

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WINSLOW,

Respondent,

-and-

Docket No. CO-2007-195

CAMDEN COUNCIL NO. 10,

Charging Party.

SYNOPSIS

Upon an Application for Interim Relief brought by Camden Council No. 10, a Commission Designee grants the requested relief based upon a charge alleging that the Township of Winslow violated subsections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Council 10 alleges that the Township violated the Act when, during negotiations, the Township refused to pay automatic salary increments which were due to Council 10 unit employees under the parties' expired agreement and the parties' practice under that agreement. Council 10 argues that the Township has thus unilaterally altered terms and conditions of employment during negotiations for a new agreement, a circumstance for which the Commission has granted numerous interim relief requests.

The Township argues that no interim relief should be granted here because the terms of the parties' expired agreement do not require the employer to provide salary increments to unit employees. The Township argues that there is nothing in the contract which mandates the continued automatic payment of increments; that there is no past practice regarding the treatment of the '03-'06 compensation provisions after contract expiration; and that the '03-'06 agreement provides for only one "merged" raise adjustment per year, thus eliminating any step increment system.

The Designee noted that the Commission has held that specific contractual language mandating increment payments after contract expiration is not necessary for establishing an obligation to pay increments. The Commission Designee determined that while the parties' '03-'06 agreement provided for one salary raise adjustment per year, there were two distinct elements to that raise; one of the elements was a conventional step-increment compensation provision under which unit employees were entitled to the payment of an increment.

Thus, the Commission Designee concluded that Council 10 had established a substantial likelihood of success on the merits of the case and that it would be irreparably harmed if the relief sought was not granted. Accordingly, the Township was ordered to pay eligible employees their increments.

I.R. NO. 2007-7

STATE OF NEW JERSEY  
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In the Matter of

TOWNSHIP OF WINSLOW,

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CAMDEN COUNCIL NO. 10,

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Appearances:

For the Respondent,  
Joel G. Scharff, Esq.

For the Charging Party, Spear Wilderman, attorneys  
(James Katz, of counsel)

INTERLOCUTORY DECISION

On December 28, 2006, Camden Council No. 10 (Charging Party or Council 10) filed an unfair practice charge with the Public Employment Relations Commission alleging that Winslow Township (Respondent or Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. - - more specifically, the Charging Party alleges that the Respondent violated subsections 5.4a(1) and (5) of the Act by refusing to pay salary increments which were due to be paid to all non-supervisory white collar and blue collar unit employees, effective January 1, 2007, under the terms of the parties' expired collective negotiation agreement and the practice under

that agreement.<sup>1/</sup> The charge was accompanied by an application for interim relief asking that the Township be required to show cause why an order should not be issued directing the Township to pay the salary increments.<sup>2/</sup> N.J.A.C. 19:14-9.1 et seq.

On December 29, 2006, Commission Designee Susan Osborn executed an Order to Show Cause with a return date of January 19, 2007.<sup>3/</sup> I conducted a hearing on the return date, having been delegated such 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.

The Charging Party contends that the Township has unilaterally altered terms and conditions of employment during contract negotiations by refusing to pay eligible unit employees

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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/ In correspondence dated December 4, 2006, Counsel for the Township wrote to Council 10's president to inform Council 10 that the Township would not pay salary step increments after the expiration of the parties' '03-'06 collective negotiations agreement.
- 3/ The instant matter and another related order to show cause proceeding - - Winslow Township and Winslow Township Police Association, Commission docket number CO-2007-199 - - were transferred to me on January 5, 2007.

their salary step increments. Charging Party argues that by its actions, the Township has refused to negotiate in good faith in violation of subsections 5.4a(1) and (5) of the Act. The Charging Party further contends that it has met the requirements for obtaining interim relief - - substantial likelihood of success on the merits of the case and irreparable harm to the Charging Party if such relief is not granted.

While acknowledging the requirement to maintain the status quo after the expiration of a collective negotiations agreement and during negotiations for a successor agreement, the Township contends that the terms of the newly expired 2003-2006 collective negotiations agreement do not require it to provide salary increments to Council 10 unit employees. Further, the Township asserts that because this is the parties' first contract with a step increment system, there is no history to guide the parties as to how to proceed regarding employee compensation after the expiration of the contract. Accordingly, Respondent argues that its action of not providing salary step increments after the expiration of the parties' collective negotiations agreement is not a unilateral change of terms and conditions of employment in violation of the Act. Therefore, Respondent argues the application should be dismissed.

