

I.R. NO. 96-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY BOARD OF SOCIAL SERVICES,

Respondent,

-and-

Docket No. CO-96-261

LOCAL 153, OPEIU,

Charging Party.

SYNOPSIS

A Commission Designee ordered the Ocean County Board of Social Services to restore salaries to those employees who received wage increments pursuant to the parties collective negotiations agreement and then had those increments rescinded by the Board during collective negotiations.

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Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(Karen Murray, of counsel)

For the Charging Party,
Schneider, Goldberger, Cohen, Finn, Solomon, Leder,
Montalbano
(Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On March 13, 1996, OPEIU Local 153 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Ocean County Board of Social Services committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act; specifically, N.J.S.A. 34:13A-5.4(a)(1), (3) and (5)^{1/} when the Board, after granting salary increases on January

^{1/} These subsections 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. (3) Discriminating in

1, 1996, unilaterally rescinded the payment of those increases on February 20, 1996. The first negotiations session for this new unit was to take place on February 22, 1996. The OPEIU also sought an interim order pending a final Commission decision.

An order to show cause was executed and a hearing conducted on April 15, 1996.

The Board opposed the motion arguing that there is no uniform pattern in paying increments by the Board and therefore it was not required to pay increments.

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 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 relative hardship to the parties in granting or denying the relief must be considered. Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State

1/ Footnote Continued From Previous Page

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. (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."

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).

On December 7, 1995, this Commission certified Local 153 as the exclusive negotiations representative for supervisory employees of the Board and the parties scheduled their first negotiations session for February 22, 1996.

There is no dispute that on January 1, 1996, with consent of Local 153, certain employees received salary increases in the form of increments and longevity payments. On February 20, 1996, two days before negotiations between the parties were to commence, the Board passed a resolution stating that effective January 1, 1996, the base salary of these same employees, "will remain at the rate in effect on December 31, 1995 and effective January 1, 1996 longevity and increment salary increases will not be granted." Accordingly, the Board reduced the salaries of employees who's salaries were increased on January 1, 1996 to the 1995 level.

The Board argues that it had to take this action because of a financial short fall; it submitted a lay-off plan to the Department of Personnel and had to take these economic steps pending approval of the lay-off plan.

The Board has a long standing practice of paying increments and longevity payments. The Board claims, however, that such payments were not automatic. In 1993 it declined to pay increments. Moreover, increments were never paid consistently at

the same time of year. However, the Union maintained that in 1993, although increment payments were delayed, they were paid retroactively.

It is not necessary to make a determination as to whether or not increment payments are automatic; there was a unilateral reduction in salaries two days before negotiations were to commence.

In Galloway Township Bd. of Ed. v. Galloway Township Ed. Ass'n, 78 N.J. 25 (1978), the Court held the language of N.J.S.A. 34:13A-5.3 "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated before they are established" requires an employer to preserve the status quo during negotiations.

In Galloway, the Court held the amount of an employee's compensation is an important condition of their employment. Here, compensation was reduced; the status quo was altered. Such conduct by the Board has "the effect of coercing its employees in their exercise of the organizational rights guaranteed them by the Act because of its inherent repudiation of and chilling effect on the exercise of their statutory right to have such issues negotiated on their behalf by their majority representative." Galloway.

The employer's economic arguments are not persuasive. The Commission and the Courts have considered and rejected such defenses to similar requests for interim relief. County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd and modified App. Div. Dkt No. A-1572-79 (4/1/81); 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); Galloway; County of Sussex, I.R. No. 91-15, 17 NJPER 234 (¶22101 1991).

Unilaterally modifying salaries on the eve of negotiations contradicts the meaning of collective negotiations, since ordinarily one cannot unilaterally act and still collectively negotiate about the same subject. Having demonstrated a unilateral change in the status quo, the Union has also proven a per se illegal refusal to negotiate in good faith. This so interferes with the negotiations process and adversely affects the ability of Local 153 to represent unit members that a traditional award at the conclusion of this case would not effectively remedy the violations of the Act. See Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶14007 1977).

Accordingly, I ORDER the Respondent, Ocean County Board of Social Services, to immediately restore the salaries to those employees who received wage increments pursuant to the incremental adjustments in January 1996 that were rescinded on February 20, 1996.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

DATED: April 16, 1996
Trenton, New Jersey