

I.R. NO. 2015-1

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2014-241

NEWARK POLICE SUPERIOR OFFICERS' ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee grants interim relief and orders the employer to restore a contractual terminal leave benefit by immediately paying unit members who were not paid their accrued leave and benefits in a lump sum on their day of separation. The Designee found that the union demonstrated a substantial likelihood of success on the merits, namely, that the employer unilaterally repudiated an existing contractual benefit, and that irreparable harm would result because the parties are in negotiations for a successor agreement. Balancing the public interest and the relative hardship to the parties, the Designee found that the public interest was furthered by adhering to the tenets of the Act, requiring good faith negotiations prior to changing a term and condition of employment, and respect for the negotiations process.

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Appearances:

For the Respondent, Carmagnola & Ritardi, LLC (Barbara J. Stanton, of counsel)

For the Charging Party, John J. Chrystal III, President

INTERLOCUTORY DECISION

On April 3, 2014, the Newark Police Superior Officers' Association (SOA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Newark (City) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4(a)(1), (3), (5), and (7)<sup>1/</sup> when, during collective negotiations, it unilaterally repudiated Article XV of the

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<sup>1/</sup> 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.; (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.; and (7) Violating any of the rules and regulations established by the commission."

parties' collective negotiations agreement (CNA) by refusing to pay unit members their accrued benefits in a lump sum on their day of separation. The SOA filed amended unfair practice charges on November 18, November 25, and December 8, 2014.<sup>2/</sup> The second amended charge was accompanied by an application for interim relief filed pursuant to N.J.A.C. 19:14-9.1 et seq. The SOA requests that the City be ordered to abide by the terms of the CNA, and pay unit members their lump sum payments on the day of separation, plus interest.

On November 26, 2014, I signed an Order to Show Cause directing the Respondent to file answering papers by December 8, and established a return date for oral argument on December 10. Subsequently, the parties agreed to an adjournment of the return date; the matter was rescheduled to December 18, 2014. On that date, I conducted a hearing via telephone conference, having been delegated the authority to act upon such requests for interim relief on behalf of the full Commission. The parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally on the return date.

The following facts appear:

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<sup>2/</sup> The SOA's amended charges added names of unit members denied lump sum payments, while removing the unit members named in the original charge (Lt. Dave Wood, Lt. Felix Conlon, Lt. Robert Lockett, and Lt. Umar Abdul-Hakeem) because their claims had been settled in small claims court.

The SOA represents all superior officers in the ranks of sergeant, lieutenant, and captain. The City and SOA are parties to a CNA effective from January 1, 2009 through December 31, 2012. Article XV of the expired CNA contains the following pertinent language in Section 3:

Each employee covered by this Agreement may, at his/her option, upon separation from the Police Department, receive wages and other benefits due him/her in a lump sum equal to the cost to the City for such wages and other benefits had the employee remained on the payroll to receive them. Base salary, longevity, holiday pay, overtime, vacation allowance, clothing allowance, stress allowance, detective's allowance and accrued compensatory terminal leave time shall be considered benefits for the purpose of this section and shall be computed for the length of time due the separated employee.

The aforesaid lump sum payment shall be made on the day of separation. In the event an employee who elects the lump sum option is entitled to wages and other benefits during two fiscal years, two lump sum payments shall be made. The first such payment shall be in an amount equal to the wages and benefits to which the employee would have been entitled for the year in which separation occurs and the second payment shall be in an amount equal to the wages and benefits to which the employee would have been entitled for the year immediately following separation had he/she remained on the payroll.

The first payment shall be made upon separation and the second payment shall be made in the second week of January of the subsequent year.

The following seventeen (17) unit members who retired in 2014 were not paid their lump sum payments on their respective dates of separation:

<u>NAME</u>	<u>RETIREMENT DATE</u>
Lt. Gerald Buglione	6/1/2014
Capt. Gregg Quackenbush	9/1/2014
Sgt. Fernando Ramirez	10/1/2014
Sgt. Robert Sarappa	10/1/2014
Lt. Angelo Sciara	11/1/2014
Lt. Christopher Ferris	11/1/2014
Sgt. Clifford Spencer	11/1/2014
Lt. David Lett	11/1/2014
Sgt. John Matos	11/1/2014
Lt. Joseph Alfieri	11/1/2014
Sgt. Kevin Gaven	11/1/2014
Lt. Michael Goitandia	11/1/2014
Lt. Tijuana Burton-Jones	11/1/2014
Lt. Tracy Childress	11/1/2014
Lt. William Sanchez	11/1/2014
Lt. Richard Moreno	12/1/2014
Capt. Susan Williams	12/1/2014

The City does not deny refusing to pay the above-listed unit members their lump sum payments upon separation. The City only disputes whether Lt. Burton-Jones was entitled to a lump sum payment, as Assistant Corporation Counsel Brendan Egan, Esq. certified that Lt. Burton-Jones' retirement application (City's Exhibit 2) "purports to acknowledge that she is not entitled to be paid for any accrued compensation time." However, the City's Exhibit 2 contradicts its assertion and actually indicates that Lt. Burton-Jones' approved retirement application included a net "Lump Sum Payment" of \$818.03 comprised of clothing allowance (\$874.52) and detective allowance (\$118.97) owed her in combination with excess holiday pay (-\$175.46) she owed the City.

