

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WINSLOW,

Respondent,

-and-

Docket No. CO-2007-199

WINSLOW TOWNSHIP POLICE ASSOCIATION,

Charging Party.

SYNOPSIS

Upon an Application for Interim Relief brought by the Winslow Township Police Association, a Commission Designee grants the requested relief based upon a charge alleging that the Township of Winslow violated subsections 5.3, and 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Association alleges the Township violated the Act when, during negotiations for a new agreement, the Township refused to pay automatic salary increments which were due to Association unit members under the parties' expired agreement and past practice. The Association argues that the Township has thus unilaterally altered terms and conditions of employment during negotiations for a new agreement, a circumstance for which the Commission has granted numerous interim relief requests.

The Township argues that no interim relief should be granted here because the terms of the parties' expired agreement do not require the employer to provide salary increments to unit employees. Although conceding that in past years, it had provided salary increments after the agreement had expired, the Township argues that in the '03-'06 agreement, the parties changed the compensation scheme to eliminate the increment system.

The Commission Designee determined that although the '03-'06 agreement changed the salary schedule from prior agreements, it did not eliminate the increment system. Thus, the Commission Designee concluded that the Association had established a substantial likelihood of success on the merits of the case and that it would be irreparably harmed if the relief sought was not granted. Accordingly, the Township was ordered to pay eligible employees their increments.

I.R. NO. 2007-6

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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TOWNSHIP OF WINSLOW,

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-and-

Docket No. CO-2007-199

WINSLOW TOWNSHIP POLICE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,  
Joel Scharff, Esq.

For the Charging Party, Detzky & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On January 5, 2007, the Winslow Township Police Association (Charging Party or Association) filed an unfair practice charge with the Public Employment Relations Commission alleging that Winslow Township (Respondent or Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. The Association alleges that the Respondent violated subsections 5.3 and 5.4(a)(1) and (5) of the Act by refusing to pay salary increments which were due to be paid to police officers and detectives, effective January 1, 2007, under the terms of the parties' expired collective negotiations agreement and past

practice.<sup>1/</sup> Also on January 5, 2007, the Association filed an application for interim relief, asking that the Township be required to show cause why an order should not be issued directing the Township to pay salary increments due to police officers and detectives, pursuant to the parties' recently expired collective negotiations agreement and their past practice. N.J.A.C. 19:14-9.1 et seq.

On January 8, 2007, I executed an Order to Show Cause with a return date of January 19, 2007. On that date, I conducted an Order to Show Cause hearing, having been delegated such authority to act upon such requests for interim relief on behalf of the full Commission. Both parties argued orally at the hearing and submitted briefs.

The Charging Party contends that the Township has unilaterally altered terms and conditions of employment during contract negotiations by refusing to pay eligible police officers and detectives their salary step increments. Charging Party

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: 5.3 "Unilaterally implementing proposed new rules or modifications of existing rules governing working conditions." 5.4(1) "Interfering with, restraining or coercing 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."

argues that by these actions, the Township has refused to negotiate in good faith in violation of subsections 5.3 and 5.4a(1) and (5) of the Act. The Charging Party further contends that it has met the requirements for obtaining interim relief -- substantial likelihood of success on the merits of the case and irreparable harm to the Charging Party if such relief is not granted.

While acknowledging the requirement to maintain the status quo after the expiration of a collective negotiations agreement and during negotiations for a successor agreement, the Township contends that the terms of the newly expired 2003-2006 collective negotiations agreement do not require the employer to provide salary increments to Association unit employees. Accordingly, Respondent argues that its action of not providing salary step increments after the expiration of the parties' collective negotiations agreement is not a unilateral change of the terms and conditions of employment in violation of the Act. Therefore, Respondent contends no interim relief should issue.

The following facts appear. The Winslow Township Police Association is the statutory majority representative of a collective negotiations unit comprised of all patrol officers and detectives employed by Winslow Township. Winslow Township is a public employer within the meaning of the Act and is the employer of the employees involved in the instant matter. The Association and the Township have been parties to a series of collective

negotiations agreements covering the above referenced collective negotiations unit, the most recent of which covered the period from January 1, 2003 through December 31, 2006. The Association and the Township are negotiating for a successor collective negotiations agreement.

For many years and many contracts, regardless of whether a successor collective negotiations agreement had been negotiated and finalized between the parties, police officers and detectives were provided with one additional step increment on the negotiated salary guide contained in the parties' then current or recently expired agreement, effective -- for the years prior to the 03-06 agreement -- on each employee's individual employment anniversary date.

