

I.R. NO. 2007-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE &
DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket Nos. CO-2005-220 &
CO-2007-271

UNIVERSITY OF MEDICINE &
DENTISTRY COUNCIL OF CHAPTERS
OF THE AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS,

Charging Party.

SYNOPSIS

For budgetary reasons, the University of Medicine & Dentistry of New Jersey has reduced the clinical salary supplement paid to certain physician faculty included in the collective negotiations unit represented by the University of Medicine & Dentistry Council of Chapters of the American Association of University Professors. The parties dispute whether a longstanding past practice allows UMDNJ unfettered right to change clinical salary components. The Commission Designee denied interim relief on the grounds that since monetary losses are remediable at the conclusion of a final Commission determination, the requisite element of irreparable harm could not be established.

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Appearances:

For the Respondent
Stuart Rabner, Attorney General
(Michael Gonnella, Deputy Attorney General)

For the Charging Party
Sterns & Weinroth
(Susan Stryker, of counsel)

INTERLOCUTORY DECISION

On March 27, 2007, the University of Medicine & Dentistry of New Jersey Council of Chapters of the American Association of University Professors (AAUP) filed an unfair practice charge with the Public Employment Relations Commission alleging that the University of Medicine & Dentistry of New Jersey (UMDNJ) violated 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)

Act, N.J.S.A. 34:13A-1 et seq., when it announced the unilateral reduction of compensation for certain members of the collective negotiations unit currently represented by the AAUP. On April 24, 2007 the AAUP filed an Application for Interim Relief (N.J.A.C. 19:14-9) which sought a restraining order to prevent UMDNJ from implementing the salary reductions. On April 30, 2007, Commission Designee Arnold H. Zudick executed an Order to Show Cause. On May 2, 2007, this matter was reassigned to me for further processing. On May 3, 2007, I scheduled the return date for oral argument for May 22, 2007. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The AAUP represents certain research and teaching faculty and librarians at UMDNJ. UMDNJ is comprised of multiple schools including the New Jersey Medical School (NJMS) and Robert Wood Johnson Medical School (RWJMS). The unit members at issue are physicians who provide patient care at affiliated hospitals, including University Hospital in Newark and Robert Wood Johnson

1/ (...continued)
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."

Hospital in New Brunswick. Their total compensation consists of a negotiated base salary and one or more clinical components.

In February 2007, the Dean of NJMS advised the chairs of the clinical departments that certain members of the clinical faculty would be reduced in total compensation through a reduction of the "patient service component" of their clinical supplement. Such salary reductions would affect faculty at RWJMS beginning in May, 2007, and in July at NJMS. Clinical salary components would be reduced up to \$50,000 with no concomitant reduction in clinical responsibilities.

All unit members receive a base salary, arrived at through bi-lateral negotiations between the AAUP and UMDNJ and reflected in salary tables set forth in the collective negotiations agreement. Certain members of the unit, mostly physicians, receive additional income in the form of a clinical salary component. Consequently, total compensation is the sum of base salary reflected in the collective agreement and the clinical supplement component.

The AAUP contends that the unilateral reduction of faculty members' clinical salary component to accommodate UMDNJ's budgetary concerns is contrary to a longstanding past practice and constitutes an unlawful, unilateral change in terms and conditions of employment. UMDNJ asserts that for more than twenty-five years it has retained the right to unilaterally

increase or decrease faculty members' clinical supplements for budgetary or other reasons, as it sought fit.

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).

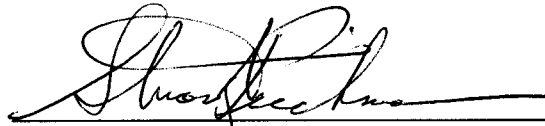
I find that the AAUP did not establish that faculty members affected by the reduction in the clinical salary component would be irreparably harmed. Clearly, physicians generally are highly compensated in light of the many years of study and skills acquisition that go into the achievement of their professional degrees. Additionally, they should be recognized for not only delivering life-saving patient care but also maintaining their responsibility to educate future physicians that go on to serve the public. However, the long line of case precedent dictates the standards required to obtain the extreme remedy of interim

relief. To satisfy the irreparable harm standard, the AAUP must demonstrate that the harm to the physicians could not be rectified at the conclusion of a final Commission determination. The Commission has the authority to issue a remedial order at the conclusion of the case which would make the affected negotiations unit members whole for any monetary losses suffered. While reductions in remuneration are always unpleasant, the case law is clear in expressing the ". . . proposition that irreparable harm is not suffered where a monetary remedy can be provided at the end of the case. . . ." Newark Board of Education, I.R. No. 83-15, 9 NJPER 253, 255 (¶14166 1983). See also, Union County, I.R. No. 99-15, 25 NJPER 192 (¶30088 1999); City of Newark, I.R. No. 99-7, 25 NJPER 81 (¶30033 1998); Borough of Sea Girt, I.R. No. 98-28, 24 NJPER 440 (¶29202 1998); Montclair Township, I.R. No. 98-2, 23 NJPER 475 (¶28225 1997); City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976). Accordingly, absent a finding of the requisite element of irreparable harm, a grant of interim relief cannot be obtained.

Thus, at this stage of the dispute, the AAUP has not established the requisite irreparable harm element. Consequently, I deny the AAUP's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The AAUP's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: May 25, 2007
Trenton, New Jersey