

I.R. No. 2009-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Respondent,

-and-

Docket No. CO-2009-124

STATE TROOPERS NCO
ASSOCIATION,

Charging Party.

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Respondent,

-and-

Docket No. CO-2009-125

STATE TROOPERS FRATERNAL
ASSOCIATION,

Charging Party.

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Respondent,

-and-

Docket No. CO-2009-126

STATE TROOPERS SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

Upon an application for interim relief brought by the State Troopers NCO Association, the State Troopers Fraternal Association and the State Troopers Superior Officers Association, a Commission Designee denies the requested relief on charges alleging that the State of New Jersey (Division of State Police) violated subsections 5.4a(1), (2), (3), (4), (5), (6) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1

et seq., when it unilaterally discontinued certain medical reimbursement payments to unit employees.

The Associations allege that the State violated the Act when, after the expiration of the most recent collective negotiations agreements between the State and the respective Associations and during negotiations for new agreements, the State discontinued contractually-provided reimbursement payments to unit employees for vision care expenses. The Associations argue that the State has thus unilaterally altered terms and conditions of employment during negotiations for new agreements, a circumstance for which the Commission has granted interim relief requests.

The State argues that the interim relief request should be denied inasmuch as no violation of the Act has occurred herein. The State contends that the charges represent at most an alleged contractual dispute as to whether there is a responsibility to continue the reimbursement payments for vision care expenses incurred after the expiration of the parties' 2004 - 2008 contracts. The State argues that the language of the contractual vision care provisions provides for only two vision care payments to be made in two specifically defined two-year periods. Accordingly, the State contends that no further payments are required under the expired contracts.

The Commission Designee determined that, pursuant to the language of the contractual Vision Care provision and the parties' treatment of the issue in the past when vision care reimbursement payments were stopped after the expiration of previous contracts, the requisite heavy burden for interim relief was not met.

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STATE OF NEW JERSEY
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-and-

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STATE TROOPERS SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Anne Milgram, Attorney General
(Sally Fields, Senior Deputy Attorney General)

For the Charging Parties, Loccke, Correia, Schlager,
Limsky and Bukosky, attorneys (Merick H. Limsky, of
counsel)

INTERLOCUTORY DECISION

On October 14, 2008, the State Troopers Fraternal Association (STFA), the State Troopers Non-Commissioned Officers Association (NCOA) and the State Troopers Superior Officers Association (SOA) (also referenced herein as the Associations or the Charging Parties) each filed separate but similar unfair practice charges with the Public Employment Relations Commission alleging that the State of New Jersey (Respondent or State) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Associations allege that the State violated subsections 5.4a(1), (2), (3), (4), (5), (6) and (7) of the Act^{1/} when it discontinued reimbursement payments to unit employees for certain vision care expenses incurred after the expiration of the

^{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. (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 this act. (4) Discharging or otherwise discriminating against any employee 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."

most recently executed collective negotiations agreements between the respective Charging Parties and the Respondent. Also on October 14, 2008, the Associations filed applications for interim relief, asking that the State be required to show cause why an order should not be issued directing the State to resume reimbursement payments for vision care expenses, pursuant to the parties' respective expired collective negotiations agreements. N.J.A.C. 19:14-9.1 et seq.

On October 23, 2008, I executed an Order to Show Cause with an initial return date of November 24, 2008. Subsequently, the parties jointly requested an adjournment of the return date; the matter was rescheduled to December 4, 2008. On that date, I conducted a hearing, having been delegated the authority to act upon such requests for interim relief on behalf of the full Commission. Both parties argued orally at the hearing and submitted briefs and certifications in support of their positions.

* * * *

The Charging Parties contend that the State has unilaterally altered terms and conditions of employment during contract negotiations by discontinuing the contractually based reimbursement payments for vision care expenses incurred by unit employees after June 30, 2008, the expiration date of the three contracts between the State and the respective Associations.

Charging Parties argue that by these actions, the State has refused to negotiate in good faith and has created a chilling effect on rights guaranteed by the Act in violation of subsections 5.4a(1), (2), (3), (4), (5), (6) and (7) of the Act. Charging Parties further contend that they have met the requirements for obtaining interim relief - - substantial likelihood of success on the merits of the case and that irreparable harm will be effected upon the Charging Parties and their unit employees, if such relief is not granted.

