

I.R. NO. 2020-15

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF LAW AND PUBLIC SAFETY),

Respondent,

-and-

Docket No. CO-2020-207

STATE TROOPERS NON-COMMISSIONED  
OFFICERS ASSOCIATION OF NEW JERSEY,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that the public employer announced its intention to unilaterally recoup salary overpayments to a named unit employee totaling about \$29,000 at a rate of about \$200 per pay period. The employer's alleged unilateral action occurred during negotiations for a successor agreement among the parties.

The Designee determined that although the majority representative appears to have demonstrated a substantial likelihood of succeeding on the merits, it did not, under the specific circumstances, demonstrate irreparable harm. The public employer appears to have acted pursuant to a final Civil Service Commission decision denying the named employee's "Request for Waiver of Repayment of Salary Overpayment," pursuant to N.J.S.A. 11A:3-7. Also, the pay period reduction sought was not as significant or detrimental as those sought in Passaic Cty. Sheriff's Office, IR No. 2020-11, 46 NJPER \_\_\_\_ (¶ \_\_\_\_ 2020).

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Appearances:

For the Respondent, Gurbir S. Grewal, Attorney General  
(Jana R. DiCosmo, Deputy Attorney General)

For the Charging Party, Loccke, Correia & Bukosky LLC,  
attorneys (Michael A. Bukosky, of counsel)

**INTERLOCUTORY DECISION**

On February 7, 2020, State Troopers Non-Commissioned Officers Association of New Jersey (STNCOA) filed an unfair practice charge against the State of New Jersey, Office of Employee Relations (State), together with an application for interim relief, a brief, certification and exhibits. The charge alleges that on or about January 27, 2020, the State, ". . . indicated that it intended to unilaterally reduce unit employee Sergeant Vincent Antenucci's salary by \$192.45 per pay period or reduce his gross annual salary by \$5,388.60." The charge alleges that the State asserted that Antenucci was

improperly placed on step eight, instead of step six, of the contractual salary guide when he was appointed to trooper 2, effective August 11, 2012. The charge alleges that the State asserted that his subsequent guide placements were "mistakenly administered," resulting in a cumulative overpayment of about \$29,000, requiring recoupment, though it (the State) hasn't provided "any explanation or documentary evidence" of the mistake.

The charge also alleges that on January 13, 2020, STNCOA demanded that the State freeze Antenucci's salary, ". . . until a final substantive determination is made through the parties' contractual arbitration process [pursuant to the grievance STNCOA assertedly filed]" and until it negotiates over the "timing, schedule and amount" of any recoupment. The charge alleges that the State has failed to respond to STNCOA's negotiations demand and has unilaterally commenced recouping "overpayment" to Antenucci. The State's actions allegedly violate section 5.4a(1), (2), (3), (4), (5), (6) and (7)<sup>1/</sup> of the New Jersey

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the act. (4) Discharging or otherwise discriminating against any employee  
(continued...)

Employer-Employee Relations Act. N.J.S.A. 34:13A-1, et seq.  
(Act).

STNCOA seeks an order enjoining the State from unilaterally deducting wages from Antenucci's paycheck to recoup an alleged \$29,000 overpayment; enjoining the State from unilaterally deducting monies from Antenucci's pay before conducting negotiations over prepayment terms and before the conclusion of the grievance arbitration process underway contesting such overpayment.

On February 21, 2020, I issued an Order to Show Cause, setting forth dates for the submission of the State's response; STNCOA's reply; and for argument in a telephone conference call. On March 25, 2020, Counsel argued their respective cases.

On March 13, 2020, the State filed a brief opposing the application. It asserts that the Commission is the "incorrect forum" for this matter because the Civil Service Commission

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1/ (...continued)  
because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission.

issued a decision (in December, 2019) denying Antenucci's requested waiver of a salary overpayment, pursuant to N.J.A.C. 11A:3-7,<sup>2/</sup> an appeal of which must be taken to the Appellate Division. It also claims that it "attempted to engage in good faith negotiations, but STNCOA unilaterally rejected those efforts by filing a grievance and [this] unfair practice charge and application . . ." It also asserts that STNCOA has not met the standard for a grant of interim relief.

