

I.R. NO. 2022-13

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-2022-191

FRATERNAL ORDER OF POLICE  
LODGE #166,

Charging Party.

**SYNOPSIS**

A Commission designee denies the FOP's request for interim relief. The FOP alleges that the Respondent violated the Act by refusing to advance unit employees on the salary guide after the parties' contract expired. The Commission designee concludes that the FOP does not have a substantial likelihood of success of prevailing on the merits as the particular facts of this dispute do not support the conclusion that the increases allegedly owed to unit employees were automatic and applied to the entire negotiations unit.

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FRATERNAL ORDER OF POLICE  
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Appearances:

For the Respondent  
Malamut and Associates, LLC, attorneys  
(Evan H.C. Crook, of counsel)

For the Charging Party  
Crivelli and Barbati, LLC, attorneys  
(Frank Crivelli, of counsel)

**INTERLOCUTORY DECISION**

On March 16, 2022, the Fraternal Order of Police Lodge #166 (FOP or Charging Party) filed an unfair practice charge against the County of Burlington (County or Respondent), together with an application for interim relief and certifications, that contested the County's refusal to advance unit employees on the salary guide after the parties' contract expired. On March 18, 2022, I requested that the FOP submit a brief in support of its position before deciding whether to issue an Order to Show Cause. FOP submitted a brief, certifications and exhibits on March 21, 2022. The FOP asserts that the County's conduct violates subsections

5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).<sup>2/</sup>

On March 22, 2022, I issued an Order to Show Cause. On April 8, 2022, the County filed its brief opposing the application for interim relief. On April 21, 2022, the FOP advised that it was not filing a reply brief. I conducted oral arguments with the parties on April 22, 2022. The following facts appear.

The FOP is the recognized majority representative for a collective negotiations unit comprised of Sheriff's Officers, Sergeants, and Lieutenants employed by the Respondent. The Sheriff of Burlington County is a duly elected New Jersey Constitutional Officer and the executive of the Sheriff Department. The Board of Chosen Freeholders of the County of Burlington, the Sheriff of Burlington County and the FOP are

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1/ 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."

2/ The charge itself only alleges 5.4a(1) and (5) violations of the Act. The attached rider to the charge asserts violations of 5.4a(1), (2), (5) and (7) of the Act. As the facts only implicate a(1) and (5) claims, I will not address the other asserted violations that are identified in the rider.

parties to a collective negotiations agreement (CNA or contract) that covered the period January 1, 2012 through December 31, 2017.

Three years after the CNA expired, during which the parties engaged in numerous negotiations sessions and reached impasse, the FOP filed for interest arbitration on or around October 14, 2020. On or around January 15, 2022, the interest arbitrator issued his award. It called for a three (3) year agreement, effective January 1, 2018 through December 31, 2020. Thus, the parties were again operating under an expired contract as of the date of the issuance of the interest arbitration award.

**Local President Rodriguez's certification**

The FOP submitted the certification of Diana Rodriguez, who is a Lieutenant with the Sheriff's Department and the President of the FOP. In her certification, she asserts that during the term of the 2012-2017 CNA, unit employees who were not at the top of the steps of the salary guides would advance one step. When that CNA expired, the County, relying on Atlantic Cty., P.E.R.C. No. 2014-40, 40 NJPER 285 (¶109 2013), rev'd 42 NJPER 433 (¶117 App. Div. 2016), aff'd on other grounds 44 NJPER 39 (¶12 S.Ct. 2017), 230 N.J. 237 (2017), failed to advance unit members on the

guide on January 1, 2018. Instead, the unit employees<sup>3/</sup> remained at the step they occupied on December 31, 2017.