The factual record in this matter was uncontested. These facts appear. Camden Council No. 10 is the statutory majority

representative of a collective negotiations unit comprised of all non-supervisory white collar and blue collar employees employed by Winslow Township. Winslow Township is a public employer within the meaning of the Act and is the employer of the employees involved in the instant matter. Council 10 and the Township have been parties to a series of collective negotiations agreements covering the above referenced collective negotiations unit, the most recent of which covered the period from January 1, 2003 through December 31, 2006. Council 10 and the Township are negotiating for a successor collective negotiations agreement.

Prior to the 2003-2006 contract, for each employment title, the salary guide consisted of an initial salary and a second, final salary level provided after completion of 90 days of employment. Advancement from the initial salary to the final salary was automatic after completion of the requisite length of service (Exhibit 2, attachment B - - parties' '99-'02 collective negotiations agreement - - pgs. S1-S8).

During the negotiations for the '03-'06 agreement, the Township proposed and Council 10 agreed upon certain changes to the salary schedule and pay provisions. The '03-'06 agreement established a six-step salary schedule. Commencing on January 1, 2005, all new employees would start on step 1 of the six-step salary guide and would annually move one step on the guide on the anniversary of their date of hire; thus, employees would reach

the highest level on the salary schedule (Step 6) on the fifth anniversary of their hire date. Also in the '03-'06 agreement, the parties agreed that, beginning on January 1, 2005, all unit employees would mark their anniversary date of employment for salary purposes on January 1 of each year. Pursuant to the parties' agreement, on January 1, 2005, all existing employees were placed on the highest step of the guide. On January 1, 2006, all employees then on-guide automatically moved to the next increment step on the salary schedule. The step increments were intended to be - - and were treated as - - automatic, with each employee on-guide advancing to the next guide step on January 1 of each year; nothing in the contract or the record suggests otherwise. Council 10 notes that in the '03-'06 contract negotiations, while it agreed to lengthen the time it would take for employees to achieve the top salary level for each employment title by agreeing to a six-step salary guide, it would not have agreed to do so if the step progression did not *remain automatic*, as it had been in prior agreements - - prior agreements containing only the initial salary and the top salary on the salary guide provided for automatic movement to the top step after 90 days of employment.

In December 2006, the Township informed Council 10 that it would not provide "automatic step movement" on the six-step salary guide after the expiration of the contract because the

parties' agreement "does not mandate that step movement shall automatically continue after expiration of the contract" (Exhibit 2, attachment D - - Township letter to Council 10, dated December 4, 2006).

The parties' '03-'06 contract contains a conventional step increment salary schedule. Taking, for example, the "Account Clerk" title (Exhibit 2, attachment A - - '03-'06 collective negotiations agreement - - schedule A), there are six steps for this title in each of years '05 and '06, as follows:

<u>Titles</u>	(3.5%) <u>2005</u>	(3.95%) <u>2006</u>
Account Clerk/Account Clerk-Typing:		
Yr. 1	11.69	12.15
Yr. 2	12.89	13.40
Yr. 3	14.09	14.65
Yr. 4	15.29	15.89
Yr. 5	16.49	17.14
Yr. 6 and above	17.72	18.42

The parties' '03-'06 agreement provided that the six-step salary increment compensation plan would take effect on January 1, 2005.

In 2005, the vertical step progression shows a \$1.20 per hour raise in each vertical step. That percentage runs progressively, from approximately 10.3% to 7.5%.

In moving horizontally, from year 2005 to year 2006, on any given step, it shows approximately a 3.95% increase, which derives from the across-the-board raise negotiated for 2006.

Movement on the salary schedule from year-to-year for an employee on-guide during the contract period is achieved by moving vertically one step downward and moving horizontally (to the right) to the column of the current year. (In effect, the movement is diagonally downward, from left to right on the salary schedule.) For employees on the highest step (step 6), there is no vertical movement, just horizontal movement to receive the across-the-board raise. After the agreement expires, horizontal movement ceases, unless and until the parties agree upon a new contract which provides for an across-the-board raise. (There would also be no across-the-board wage increase if the parties agreed upon a 0% increase for any given contract year.) However, for employees on-guide, vertical movement continues even after the expiration of the agreement.