The following facts appear:

STNCOA represents a collective negotiations unit of sergeants, detective sergeants, sergeants first class and detective sergeants first class in the Division of State Police employed by the State of New Jersey. The parties' most recent collective negotiations agreement (CNA) extended from July 1, 2012 through June 30, 2017 (STNOCA Exhibit 1; STNCOA President Stilianessis cert., para 7). The parties are currently engaged in negotiations for a successor agreement (cert., para. 8).

Unit employee Sergeant Vincent Antenucci was promoted to sergeant (and into the unit) on June 11, 2016 (cert. para. 15).

On December 23, 2019, the Civil Service Commission (CSC) issued a five-page final decision on Antenucci's "Request for Waiver of Repayment of Salary Overpayment," pursuant to N.J.S.A.

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<sup>2/</sup> This provision authorizes Civil Service Commission to waive repayment of an employee's receipt of an erroneous salary overpayment.

11A:3-7 (OSC Docket No. 2019-3633) (State Exhibit A). The decision provides, among its determinations, a procedural history and Antenucci's salary history that STNCOA hasn't specifically contested. The decision advises that, ". . . any further review should be pursued in a judicial forum."

The decision reports and STNCOA certifies that the State informed Antenucci [on May 21, 2019] that he was, ". . . placed on the wrong salary step - step eight, instead of step six - when he was appointed to the [non-unit] title of trooper 2, effective August 11, 2012" (State Exhibit A; Stilianessis cert., para 14).

The decision reports that the State submitted records reflecting Antenucci's title(s), salary range(s) and salary progression, together with the "effective dates" of each over the ensuing years. The decision sets forth a table of those facts. The decision reports that the initial error was ". . . compounded over the ensuing years, resulting in a salary overpayment of approximately \$29,000" (State Exhibit 1, p.1). It reports that the State asserted that the placement of Antenucci on step eight, rather than six is, ". . . a result of a data entry mistake" that,

was recently noticed due to the fact that the State Troopers Fraternal Association CNA was ratified this year. [The State} explains that per the CNA, it is impossible for a trooper to be appointed to trooper 2 at step eight after seven years of service as a trooper.

Rather, such an individual is placed on step six. [State Exhibit 1, p.2]

The decision also explains why Antenucci's waiver request was being denied; that the required bi-weekly recoupment pay would not create a hardship to Antenucci and directs that a reasonable and if necessary, lenient repayment schedule of the \$29,000 be set by the State and Antenucci. The decision was dated and signed by Civil Service Commission Chairperson, Deirdre' Webster Cobb.

On January 8 and 13, 2020, a Human Resources representative of the State police emailed Antenucci, advising of "repayment options," specifically advising on the latter date that payroll,

. . . will recover the regular pay and overtime together for a total amount of \$192.45 for 28 pay periods and then \$163.75 per pay period for 145 pay periods. [Payroll] are able to start the overpayment for . . . pay date 1/24/2020. Please let me know if these figures work for you.

Also on January 13, 2020, STNCOA Counsel sent a letter to the State police Superintendent and the Director of the State's Office of Employee Relations claiming the possibility that Antenucci's salary placement ". . . was proper in all respects." Counsel also wrote that if Antenucci was overpaid, owing the State's "mistake," its negligence may warrant a "mitigation and an equitable offset of any amounts due." Counsel also wrote of collective negotiations obligations of the State, pursuant to the Act, among other concerns. The letter provides that STNCOA filed

a contractual grievance concerning the matter (STNCOA Exhibit B). STNCOA Counsel asserted during argument on the application that the contractual grievance was filed on January 13, 2020.

### **ANALYSIS**

A charging party may obtain interim relief in certain cases. To obtain 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. DeGioia, 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).