Rodriguez certifies that at the time the unit employees' step movement was frozen, the County told the FOP that the law permitted their actions. She acknowledges that the FOP "did not question the County's actions until we engaged [its] current counsel in 2019. . . ." On September 3, 2019, the FOP filed an unfair labor practice charge CO-2020-054, contesting the County's refusal to provide automatic step advancements after the expiration of the CNA. The charge was effectively dismissed as untimely under N.J.S.A. 34:13A-5.4(c). (Rodriguez cert. Ex. D) I take administrative notice that the FOP did not appeal the dismissal to the Commission.

Rodriguez certifies that on October 14, 2020, the FOP filed a petition to initiate compulsory interest arbitration. The award issued on January 15, 2022. Neither party appealed the award. (Rodriguez cert. Ex. F)

Rodriguez certifies that on February 10, 2022, one of its unit members, who is due to retire in 2022, inquired with the County payroll department about his current salary and the salary

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3/ As this unit appears to both include rank-and-file officers and superior officers, each with their own salary provisions, it is unclear precisely which officers the FOP considers to have been frozen at a step since not all titles have clearly defined steps, as will be discussed in more detail below.

that the County would certify for his retirement. The County's payroll supervisor, Mike Miley, advised the officer that the officer would advance one step on January 1, 2018, and one step on January 1, 2020. The officer was further informed that he would not continue to advance after the expiration of the award on December 31, 2020, until a new contract was reached.

Rodriguez certifies that the FOP ascertained that the County would not advance officers on the guide for steps it claims were due on January 1, 2021 and January 1, 2022. As a result, FOP counsel contacted the County's labor counsel by letter dated February 13, 2022. FOP counsel asserted that an individual's movement on a salary guide subsequent to the expiration of a contract is mandated absent specific contract language prohibiting such movement and advised that it viewed the County's conduct to be an unfair labor practice. (Rodriguez cert. Ex. G)

Rodriguez certifies that FOP counsel advised that County counsel called in response to the February 13, 2022 letter, and explained that there would not be movement on the guide until a new contract was reached.

**Relevant Provisions of the 2012-2017 CNA**

Although the FOP repeatedly asserts that the County acted contrary to the "plain wording" of the CNA when it failed to advance officers a step on January 1, it does not identify a contract provision for automatic step movement that its members

are allegedly entitled to under the plain wording of the agreement. It appears that the FOP is referencing Article 6, entitled "Salaries," which provides in pertinent part:

A. Commencing on January 1, 2012, all Sheriff's Officers employed by the Department as of December 31, 2014, shall be subject to the salary schedule provided on Schedule A. As provided for in the guide, rank and file officers' annual increases will be based on their dates of hire as indicated on the guide which cut-off date is July 1 of any given year. Thus, an officer in "Step 8" at a salary of \$57, 105 hired prior to July 1 of his/her year of hire will increase to \$60,001 on January 1 of the succeeding year, while an officer hired on or after July 1 of his/her year of hire will receive an increase on July 1 (rather than January 1) of the succeeding year. Thus, the second officer (hired after July 1) will be paid \$58, 553 in the succeeding year. Officers will thereafter remain in the guide until such time as they achieve Step 12, at which time they will receive the applicable increase and 1.75% increases thereafter effective January 1<sup>st</sup> of each year.

The CNA includes Appendices A and B, with Appendix B applying to new officers hired after January 1, 2015. Appendix A sets forth different salary terms for officers, sergeants and lieutenants. The guide for officers has a heading stating: "Officers Salary Guide 2012-2017 with a 1.75% increase at Step 12." It sets forth twelve steps with predetermined salaries for each step for every year of the contract from 2012-2017. It also provides for a 1.75% increase at Step 12. Appendix A also contains a separate schedule with the following heading:

"Sergeant Salary Guide 2012-2017 with 1.75% increase." It sets forth the salaries for sergeants, which are tied to the following three service periods: less than or equal to 2 years; 3-4 years; and equal to or greater than 5 years. The schedule for Lieutenants is comprised of only two columns that do not reference years of service and has the following heading: "Lieutenant Salary Guide 2012-2017 with a 1.75% increase." It simply specifies the salary that should be paid for a particular year of the contract.

