

I. R. NO. 87-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-87-24

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT/AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee grants the Charging Party's request for interim relief based upon the refusal of the Respondent to continue payment of non-discretionary salary increments on and after the expiration of the most recent collective negotiations agreement, June 30, 1986: See CWA et al and State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

I. R. NO. 87-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-87-24

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT/AFL-CIO,

Charging Party.

INTERLOCUTORY DECISION AND ORDER

This matter having been opened to the Public Employment Relations Commission by Michael E. Buckley, Esq., of Dwyer & Canellis, Esqs., attorneys for the Charging Party, and Melvin E. Mounts, Deputy Attorney General having appeared for W. Carey Edwards, Attorney General, in response to an Order to Show Cause by the Commission's Designee, Alan R. Howe, why he should not order the Respondent to continue paying the salary increments to unit members as provided for in Article XXI of the 1983-86 collective negotiations agreement, which expired by its terms on June 30, 1986 and, further, order the Respondent to repay any increments which it has withheld from the unit members on and after July 25, 1986, pending the final adjudication of the instant Unfair Practice Charge by the Commission; and

It appearing, after hearing on August 27, 1986, that the collective negotiations agreements between the parties since June 1981 have provided for the payment of increments to employees in the unit, notwithstanding a hiatus in the payment of such increments between June 1979 and June 1981; and

It appearing further that the basis for the Respondent's refusal to make payment of increments to unit members on and after July 25, 1986 is twofold: (1) The Respondent's position in negotiations for a successor agreement with the Charging Party is to discontinue the payment of increments to unit members as was the case between July 1979 and June 1981; and (2) The Governor signed into law on July 9, 1986, amendments to Title 18A of the Education Law, which provide in a new Section 13, inter alia, that "Professional members of the academic, administrative and teaching staffs...listed as unclassified positions pursuant to Title 11, Civil Service...shall be removed from the provisions of Title 11..."; and

It appearing further in a new Section 15, amending Title 18A, which provides that "Nothing in this amendatory and supplementary section shall be construed and interpreted to contravene or modify the provisions of the 'New Jersey Employer-Employee Relations Act,'...or to limit or restrict the scope of negotiations as provided pursuant to that law..."; and

After considering the oral argument of the parties without written submissions, it appears that the Charging Party has satisfied the twin standards for the grant of interim relief,

namely, the "substantial likelihood of success on the merits as to the facts and the law" and "irreparable harm" for the following reasons.

1. The decisions of the prior Commission Designees in the matter of the granting of interim relief where non-discretionary increments are withheld during the pendency of negotiations for a successor agreement are legion and best exemplified in this case by CWA et al and State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981) where the Commission's Chairman, acting as its designee, 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...measured by assigned anniversary dates... (P)roper placement on the salary guide which remains in effect requires that (qualified employees)...move up one step and receive the appropriate salary increment (7 NJPER 536).

2. There exists no basis to make a legal distinction between the facts in the instant application and those present in the CWA-State case, supra, notwithstanding the July 9, 1986, amendments to Title 18A of the Education Law. It is true that unit members involved herein are no longer covered by Title 11 of the Civil Service Law. However, the significant amendment, in the opinion of the undersigned, is that nothing in the amendatory act contravenes or modifies our Act nor does the amendatory act limit or restrict the scope of negotiations. The language of the new Section

15, supra, would appear to the undersigned to embrace not only the provisions of our Act but the decisions heretofore rendered thereunder. Thus, CWA-State, supra, remains in full force and effect together with the other decisions decided on interim relief since 1981 involving non-discretionary increment payment during the pendency of negotiations for a successor agreement. Also, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978), the benchmark judicial decision on the payment of non-discretionary increments and the maintenance of the status quo, is clearly untouched by the July 9, 1986, amendments to Title 18A.

The Charging Party, having met the requisite for interim relief, supra, and the law being clear, the Commission Designee enters the following:

ORDER

The Respondent shall resume payment forthwith of non-discretionary salary increments, in accordance with the provisions of Article XXI of the recently expired collective negotiations agreement, to eligible members of the collective negotiations unit and, further, the Respondent shall repay to eligible unit members any non-discretionary salary increments withheld since July 25, 1986, and, further, nothing in this Decision and Order shall require the Respondent to alter its position in collective negotiations for a successor agreement, regarding the

discontinuance of its prior contractual obligation to make payment of non-discretionary salary increments.



Alan R. Howe
Commission Designee

Dated: August 29, 1986
Trenton, New Jersey