#### 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 similar 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.<sup>4/</sup>

An employer's unilateral alteration of existing terms and conditions of employment during negotiations constitutes a 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). During negotiations for a successor agreement, salary increments of an automatic nature which are contained in an expired contract must be paid to eligible employees. Where an employer unilaterally discontinues salary increments during negotiations, the Commission has concluded that such conduct violates the Act, even where the increment program was established not through the parties' expired written agreement but through a past practice. Galloway; and Hudson Cty. Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt. No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978).

In State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), the Commission ordered the employer to pay salary

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<sup>4/</sup> 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).

increments which were due to employees under the terms of the parties' expired agreement. The Commission 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 upon the passage of additional periods of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide which remains in effect requires that they move up one step and receive the appropriate salary increment.

State of New Jersey at p. 536.

In Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4041 1978), a Commission Designee considered the effects of certain types of unilateral employer action:

Particular types of unilateral action relating to terms and conditions of employment, such as the non-payment of salary increments, may so undercut the negotiations process and adversely affect the ability of a majority representative to effectively represent its particular constituency that traditional monetary awards that would be ordered at the conclusion of a case would not effectively remedy a violation of the Act . . . . To permit the Board not to pay increments during the pendency of negotiations for a successor agreement would be to permit the Board to apply illegal pressure on negotiations proposals in order to receive increments in fact due under the old agreement . . . .

Union Cty., at p. 14.

Charging Party contends the employer violated subsections 5.4a(1) and (5) of the Act when it failed to pay eligible Council 10 unit employees salary increments due to them under the existing terms and conditions of employment which derived from the parties' expired '03-'06 collective negotiations agreement and the parties' practice under that agreement.

Charging Party contends that it has demonstrated a substantial likelihood of success on the merits of the case before the full Commission and notes that the law is well settled that the Commission will grant interim relief where a unilateral change in terms and conditions of employment is effected during negotiations for a new collective negotiations agreement. Further, Charging Party asserts that the Commission has concluded that an employer's activity during successor contract negotiations to withhold payment of salary increments due to eligible unit employees has such a chilling effect on the negotiations process as to require interim relief in order to allay irreparable harm.

The Township acknowledges that after the expiration of a collective negotiations agreement and during the period of negotiations for a successor agreement, an employer is required - - under the Act and decisions of the Courts and this Commission - - to maintain the status quo regarding existing terms and conditions of employment, including the payment of step

increments, whether they be established by the terms of the collective negotiations agreement or by past practice (Township's brief at p. 2).

However, in this circumstance (in January, 2007), the Township argues that, for several reasons, it is not obligated to continue to advance employees on the step increment salary guide. First, the Township notes that there is nothing in the contract which mandates the continued automatic payment of increments. Second, the employer notes that there is no past practice regarding the treatment of the '03-'06 compensation provisions and salary schedule after the expiration of the contract. Third, the '03-'06 agreement provides for one annual raise adjustment each year, on January 1. The agreement provides that the across-the-board raise shall be provided on January 1 and any step increment raises due to employees on their employment anniversary date shall now also be provided on January 1, as the parties have agreed that January 1 shall be deemed the employment anniversary date for all employees for salary adjustment purposes. By merging the payment of the two raise elements on January 1, the employer argues that there is no longer a separate step increment system, making compensation increases a matter to be negotiated from contract to contract.

The Commission has utilized a number of factors in evaluating failure-to-pay-increments interim relief cases. These

factors include, inter alia, statutory language requiring the automatic payment of increments; contractual language directing, or a contractual salary schedule effecting the automatic payment of increments; a past practice under which increments have been automatically paid; and various other indicia of an automatic step increment compensation plan - - such as, the regular payment of increments to all unit employees pursuant to a clear and internally consistent salary guide.

The Respondent cites Hudson Cty. Sheriff, P.E.R.C. No. 93-56, 19 NJPER 64 (¶24029 1992) and H.E. No. 93-2, 18 NJPER 384 (¶23173 1992), in support of its argument that the parties' '03-'06 agreement does not require the payment of salary step increments. However, Charging Party argues that the relevant facts in Hudson Cty., by which the Commission, the Commission Designee and the Hearing Examiner determined that the design of the compensation plan in the parties' agreement was not an automatic step increment system, are different from the facts in the instant matter.

