 (¶18101 1987); Borough of Palisades Park, I.R. No. 87-21, 13 NJPER 260 (¶18107 1987); Township of Marlboro, I.R. No. 88-2, 13 NJPER 662 (¶18250 1987); Hunterdon Cty Bd. of Social Services, I.R. No. 87-17, 13 NJPER 215 (¶18091 1987); Belleville Bd. of Ed., I.R. No. 87-5, 12 NJPER 692 (¶17262 1986); City of Vineland and Vineland PBA 266, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981).

Galloway held that irreparable harm exists when an employer refuses to apply automatic increments because such action changes the established terms and conditions of employment. The Cour held:

> Undisputedly, 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.]

In accordance with the above, I find that the CWA has established a likelihood of success on the merits and that it will suffer irreparable harm as a result of the City's failure to pay increments. Increments have been paid on January 1 for at least twenty years. The City has proffered nothing to contradict the apparent automatic nature of the payment of increments to unit employees. In its brief the City noted certain "instances" over the years where CWA members did not receive their increments as the result of a manager's recommendation that the particular member(s) had not earned the increment. But, withholding an increment for a particular employee does not undermine the automatic nature of increments for the unit of employees.

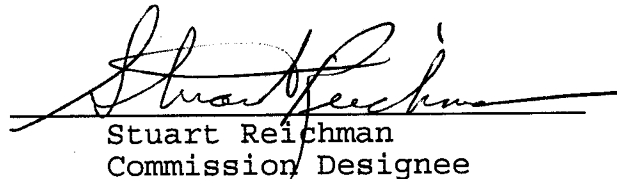
In balancing the parties' relative hardship, I find that the chilling effect of the City's failure to pay increments and the irreparable harm which the CWA suffers as the result of the City's action during the course of negotiations outweighs any harm suffered by the City as the result of maintaining the status quo by granting increments to unit employees. The City has proffered nothing that would support a contention that it was budgetarily incapable of

paying increments or was otherwise prevented from doing so. Moreover, I find that actions which foster the collective negotiations process are in the public interest.

This case will continue to proceed through the unfair practice processing mechanism.

ORDER

It is ordered that the City pay unit employees who would have been eligible to receive increments on January 1, 2000, their regular increment retroactive to that date. This interim order will remain in effect pending a final Commission order in this matter.



Stuart Reichman
Commission Designee

DATED: August 2, 2000
Trenton, New Jersey