Section 5.3 of the Act provides:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

To prove a violation of this section, a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J. 322 (1989); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).



As a rule, employees have a right to negotiate over compensation they receive for the duties they perform. See, e.g., Hunterdon Cty. Freeholder Bd. and CWA; Woodstown-Pilesgrove Reg. H.S. Dist Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980); State of New Jersey (Dept of Human Services), P.E.R.C. No. 97-106, 23 NJPER 194, 197 (¶28090 1997). Both the salary step system and an employee's placement on a salary guide are mandatorily negotiable. Sussex Cty., P.E.R.C. No. 83-92, 9 NJPER 77 (¶14042 1983); Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986). Just as salary increases are mandatorily negotiable, so too are salary reductions. Camden Cty., P.E.R.C. No. 94-121, 20 NJPER 282 (¶25143 1994); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35, 36 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80J8 (5/24/82).

A public employer's unilateral recoupment of purported overpayments in compensation to unit employees has been found to violate section 5.4a(1) and (5) of the Act and to be an appropriate source of interim relief restraints. City of Orange Tp., P.E.R.C. No. 2001-46, 27 NJPER 124 (¶32046 2001); City of Orange Tp., I.R. No. 2000-16, 26 NJPER 326 (¶31131 2000); City of Camden, I.R. No. 2010-12, 36 NJPER 59 (¶27 2010); City of Orange Tp., I.R. No. 2007-9, 33 NJPER 99 (¶34 2007); Cf. Borough of Dunellen, P.E.R.C. No. 97-30, 22 NJPER 370 (¶27194 1996).

The facts appear to show by the requisite standard that the State unilaterally commenced a recoupment of Antenucci's purported or demonstrated salary overpayments (pursuant to the CSC decision) without first negotiating with STNCOA, as it was obligated to do under Section 5.3 of the Act. A majority representative's filing of a grievance or an unfair practice charge regarding the matter does not obviate the duty, particularly when, as in this case, more than two weeks passed between the CSC decision and the State's first communication with Antenucci. The State should have initially, or at a minimum, simultaneously sought negotiations with STNCOA. See e.g., Piscataway Tp., P.E.R.C. No. 2005-55, 31 NJPER 102 (¶44 2005), recon. den. P.E.R.C. No. 2005-79, 31 NJPER 176 (¶71 2005), aff'd 32 NJPER 417 (¶172 App.Div. 2006); Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶ 19020 1987).

I am not persuaded that STNCOA has demonstrated irreparable harm. It is true that a unilateral change in terms and conditions of employment during collective negotiations has a chilling effect on employee rights guaranteed by the Act, undermines labor stability and constitutes irreparable harm. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978).

In a recent interim relief decision on an alleged unilateral recoupment of overpaid wages to unit employees, I found irreparable harm when several unit employees' gross bi-weekly wages were unilaterally reduced by about one-third during a period of successor contract negotiations. Passaic Cty. Sheriff's Office/Cty. of Passaic, I.R. NO. 2020-11, 46 NJPER \_\_\_ (¶\_\_\_2020). Unlike the circumstances there, the State in this case acted or announced its intention to deduct an overpayment to one named unit employee, pursuant to a final CSC decision concerning that employee, exclusively, and proposed a deduction schedule imposing a less significant financial detriment. I don't believe that these particular circumstances have a tendency to undermine or chill the negotiations process.

Any financial detriment to Antenucci would be fully remunerated to him in the aggregate, if and when STNCOA prevails at the conclusion of the pending unfair practice charge or more likely, the grievance arbitration process. See Maplewood Tp. and CWA, State of N.J. and CWA, Boro of Washington and NJ State PBA, et. al., I.R. No. 2009-26, 35 NJPER 184 (¶70 2009); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191, 1984).

In the absence of an adequate demonstration of irreparable harm, I deny this application for interim relief. The charge shall be processed in the normal course.

/s/ Jonathan Roth  
Jonathan Roth  
Commission Designee

DATE: March 30, 2020  
Trenton, New Jersey