Article 48 of the CNA is entitled Term and Renewal. It provides:

This Agreement shall be in full force and effect as of January 1, 2012 to remain in full force and effect until the later of midnight on the evening of December 31, 2017 (which is January 1, 2018) or the date on which a substitute or successor agreement shall be entered into by and between the parties in accordance with the then applicable statutes and rules and regulations of the Public Employment Relations Commission.

### **The IA Decision and Award**

The County provided a copy of the interest arbitration decision and award in its submission. A crucial threshold issue before the arbitrator was whether the Interest Arbitration 2% cap on awards under N.J.S.A. 34:13A-16.7 applied, given the parties' different interpretations of the term and renewal language under Article 48 of the 2012-2017 CNA and when the cap would sunset.



Additionally, the FOP sought a five year contract term, while the County sought a four year term. Ultimately, the arbitrator determined that the cap applied, but he limited the contract term to only three years. As a result of the shorter term awarded and the prolonged negotiations history, the parties were out of contract by time the award issued and the term coincided with the expiration of the statutorily mandated cap.

In explaining his decision to award a term that was shorter than either party proposed, the arbitrator asserted that "[a] shorter contract duration than what the parties have proposed is desirable in light of the applicability of the CAP . . . . The parties can promptly resume negotiations for a new contract that will begin on January 1, 2021 and beyond for whatever duration that can be agreed to voluntarily or to invoke statutory impasse proceedings in the absence of the CAP if voluntary bargaining efforts do not succeed." (IA Award pg. 72).

The arbitration award, at the outset, provides:

All proposals by the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award or otherwise voluntarily agreed to by the parties. (IA Award Pg. 129)

The award also modified Article 48 Term and Renewal as follows:

Article 48- Term and Renewal: There shall be a three (3) year contract effective January 1, 2018 through December 31, 2020.

Article 48 shall be modified to provide:

This Agreement shall be in full force and effect as of the beginning of January 1, 2018 and remain in full force and effect up, to including and through the full date of December 31, 2020 or any other date on which a substitute or successor agreement shall be entered into by and between the parties in accordance with the then applicable statutes and rules and regulations of the Public Employment Relations Commission, or applicable New Jersey Superior Court decisions.

Paragraph No. 12 of the Award, modified Article 6- Salaries, providing in pertinent part as follows:

Article 6 shall be modified to provide:

1. Effective and retroactive to the beginning of January 1, 2018, each Officer, Sergeant and Lieutenant shall move one step<sup>4/</sup> on the applicable 2017 Salary Guide (Guides A&B for Officers and the separate Guides for Lts. & Sgts). No increase shall be applied to the steps before Top Step. Effective and retroactive to January 1, 2018, Top Step on the Officer, Sergeant and Lieutenant Salary Guides shall be increased by 1.95%.

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<sup>4/</sup> It is unclear why under either the expired 2012-2017 CNA or the new schedules included in the IA award, the salary frameworks for sergeants and particularly lieutenants are considered to contain "steps." Only the rank and file officers have clearly defined steps. As discussed above, the sergeant salary framework has three different service terms rather than distinct steps (less than or equal to two years, three to four years and equal to or greater than five years) while the lieutenant framework simply has a salary connected to a corresponding year. Therefore, it appears that a unit employee promoted to lieutenant in 2019 would have the same salary as a lieutenant who has held the title since 2018. For purposes for interim relief however, I do not need to resolve whether these frameworks are properly characterized as guides to reach my determination.

2. Effective and retroactive to January 1, 2019, Top Step on the Officer, Sergeant and Lieutenant Salary Guides (Guides A&B for Officers and the separate Guides for Lts. & Sgts) shall receive a 1.95% increase to base salary. No increase shall be applied to the steps before Top Step. Officers, Sergeants and Lieutenants below top step shall remain on the step they moved to as of January 1, 2018.