The parties are in negotiations for a successor CNA. On September 15, 2014, the City submitted a Memorandum of Agreement

to the SOA containing proposed changes to the CNA. The City proposed the following changes to Section 3. of Article XV:

Longevity premiums shall be specifically excluded from any calculations seeking remittance for overtime compensation as part of any request for lump sum payouts. References providing for retroactive pay adjustments to lump sum payments upon execution of a new bargaining agreement shall be deleted in its entirety.

Provided that all requisite auditing proofs required by the City for payment processing have been received, the aforesaid lump sum payment shall be made within 90 days of separation.

#### 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 SOA contends it is entitled to interim relief because the City has unilaterally changed a term and condition of employment during negotiations for a successor agreement. It argues that the City has repudiated Article XV of the CNA because

it clearly and unambiguously requires the City to pay retiring unit members their lump sum benefits on the day of separation. It asserts that this unilateral change constitutes irreparable harm because it has a chilling effect on negotiations.

The City asserts that the SOA has failed to establish a substantial likelihood of success because it has not utilized the grievance procedure to contest the failure to pay lump sums upon retirement. It argues that there is no irreparable harm because the allegations can be adequately remedied by money damages. The City asserts that granting interim relief will cause injury to the public because it would then have to pay unsubstantiated lump sums of accrued benefits. The City also argues that there are contested material facts based on the retirement application of Lt. Burton-Jones, but as discussed above, the documentation provided by the City does not support that assertion.

In oral argument, the City stated that it is difficult to verify and process the accrued benefits of retiring officers by their date of separation. The SOA responded that it is the City's responsibility to maintain time and leave records.

It is well settled that after a contract expires, existing terms and conditions of employment must continue until the negotiations obligation is satisfied. N.J.S.A. 34:13A-33. 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 subsection 5.4(a)(5) of the Act. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). The Commission has consistently held that terminal leave is a deferred form of compensation and, like other forms of compensation, is a mandatorily negotiable term and condition of employment. Therefore, the method of paying terminal leave in either a lump sum or at regular pay periods is mandatorily negotiable. See, e.g., Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998); Morris School Dist. Bd. of Ed., P.E.R.C. No. 97-142, 23 NJPER 437 (¶28200 1997), aff'd App. Div. Dkt. No. A-006013-96T2 (4/22/98); Middlesex Cty. Prosecutor, P.E.R.C. No. 91-83, 17 NJPER 219 (¶22093 1991), aff'd NJPER Supp. 2d 280 (¶227 App. Div. 1992). We have thus found that unilateral changes to terminal leave benefits are unfair practices in violation of subsections 5.4(a)(1) and (5) of the Act. No. Hudson Regional Fire and Rescue and No. Hudson Firefighters Ass'n, P.E.R.C. No. 2013-83, 40 NJPER 32 (¶13 2013), app. pending; State of New Jersey (State Troopers), P.E.R.C. No. 92-3, 17 NJPER 374 (¶22175 1991), recon. den. P.E.R.C. No. 92-5, 17 NJPER 409 (¶22195 1991), aff'd NJPER Supp. 2d 278 (¶225 App. Div. 1992), certif. den. 130 N.J. 596 (1992). Accordingly, I find that the FOP has established a substantial likelihood of success in a final Commission decision.



I next find that the SOA has established irreparable harm. Ordinarily, issues of monetary remedy are not irreparable. However, in circumstances such as here where the parties are engaged in negotiations, the repudiation of an economic benefit such as the timing and method of receiving accrued leave upon retirement undermines the union's ability to represent its unit and chills the employees' rights to negotiate collectively. Unilateral changes in terms and conditions of employment during any stage of negotiations can shift the balance of power in the collective negotiations process and therefore have a chilling effect on employee rights guaranteed under the Act and undermine labor stability. Galloway, 78 N.J. 25. Such changes are unlawful and, where appropriate, will be rescinded if the standards for obtaining interim relief have been met. City of Passaic, P.E.R.C. 2004-21, 29 NJPER 483 (¶150 2003); Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001).

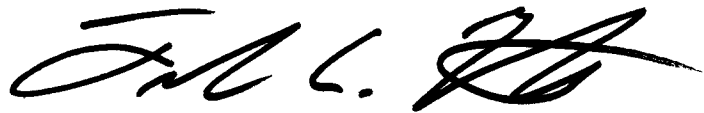
In considering the public interest and relative harm to the parties, I find that the public interest is furthered by requiring adherence to the tenets expressed in the Act which require parties to negotiate prior to implementing changes in terms and conditions of employment. Maintaining the collective negotiations process results in labor stability and thus promotes the public interest. I find that denying relief would harm the SOA in the negotiations process as the unilateral change of the

lump sum benefit would put it in the position of having to negotiate back the benefit which the City has repudiated at the same time the City has proposed that the successor agreement require a 90-day waiting period to receive such lump sum benefits. Restoring and enforcing the existing contractual benefit now levels the economic playing field for negotiations.

Based upon the above facts and analysis, I find that the Commission's interim relief standards have been met, and the SOA's requested interim relief has been granted. The case will proceed through the normal unfair practice processing mechanism.

ORDER

The City is hereby ordered to restore the Article XV terminal leave benefit by immediately paying the appropriate lump sums of accrued benefits owed to those seventeen retired officers named in this decision who were not paid said lump sums on their respective days of separation.



Frank C. Kanther, Esq.  
Commission Designee

DATED: December 29, 2014

Trenton, New Jersey