Finally, Charging Parties argue that Article 26 B (Complete Agreement) and Article 29 B (Contract Negotiation) mandate that the terms of the parties' Agreements remain in force until successor agreements take effect; therefore, Charging Parties contend that these provisions provide support for its argument that the vision care reimbursement payments should be continued even subsequent to the contracts' expirations.

The Respondent contends that no violation of the Act has occurred herein, and that the charges represent at most an alleged contractual dispute as to whether there is a responsibility to continue the payments for certain vision care expenses incurred subsequent to the expiration of the parties' 2004-2008 contracts. The Respondent argues that the Charging Parties have not established any of the elements required for a grant of injunctive relief. The Respondent argues that the

language of the contractual vision care provision provides for one payment to be made in the two-year period ending on June 30, 2006 and one payment to be made during the two-year period commencing on July 1, 2006. Thus, the Respondent argues that this language provides for only two vision care reimbursement payments to be made in the two specifically defined two-year periods.

Respondent argues that when taken together, its interpretation of Articles 10 D (Eye Care Program), 26 B and 29 B that "the suspension of the Eye Care Program benefit in between contracts is proper . . . is at least reasonably debatable" (Respondent's brief at p. 9).

* * * * *

The following facts appear:

The State Troopers Fraternal Association (STFA) is the statutory majority representative of a collective negotiations unit comprised of State Troopers employed by the State of New Jersey (Division of State Police) (State). The State Troopers NCO Association is the statutory majority representative of a collective negotiations unit comprised of State Trooper NCO's - - sergeants - - employed by the State. The State Troopers SOA is the statutory majority representative of a collective negotiations unit comprised of State Trooper superior officers - - lieutenants - - employed by the State. The State of

New Jersey (Division of State Police) is the public employer of the above-referenced employees. The State and the respective Associations are parties to three separate collective negotiations agreements covering the units described above. Each contract covers one of the units for the period from July 1, 2004 through June 30, 2008. The Vision Care provision (STFA - - Article 10 D) and Contract Negotiation provision (STFA - - Article 29 A&B) in each of the agreements are similar.

Article 29, Paragraphs A and B (Contract Negotiation) of the 2004-2008 collective negotiations agreement between the State and the STFA provides, in part, as follows:

A. This Agreement shall continue in full force and effect until June 30, 2008, and shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing . . . that it desires to amend the terms of this Agreement.

B. Should either party notify the other of its desire to amend this Agreement through the procedure in A above, the terms of this Agreement shall remain in force until the effective date of a successor Agreement. . . .

On October 15, 2007, Yvonne Catley, Deputy Director of the State of New Jersey Office of Employee Relations, received a letter from Richard Loccke, Esq. Counsel to the three above-referenced Associations, notifying the State of the Associations' intent to commence negotiations for successor contracts to the 2004-2008 Agreements covering each of the above State Police units.

Article 10 D (Eye Care Program) of the State/STFA Agreement states:

1. Full-time employees . . . shall be eligible for the State-administered Eye Care Program. The Program shall provide for each eligible employee . . . to receive a \$35 payment for prescription eyeglasses with regular lenses and a \$40 payment for such glasses with bi-focal lenses. Each eligible employee . . . may receive only one (1) payment during the two (2) year period ending June 30, 2006, and only one (1) payment during the two (2) year period commencing July 1, 2006. . . .

2. Eligible dependents of full-time employees shall be eligible for a maximum payment of \$35 or the cost whichever is less for an eye examination . . . during the two (2) year period ending June 30 2006, and only one payment during the two (2) year period commencing July 1, 2006.

Article 26 B (Complete Agreement) of the State/STFA Agreement states:

The State agrees that all mandatorily negotiable benefits, terms and conditions of employment relating to the status of Troopers of the Division of State Police covered by this Agreement shall be maintained at standards existing at the time of the agreement.

Article 10 H (Educational Incentive) of the State/STFA Agreement provides:

1. In order to recognize the achievement of the employee's educational advancements the State shall provide an annual education incentive payment for employees who attain the following degrees:

Associates (60 credits)	\$ 500
Bachelors	\$1000
Masters and above	\$1500 . . .