3. Effective and retroactive to January 1, 2020, each Officer, Sergeant and Lieutenant shall move one step on the applicable 2019 Salary Guide (Guides A&B for Officers and the separate Guides for Lts. & Sgts). No increase shall be applied to the steps before Top Step. Effective and retroactive to July 1, 2020, Top Step on the Officer, Sergeant and Lieutenant Salary Guides shall be increased by 1.95%.

In his decision addressing the modifications to Article 6, the arbitrator explained that "[e]mployees on the salary schedule below Top Step will receive two steps during the three year period, one at the first year and the second in the third year. Employees at the Top Step will receive increases of 1.95% in each of the three years." (IA Award pg. 80) He reasoned that although "equitable considerations might argue for lower paid employees to receive more than two step increases over the three year contract period, their longer term interests are better served by achieving higher maximum salaries. . . ." (IA Award pg. 83)

In issuing the award, the arbitrator also expressly rejected a proposal from the FOP regarding automatic step movement on the guide after the expiration of the contract. As he explained:

The FOP has proposed to add language to the salary provision to provide "automatic" step movement after contract expiration to those eligible on the salary guide. This language, it contends, is necessary given judicial precedent that such language providing step movement after contract expiration is required to achieve that objective. I do not award this proposal during this contract term. The contract duration here places the overall salary issue, including step moment, on the table for immediate negotiations and I find this proposal to alter the status quo should be considered during negotiations for the parties' next agreement.

(IA Award pg. 84-85).

#### **APPLICABLE LEGAL STANDARDS**

A charging party may obtain interim relief in narrow and limited circumstances. To obtain relief, the moving party must demonstrate both that it has a reasonable probability of prevailing on the merits and that irreparable harm will occur if the requested relief is not granted. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). Relief should not be granted where the underlying legal right is unsettled. Id. at 133. ("[T]emporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled.") See also Waste Mgmt. v. Union County Utils. Auth., 399 N.J. Super. 508, 528 (App. Div. 2008) ("The time-honored approach in ascertaining whether a party has demonstrated a reasonable likelihood of success requires a determination of whether the material facts are in dispute and whether the applicable law is settled.") Additionally, 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. Id. See also 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). A public employer may violate section 5.4a(5) of the Act if it modifies terms and conditions of employment without first negotiating in good faith to impasse or having a managerial prerogative or contractual right to make the change. State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, NJPER 560 (¶16202 1985).

With respect to the unilateral cessation of wage increases upon the expiration of a collective negotiations agreement, the Commission has recognized that Section 5.4a(5) is violated and Section 5.4a(1) derivatively, if the salary increases were automatic. Galloway Tp. Bd. of Ed., P.E.R.C. No. 76-32, 2 NJPER

186 (1976), rev'd 149 N.J. Super. 352 (App. Div. 1977), rev'd 78 N.J. 25 (1978); Hudson Cty., P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd NJPER Supp. 2d 62 (¶44 App. Div. 1979).

However, if the salary increases were not automatic, then the salary increases did not have to be paid during negotiations for a successor agreement under the Act. Ocean Cty., P.E.R.C. No. 86-107, 12 NJPER 341, 347 (¶17130 1986) (no violation where the wages increases were merely negotiated as opposed to automatic since the parties never reached a "meeting of the minds" on a system requiring automatic increment payments as an existing term and condition of employment); Bergen Cty., P.E.R.C. No. 97-124, 23 NJPER 297 (¶28136 1997) (declining to consider "salary adjustments," defined as salary increases unrelated to the attainment of an additional year of service, as part of the status quo). This distinction is derived from the seminal decision in NLRB v. Katz, 369 U.S. 736 (1962) and Section 5.3 of the Act. See East Orange Community Charter School, I.R. No. 2021-2, 47 NJPER 74 (¶20 2020).