Under the parties' prior negotiations agreements, employees took 25 years to reach journeyman status. Their salaries were re-calculated twice each year -- once on January 1 when the unit-wide, across-the-board percentage increase became effective and once on the individual employee's employment anniversary date when the employee received a salary step increment.

During the negotiations for the '03-'06 agreement, the parties agreed upon certain changes to the salary schedule. More specifically, the '03-'06 agreement reduced the number of steps on the guide from 25 to 10 and the '03-'06 agreement designated January 1 as the employment anniversary date for all unit employees.

On each January 1 during the '03-'06 agreement, all patrol officers and detectives were advanced one step on the negotiated salary guide. During the first year of the '03-'06 collective negotiations agreement, employees continued to receive their salary step increment on their individual employment anniversary date. Commencing on January 1, 2005, all employees were converted to a January 1 anniversary date. On January 1, 2005, all employees on guide (i.e., employees on steps 1-9 of the salary guide) received a salary step increment. On January 1, 2006, all employees on guide again received a salary step increment. And, because January 1 was also the agreed-upon date that the across-the-board percentage wage increase would become effective, unit employees also received that wage increase on the January 1 date.

After the expiration of the '03-'06 agreement and during the negotiations for a successor agreement, the Township declined to advance eligible unit employees -- that is, those employees situated on steps 1-9 of the guide -- one step on the salary schedule, contending that the parties had somehow eliminated the step increment wage increase by the terms of the 03-06 agreement.

#### ANALYSIS

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing such applications. The moving party must demonstrate that it has a substantial likelihood of

success on the legal and factual allegations of the charge 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 public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

An employer's unilateral alteration of existing terms and conditions of employment during negotiations constitutes a refusal to negotiate in good faith in violation of the Act. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). During negotiations for a successor agreement, salary increments of an automatic nature which are contained in an expired contract must be paid to eligible employees. Where an employer unilaterally discontinues salary increments during negotiations, the Commission has concluded that such conduct violates the Act, even where the increment program was established not through the parties' expired written agreement but through a past practice. Galloway; and Hudson Cty. Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt. No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978).

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

In State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), the Commission ordered the employer to pay salary increments which were due to employees under the terms of the parties' expired agreement. The Commission stated:

It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional periods of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide which remains in effect requires that they move up one step and receive the appropriate salary increment.

State of New Jersey at p. 536.

In Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4041 1978), a Commission Designee considered the effects of certain types of unilateral employer action:

Particular types of unilateral action relating to terms and conditions of employment, such as the non-payment of salary increments, may so undercut the negotiations process and adversely affect the ability of a majority representative to effectively represent its particular constituency that traditional monetary awards that would be ordered at the conclusion of a case would not effectively remedy a violation of the Act....To permit the Board not to pay increments during the pendency of negotiations for a successor agreement would be to permit the Board to apply illegal pressure on negotiations proposals in order



to receive increments in fact due under the  
old agreement . . . .

Union Cty., at p. 14.

Charging Party contends the employer violated subsections 5.3 and 5.4a(1) and (5) of the Act when it failed to pay eligible Association unit employees salary increments due to them under the existing terms and conditions of employment which flowed from the parties' expired '03-'06 collective negotiations agreement and the parties' past practice.

Charging Party contends that it has demonstrated a substantial likelihood of success on the merits of the case before the full Commission and notes that the law is well settled that the Commission will grant interim relief where a unilateral change in terms and conditions of employment is effected during negotiations for a new collective negotiations agreement. Further, Charging Party asserts that the Commission has concluded that an employer's activity during successor contract negotiations to withhold payment of salary increments due to eligible unit employees has such a chilling effect on the negotiations process as to require interim relief in order to allay irreparable harm.

The Township acknowledges that after the expiration of a collective negotiations agreement and during the period of negotiations for a successor agreement, an employer is required -- under the Act and decisions of the Courts and this Commission

-- to maintain the status quo regarding existing terms and conditions of employment, including the payment of step increments, whether they be established by the terms of the collective negotiations agreement or by past practice (Township's brief at p. 2). The Township further concedes that for many years, whether during the terms of a collective negotiations agreement or after its expiration, it provided all eligible officers in the Association unit with the appropriate salary step increment upon their employment anniversary date. However, in this instance (January 2007), the Respondent Township argues that in the 2003-2006 collective negotiations agreement, the parties changed the compensation scheme for unit employees by agreeing to change the date for employment anniversary step increment movement to January 1 for all employees -- a date that coincided with the date on which the parties agreed to implement annual across-the-board wage increases. By so doing, the employer argues that the two raises were merged, thereby eliminating the step increment system, making compensation increases not automatic but simply a matter to be negotiated from contract to contract.