3. The incentive payment is an *annual lump sum payment*, which shall not be added to base. . .

5. *The incentive payment shall be made on or before June 30 of each fiscal year.* (emphasis added)

Article 10 B2 (Compensation Program) of the State/STFA Agreement provides:

- 2.a. There shall be a 4% across-the-board increase effective July 1, 2004.
- There shall be a 4% across-the-board increase effective July 1, 2005.
- There shall be a 4% across-the-board increase effective July 1, 2006.
- There shall be a 4% across-the-board increase effective July 1, 2007.

In June 2008, Ms. Catley advised the Centralized Payroll Unit in the State Department of the Treasury ". . . that the State should stop any payments for benefits that have historically normally been stopped in between contract periods".^{2/} Subsequently, on October 1, 2008, the Division of State Police posted an intranet notice that reimbursement for vision care expenses was being halted:

Please be advised, due to the lack of a renewed contract, Reimbursement for Vision Care with service date from July 1, 2008 onwards has been suspended. These will be held until your new contract is signed. All

^{2/} Catley certification, paragraph 5.

bills with service date through June 30, 2008 will be paid. Thank you for your patience.^{3/}

In the past, subsequent to the expiration of the parties' collective negotiation agreements - - and prior to the execution of the successor agreements - - vision care payments had been stopped. The contractual language of the Vision Care provisions and the Contract Negotiation provisions has remained substantially the same since 2000. After the expiration of the 1996-2000 agreements on June 30, 2000, during the negotiations for the 2000 - 2004 contracts, reimbursement payments for vision care expenses incurred after June 30, 2000 were stopped.^{4/} Payments for vision care expenses incurred prior to June 30, 2000 continued to be paid.

The suspension of vision care program benefits here is generally consistent with the treatment given to vision care benefits in other State law enforcement negotiations units during the period between an expired collective negotiations agreement and a successor agreement. (Catley certification, paragraph 5);

^{3/} Commission Exhibit 1, Unfair Practice Charge, Docket No. CO-2009-125, addendum page 1.

^{4/} As the claims for reimbursement payments for vision care expenses incurred after June 30, 2000 were received by the State, it held those claims in abeyance pending the results of contract negotiations. On June 22, 2001, soon after the May 11, 2001 ratification of the 2000 - 2004 contract, the State processed 81 claims for vision care reimbursements.

Cf., State of New Jersey, I.R. No. 96-31, 22 NJPER 257 (¶27134 1996).

On October 2, 2008, the STFA filed a grievance concerning the State's cessation of vision care reimbursement payments for expenses incurred by employees in State Police units after the June 30, 2008 expiration of the three contracts covering the State Police units.

ANALYSIS

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing such applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations of the charge in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying the relief must be considered.^{5/}

An employer's unilateral alteration of existing terms and conditions of employment during negotiations constitutes a

5/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); 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); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

refusal to negotiate in good faith in violation of the Act.

Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). Health benefits are a mandatorily negotiable term and condition of employment and may not be changed by an employer unilaterally. Piscataway Tp. B/E., P.E.R.C. No. 91, 1 NJPER 49 (1975). See also, Union Tp., P.E.R.C. No. 2000-55, 28 NJPER 198, (¶33070 2002).

* * * *

Charging Parties contend that they are entitled to interim relief because Respondent has unilaterally changed a term and condition of employment subsequent to the expiration of the parties' collective negotiations agreements and during negotiations for their successor agreements. Charging Parties contend that the changed term and condition of employment - - cessation of reimbursement payments for vision care expenses - - was established by contract (Article 10 D in the State/STFA Agreement). Charging Parties argue that the employer's cessation of reimbursement payments for vision care expenses and the reason given for the cessation - - the parties' failure to execute successor collective negotiation agreements - - creates a chilling effect on negotiations and establishes the irreparable harm requisite for interim relief. The Charging Parties argue that although Article 10 B (Compensation Program), cited above, provides for a 4% salary increase on July 1 of each contract year

(2004-2008), the employer did not cease paying salary to employees after the expiration of the contract. Further, the Charging Parties argue that Articles 26 B and 29 B buttress their position that the terms of the parties' Agreements must remain in force until a successor contract becomes effective.