Our state supreme court provided the following explanation regarding why the automatic nature of the increases is the touchstone for analysis:

Automatic increases are sanctioned because they do not represent actual changes in conditions of employment but continue the status quo in the sense that they perpetuate existing terms and conditions of employment. Because the employees expect these benefits

and readily recognize them as established practice, the increases do not tend to subvert the employees' support for their bargaining agent or disrupt the bargaining relationship.

Galloway Tp. Bd. of Ed., 78 N.J. at 50 (quoting the summary of Katz in NLRB v. John Zink Co., 551 F.2d 799, 801 (10th Cir. 1977)).

#### **THE PARTIES' ARGUMENTS****The FOP's Arguments**

The FOP asserts that interim relief is warranted because it is likely to prevail on the merits of the dispute. It contends that the County, by freezing members in place on the salary guides, unilaterally reduced the compensation and benefits provided to certain FOP members, thereby altering mandatorily negotiable terms and conditions of employment. Its brief incorporates significant portions of analysis from State of New Jersey (Corrections), H.E. 2020-2, 46 NJPER 195 (¶49 2019), in which the hearing examiner provided a comprehensive and nuanced analysis of the unilateral change doctrine as applied to wage increases after the expiration of a contract.

Without quoting or citing any specific contract language from the 2018 through 2020 CNA, the FOP asserts that "[u]nder the 2018 through 2020 CNA, FOP 166 members automatically receive a salary increment on January 1, according to a salary guide upon satisfactory completion of twelve (12) months of service." It contends that the unilateral change doctrine required continued

salary guide movement post-expiration because the increases were given based on a fixed 12-months period. It characterizes the arbitrator's failure to grant its proposal that expressly provided for continued movement post-expiration of the contract as "dicta," and that the rejection of the proposal lacks any legal significance because the term and renewal clause remained the same, other than the modifying the specific term dates.

The FOP claims that the plain reading of the Term and Renewal clause under Article 48 indicates that all terms and conditions of the agreement remain in full force and effect subsequent to its expiration until a new agreement is reached by the parties, which would include step increments. It contends that if the arbitrator intended benefits to expire on December 31, 2020, the renewal clause would have been changed accordingly. Instead, it claims that the only changes to the Term and Renewal clause were the dates defining the new term. The FOP also asserts that since the Term and Renewal clause largely remained the same, there was no "clear and unmistakable" waiver of the statutory right to continued salary increments during negotiations." It claims that under applicable case law, there would need to be clear and unmistakable language waiving its "right to renewal."

The FOP concludes that like other employee benefits, such as leave and insurance, "salary increments and the advancement on



the salary guide must also continue in accordance with the established case law, the unilateral change doctrine, and a plain reading of the contract and EERA itself." Citing State of New Jersey (Corrections), P.E.R.C. No. 2020-49, 46 NJPER 509 (¶113 2020), the Commission's decision affirming H.E. 2020-002, it claims that "the Commission has now definitively established that an employer's action of unilaterally freezing step increments subsequent to the expiration of a CNA is illegal, unless unions negotiated a clear written waiver of their unfettered right to receive automatic salary increments subsequent to the expiration of a collective negotiations agreement." Thus, the County violated its statutory duty to negotiate.

The FOP claims that failure to grant interim relief would result in irreparable harm because imposing a step freeze on employees' advancement on the guide would create a chilling effect on negotiations for a successor collective agreement, particularly since the parties recently completed interest arbitration. It also contends that its members would suffer financial hardship.

Lastly, it maintains that the relative hardships weigh in favor of granting interim relief. It claims the County would suffer no hardship as the parties would merely return to the status quo ante. The FOP claims that the compensation that its members anticipated would be reduced for the foreseeable future,

absent interim relief. Lastly, it contends that without interim relief, the parties are in disparate bargaining positions, which compromises the collective bargaining process in its entirety.