In Hudson Cty, there was no clear history of the payment of salary step increments. In Winslow Township, there has been a clear practice (albeit short) of the payment of increments to employees under the parties' agreed-upon six-step salary guide. In Hudson, the salary guide structure was internally inconsistent and asymmetrical. In Winslow Township, the salary guide

structure is internally consistent. In Hudson, there was no differentiation between the step increment element of compensation increases and the across-the-board percentage increase element of compensation; there was one, undifferentiated annual salary adjustment. In Winslow, there are two distinct elements of compensation increases - - a step increment increase and an across-the-board percentage increase for each year of the contract. Although the '03-'06 contract in Winslow provided that these raises were given at the same time, the two raise elements remained distinct and identifiable. In Hudson, there was no clear indication of a date or any clear schedule of when step increments were to be given. In Winslow, January 1 was the designated date for the payment of increments. In Hudson, there was no clear and consistent relationship between increments and years of service. In Winslow Township, there is a direct relationship between years of service (up to six) and receipt of increments.

In its decisions concerning the withholding of salary step increments after the expiration of a collective negotiations agreement and during negotiations for a successor agreement, the Commission has stated that specific contractual language mandating the payment of increments is not necessary for establishing an obligation to provide salary step increments. Galloway and State of New Jersey, supra. In the instant matter,

the parties' salary schedule is a conventional step increment compensation plan providing for automatic movement on the salary guide. Nothing in the contract or the record suggests otherwise. During the period of the '03-'06 agreement when the parties did have the opportunity to apply the step increment compensation plan, on January 1, 2006, all employees on-guide were automatically advanced one step on the salary guide.

That there is one merged raise payment to employees here is of no moment in this dispute. The parties' agreement provides for two separate and distinct raise elements: (a) an across-the-board raise, given annually, on January 1, pursuant to the parties' negotiated agreement, to each employee covered by the agreement; and (b) a salary step increment raise, given to eligible employees on-guide (i.e., employees on steps 1-5 of the salary guide), on January 1, their contractually designated employment anniversary date.

At the expiration of the parties' agreement on January 1, 2007, a snapshot of the parties' extant terms and conditions of employment included an automatic step increment compensation plan. The record here provides no basis for changing that compensation plan by halting the step increment movement of eligible employees.

Accordingly, in the instant matter, the Township's refusal to pay salary step increments on January 1, 2007, was a

unilateral change of an existing term and condition of employment. This change occurred at the expiration of the parties' '03-'06 collective negotiations agreement and during negotiations for a successor agreement. Based upon all of the foregoing, Charging Party has demonstrated a likelihood of success on the merits of its charge and that it would be irreparably harmed in the absence of interim relief. Galloway. Further, there has been no demonstration that the granting of interim relief would harm the public interest. Rather, the maintenance of the integrity of the collective negotiations process enhances labor relations stability and thus, promotes the public interest. And finally, there has been no demonstration that providing the interim relief sought herein would impose a greater hardship upon the Township than a denial of such relief would impose upon Council 10.

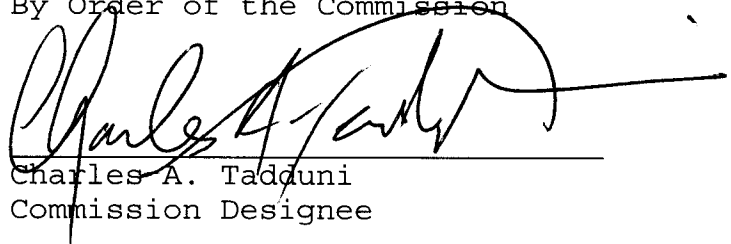
ORDER

Accordingly, it is hereby ordered that the Respondent, Township of Winslow, immediately pay to those eligible Winslow Township non-supervisory white collar and blue collar unit employees the salary increments due to them pursuant to the increment system contained in the parties' expired '03-'06 collective negotiations agreement and the parties' practice under that agreement.



It is further ordered that the Township of Winslow pay the affected employees the monetary difference between the amount the eligible employees would have received had their increments not been unilaterally withheld and the amount they were in fact paid, between January 1, 2007 and the date of this order.

By Order of the Commission

A handwritten signature in black ink, appearing to read "Charles A. Tadduni", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Charles A. Tadduni  
Commission Designee

Dated: February 2, 2007  
Trenton, New Jersey