The Commission has utilized a number of factors in evaluating failure-to-pay-increments interim relief cases. These factors include, inter alia, statutory language requiring the automatic payment of increments; contractual language directing, or a contractual salary schedule effecting the automatic payment

of increments; a past practice under which increments have been automatically paid; and various other indicia of an automatic step increment compensation plan -- such as, the regular payment of increments to all unit employees pursuant to a clear and internally consistent salary guide.

The Respondent cites Hudson Cty. Sheriff, P.E.R.C. No. 93-56, 19 NJPER 64 (¶24029 1992) and H.E. No. 93-2, 18 NJPER 384 (¶23173 1992), in support of its argument that the '03-'06 agreement eliminated the step increment compensation format. However, Charging Party argues that the facts in Hudson Cty., by which the Commission, the Commission Designee and the Hearing Examiner determined that the design of the compensation plan in the parties' agreement was not an automatic step increment system, are different from the facts in the instant matter.

In Hudson Cty., there was no clear and consistent history of the payment of salary step increments. In Winslow Township, there has been a clear and consistent history of the payment of increments to police employees. In Hudson, the salary guide structure was internally inconsistent and asymmetrical. In Winslow Township, the salary guide structure is internally consistent. In Hudson, there was no differentiation between the step increment element of compensation increases and the across-the-board percentage increase element of compensation; there was one, undifferentiated annual salary adjustment. In Winslow, there are two distinct elements of compensation increases -- a

step increment increase and an across-the-board percentage increase for each year of the contract. Although the '03-'06 contract in Winslow provided that these raises were, for the first time, given at the same time, the two raise elements remained distinct and identifiable. In Hudson, there was no clear indication of a date or any clear schedule of when step increments were given. In Winslow, January 1 was the designated date for the payment of increments. (Prior to the '03-'06 contract, the schedule for the payment of increments was determined by each individual employee's employment anniversary date). Finally, in Hudson, there was no contractual language which suggested an automatic increment system. While the inclusion of such contractual language is not essential for concluding that a compensation schedule is an automatic step increment design, in Winslow, the contract contains language which references ". . . officers' progressive rates of pay . . . ."

The Township argues that the parties' agreement upon one activation date to commence both the payment of salary step increments and the payment of across-the-board-percentage increases, has eliminated the increment system. However, that is not the case.

The record here shows that in the negotiations for the '03-'06 contract, the parties agreed to contract the salary schedule from 25 steps to 10 steps and to change each employee's

anniversary date from their individual hire/anniversary date to January 1. Without more, these changes did not eliminate the increment system. American Distributing Co. v. NLRB, 715 F.2nd 446, 114 LRRM 2402 (9th Cir 1983). (In the absence of *unequivocal contractual waiver or waiver by acquiescence*, an employer unlawfully discontinues pension contributions upon the expiration of the parties' collective negotiations agreement.)

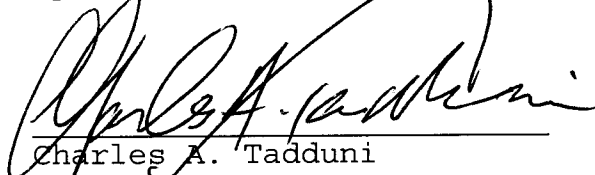
Accordingly, in the instant matter, the Township's refusal to pay salary step increments on January 1, 2007, was a unilateral change of an existing term and condition of employment. This change occurred after the expiration of the parties' '03-'06 collective negotiations agreement and during negotiations for a successor agreement. Based upon all of the foregoing, Charging Party has demonstrated a likelihood of success on the merits of its charge and that it would be irreparably harmed in the absence of interim relief. Galloway. Further, there has been no demonstration that the granting of interim relief would harm the public interest. Rather, the maintenance of the integrity of the collective negotiations process enhances labor relations stability and thus, promotes the public interest. And finally, there has been no demonstration that providing the interim relief sought herein would impose a greater hardship upon the Township than a denial of such relief would impose upon the Association.

ORDER

Accordingly, it is hereby ordered that the Respondent, Township of Winslow, immediately pay to those eligible Winslow Township police officers and detectives the salary increments due to them pursuant to the increment system contained in the parties' expired 03-06 collective negotiations agreement and the parties' past practice.

It is further ordered that the Township of Winslow pay the affected employees the monetary difference between the amount the eligible employees would have received had their increments not been unilaterally withheld and the amount they were in fact paid, between January 1, 2007 and the date of this order.

By Order of the Commission



Charles A. Tadduni  
Commission Designee

Dated: February 2, 2007  
Trenton, New Jersey