### **The County's Arguments**

The County counters that the FOP cannot satisfy the high standards for interim relief. Its primary argument is that the IA Award clearly and specifically directed the parties to commence negotiations for 2021 and 2022, including step movement. It explains that the IA Award supersedes the 2012-2017 CNA to the extent it sets forth different terms and conditions of employment. It contends that the IA Award modified both salaries and step movement. It notes that it is undisputed that the IA Award modified the salary provisions set forth under Article 6 under the 2012-2017 CNA by detailing the specific increases or step movements that were to occur for years 2018, 2019, 2020. The County emphasizes that the arbitrator expressly provided the following clarification: "It is critical to note that nothing in any of these provisions refers to the years 2021 and 2022, or automatic step movement after the designated years of 2018, 2019 and 2020." It also emphasizes that the arbitrator rejected the FOP's proposal for automatic step movement after contract expiration, explaining that "the contract duration here places the overall salary issue, including step movement, on the table for immediate negotiations and I find this proposal to alter the

status quo should be considered during negotiations for the parties' next agreement." (IA Award Pg. 84-85) Thus, the County concludes that both the express language of the IA award regarding salaries and the arbitrator's explanations of its award, clearly establish that there is no automatic step movement post-expiration of newly awarded contract. The County also submits that this reading is consistent with the arbitrator's decision to award a three year contract, as it would afford the FOP the opportunity to negotiate without the limitation of the 2% cap. As a result, it maintains that the FOP does not have a settled legal right to automatic step movements based upon the specific facts of this matter, and cannot show a likelihood of prevailing on the merits because automatic steps are clearly not provided under the IA Award.

It further maintains that there is no irreparable harm if interim relief is denied. There is no chilling effect to the negotiations process because the unit employees were not entitled to step movement after December 31, 2020 based on the clear language of the IA award and monetary damages do not constitute irreparable harm.

Lastly, in weighing the relative hardships to the parties, the County contends that its interest would be irreparably harmed if it made payments to employees that were subsequently determined not to be warranted. Then the taxpayers' public

interest would be harmed as a result of the inevitable delays that the County would encounter in recouping the money from the officers' paychecks through a series of payroll deductions.

### **ANALYSIS**

The FOP's request for interim relief is denied. It has not established that it has a reasonable likelihood of success of prevailing on the merits. Therefore, in accordance with the fundamental principles articulated in Crowe, interim relief should not be granted.

The FOP does not have a reasonable likelihood of success on the merits because it did not establish that the status quo provided for automatic wages increases for unit employees. As discussed above, the Act only requires payment of automatic wage increases after contract expiration, but does not require payment of wage increases if they are discretionary or otherwise lack "a recognizable pattern establishing who will receive a raise, when it will occur, and how much the raise will be." Advanced Life Systems v. NLRB, 898 F.3d 38, 46 (D.C. Cir. 2018). Accordingly, interim relief has been repeatedly denied where it was unclear from the particular facts of each case whether wage increases were automatic under the status quo. See e.g., Ocean Cty., I.R. No. 84-14, 10 NJPER 398 (¶15184 1984); Hudson Cty. Sheriff, I.R. No. 92-13, 18 NJPER 106 (¶23051 1992); East Orange Community Charter School, I.R. No. 2021-2, 47 NJPER 74 (¶20 2020).

The instant matter is clearly distinguishable from the line of cases where wage increases were required post-contract expiration because they were automatic under the status quo. Here, step movement or salary increases, depending upon a unit employees' title under the 2012-2017 CNA, were not paid on January 1, 2018. The FOP did not file a charge contesting the County's conduct until September 3, 2019, and when the charge was effectively dismissed, that determination was not appealed to the Commission. It appears there were no wage increases while negotiations and the interest arbitration proceeding were pending. When the Interest Arbitration Award was issued for a three-year term, it specifically did not provide for step movement for every year of service. Instead, all officers received a step in the first year, most officers received none in the second, and all officers then moved one more step in the third year. These facts do not demonstrate that the wage increases were automatic under the status quo. They would not be recognized as an established practice because under the history here, there is plainly a degree of irregularity and uncertainty regarding who will receive raises, the timing of the raises and the amount. These facts even pose conflicting, colorable interpretations of the status quo.