The Respondent denies (a) that it is obligated to continue reimbursement payments for vision care expenses incurred by unit employees after the June 30, 2008 expiration date of the contract; (b) that its conduct violated any provision of the contract; or (c) that it unilaterally changed any term and condition of employment. The Respondent argues that contract Article 10 D - - Vision Care Program - - provides for payments tied to specific dates; beyond those specified payments and dates, the employer argues that it has no obligation to continue the payments. Accordingly, the State contends that it has maintained the terms of the Agreements pending the parties' execution of successor collective negotiations agreements.

Further, Respondent notes that contract Article 10 H (Educational Incentive) is not tied to any specific dates and accordingly, Respondent has continued those payments even after the expiration of the contract.

* * * *

In this interim relief matter, the critical issue to be determined is whether Charging Parties have established a

substantial likelihood of prevailing in a final Commission decision on the legal and factual allegations of the charge - - or more specifically, whether the State is obligated to continue reimbursement payments for vision care expenses incurred after the June 30, 2008 termination date of the Agreements. If there was no obligation to maintain the vision care payments, then the State has acted in accordance with the contracts, has satisfied its obligation to negotiate and, therefore, has effected no unilateral change in terms and conditions of employment. Camden Cty College, I.R. No. 2008-13, 34 NJPER 104 (¶45 2008); City of Orange, I.R. No. 2005-10, 31 NJPER 130 (¶56 2005). If the State was obligated to continue the vision care payments after the June 30, 2008 contract expiration date, then a unilateral change during contract negotiations may have occurred herein. Galloway, supra.

While Charging Parties have made a strong argument that the principal issue in this matter is the unilateral change of a term and condition of employment during successor contract negotiations, the Respondent makes a compelling case that, pursuant to the language of the Vision Care provision and the parties' treatment of that provision in the past, it was not obligated to continue the vision care reimbursement payments after the June 30, 2008 contract expiration. Therefore, Respondent asserts that no unilateral change occurred herein.

Based upon the legal and factual record in this case, I am not persuaded that the requisite heavy burden for the issuance of interim relief has been met.

When the parties' prior collective negotiations agreements (1996-2000) had expired and the parties were negotiating the 2000-2004 collective negotiations agreements, the vision care reimbursement payments were stopped. The Vision Care and Contract Negotiation provisions in the parties collective negotiation agreements have remained substantially the same since 2000.

The Vision Care provisions in the 2004-2008 Agreements provide that unit employees are entitled to two specific reimbursement payments for vision care expenses - - one payment during the two year period ending on June 30, 2006 (i.e., during the period from July 1, 2004 through June 30, 2006); and one payment during the two-year period commencing on July 1, 2006 (i.e., during the period from July 1, 2006 through June 30, 2008).

Although contract Article 10 B (Compensation Program) sets forth specific dates for salary increases (the last being "There shall be a 4 percent . . . increase effective July 1, 2007"), the State has continued paying salaries. However, this provision would seem to address *salary increases*, not the mere payment of salary. Thus, after the expiration of the contracts, the State

did not provide new increases; however, it did continue paying employees their then-existing salaries, the same salary amounts that these employees had been receiving since July 1, 2007.

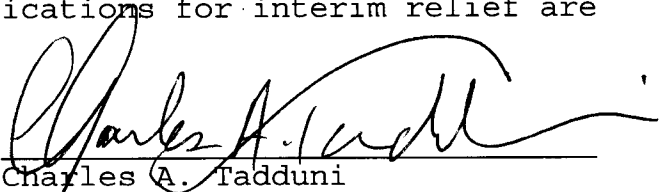
In contrast to such contract provisions as Article 10 D which link payments to specific dates, contract Article 10 H (Educational Incentive) provides for these payments to be made *annually, on June 30 of each fiscal year*. Rather than being linked to a date certain, these educational incentive payments are set on an annual schedule and thus, have historically been continued after the expiration of the parties' collective negotiations agreements.

* * * *

Accordingly, based upon the record before me in this interim relief matter, I cannot conclude that the Charging Parties have established the requisite likelihood of success on the merits of the case in a final Commission decision. Consequently, I decline to grant Charging Parties' applications for interim relief. These cases will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's rules and procedures governing unfair practice charges.

ORDER

The Charging Parties applications for interim relief are denied.



Charles A. Tadduni
Commission Designee

DATED: December 19, 2008
Trenton, New Jersey