While the FOP is correct in its assertion that under Article 48 Term and Renewal, terms and conditions of employment must be

continued until a successor is reached, that Article on its own does not answer the central question of whether an automatic wage increase is part of the status quo. Additionally, the years of non-payment and the interest arbitrator's decision not to provide annual step movement create a material issue of fact as to whether the wage increases were automatic. And although the FOP submits that the arbitrator's rejection of its proposal to include specific language regarding movement after the expiration of the contract and his express instructions to negotiate immediately concerning step movement have no bearing on the instant dispute, the Commission has closely examined negotiations history to determine whether the parties intended for automatic wage increases to continue. See e.g., Ocean Cty., P.E.R.C. No. 86-107, 12 NJPER 341, 347 (¶17130 1986) (explaining the totality of the circumstances are examined to determine if the parties intended to provide automatic increases). Moreover, it is unclear from the FOP's submissions why the status quo should be understood as requiring automatic annual wage increases on January 1, when the interest arbitration award afforded movement for officers in the first and third years of the awarded contract term, but not in the second.<sup>5/</sup>

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<sup>5/</sup> During oral arguments, the FOP asserted that since the final year of the interest arbitration term included step movement for officers, the County should continue to pay step increases annually until a successor is reached. However,  
(continued...)

Further undermining the FOP's likelihood of prevailing on the merits are the different salary schemes for rank-and-file officers, sergeants, and lieutenants under the expired 2017 CNA and the IA Award. As noted above, the rank-and-file officers have clearly defined steps as part of their compensation system, while lieutenants do not. The Commission and courts have declined to require public employers to pay wage increases after the expiration of the contract where there were different systems of compensation for different titles within the same unit. East Hanover Bd. of Ed. and East Hanover Ed. Ass'n, P.E.R.C. No. 99-71, 25 NJPER 119 (¶30052 199), aff'd 26 NJPER 200 (¶31081 App. Div. 2000), certif. denied 165 N.J. 489 (2000), 26 NJPER 330 (¶31133 Sup. Ct. 2000) (automatic increments to non-certificated staff were not required to be paid after the three-year contract expired where the unit also included teaching staff). Instead, only those automatic increases that extend to the entire negotiations unit should be paid after a contract's expiration. Id. (explaining "[i]t seems unwise to us, as a matter of labor relations policy, to have separate rules for increment payments for different types of employees within a single, broad-based

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5/ (...continued)  
for purposes of defining the status quo that should continue after the expiration of the contract, it is unclear why step movement in year 3 is necessarily dispositive. Being frozen on the guide in year 2 is just as much a term and condition of employment as movement in year 3.

negotiations unit.”) Similarly, one group of employees in this unit appears to have a traditional salary guide step system while another group within the same unit does not appear to have annual step advancement. Such variation counsels heavily against concluding that the status quo provided for automatic increases for the entire negotiations unit.

Having determined that the FOP does not have a substantial likelihood of success of prevailing on the merits, no further analysis of the remaining Crowe factors is warranted. Crowe, supra (explaining substantial likelihood of success is a prerequisite for obtaining interim relief). See also, Paterson State Operated School District, I.R. No. 2021-25, 47 NJPER 510 (¶120 2021) (citing Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019); Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018); Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017); New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012)).

#### **ORDER**

Under these circumstances, I find that the FOP has not sustained the heavy burden required for interim relief under the Crowe factors and deny the application pursuant to N.J.A.C. 19:14-9.5(b)(3). This case will be transferred to the Director of Unfair Practices for further processing.



I.R. NO. 2022-13

24.

/s/ Christina Gubitosa  
Christina Gubitosa  
Commission Designee

DATED: June 7, 2022  
Trenton, New Jersey