

I.R. NO. 2001-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY,

Respondent,

-and-

Docket No. CO-2001-300

BURLINGTON COUNTY CORRECTIONS
PBA LOCAL NO. 249,

Charging Party.

SYNOPSIS

A Commission Designee grants interim relief on the PBA's charge that the Town discontinued the corrections officers' uniform allowance after the contract expired. The Commission Designee finds that the failure to maintain existing benefits during negotiations and interest arbitration for a successor contract would result in irreparable harm and have a chilling effect on negotiations. The County is ordered to pay the uniform allowance forthwith.

I.R. NO. 2001-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY,

Respondent,

-and-

Docket No. CO-2001-300

BURLINGTON COUNTY CORRECTIONS
PBA LOCAL NO. 249,

Charging Party.

Appearances:

For the Respondent,
Evan Crook, County Counsel
(Daniel Hornickel, Assistant Counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles Schlager, of counsel)

INTERLOCUTORY DECISION

On April 18, 2001 Burlington County Corrections PBA Local 249 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Burlington County (County) violated 5.4a(1), (2) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} when

^{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

during negotiations and interest arbitration, it refused to pay employees their annual uniform allowance pursuant to the expired collective negotiations agreement. The County denies the unfair practice and asserts generally that the corrections officers are not entitled to a clothing allowance once the contract has expired; and that any contract dispute should be addressed through the parties' grievance arbitration process, not an unfair practice.

The unfair practice charge was accompanied by an application for interim relief pursuant to N.J.A.C. 19:14-9. On April 20, 2001, I issued an order to show cause scheduling the return date on the interim relief application for May 7, 2001. The return date was postponed to May 16. The parties submitted briefs and affidavits in accordance with Commission rules and argued orally on the rescheduled return date. The following facts appear.

PBA Local 249 is the majority representative of the County's corrections officers and identification officers. The most recent collective agreement between the parties was signed June 29, 2000 and covered the period January 1, 1998 through December 31, 2000. Article III of the agreement, "Uniform

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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."

Allowance" provides in relevant part:

A. ...All corrections officers shall maintain and wear the proper uniform for corrections officers as prescribed herein...

* * *

D. Annual Allowance

1. 1998 - Each eligible officer shall be paid the lump sum of \$575, as of April 1, 1998.
2. 1999 - Each eligible officer shall be paid the lump sum of \$600, as of April 1, 1999.
3. 2000 -- Each eligible officer shall be paid the lump sum of \$625 as of April 1, 2000.
4. The lump sum payments made under subparagraph 1, 2, and 3 of this paragraph are intended by the parties to be utilized by the officer for replacement and maintenance of their uniforms. It is the officer's sole responsibility to insure he/she reports to work in a proper uniform in compliance with applicable administrative directives, policies/procedures and codes. Failure of the officer to report for work in a proper uniform may result in disciplinary action.

The parties have apparently historically negotiated the amount of uniform allowance to be paid employees in each year of a contract period. The PBA asserts, and the County does not deny, that the County has paid the clothing allowance regularly even when the parties' contracts had expired. In 1998 and 1999, County Management Specialist Augustus Mosca advised the PBA by letter that, while the County denied any legal obligation to pay the clothing

allowance as provided in the 1995-97 contract, it would nevertheless pay employees a clothing allowance on or about April 1.^{2/}

The parties have been in negotiations since the contract expired December 31, 2000. The PBA has filed a demand for interest arbitration and an arbitrator was appointed March 29, 2001. The interest arbitrator has scheduled the first arbitration session with the parties for May 24. The PBA has demanded in negotiations that the annual uniform allowance amounts be increased. The County's position in negotiations has been "to maintain the 2000 allowance of \$625 for future years."

On March 27, 2001, the County advised the PBA that, until the contract was settled, it would not pay a uniform allowance to employees since it believed the "clear language of the contract" only provided payments for the specific years of the contract.

ANALYSIS

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

^{2/} At oral argument, the County expressed some doubt over whether corrections officers had been paid a uniform allowance in April, 2000. The PBA maintains that at no time in the parties' history did the County stop paying employees their clothing allowance.

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).

The PBA maintains it will succeed on the merits in that the County has repudiated the contract and failed to negotiate in good faith when it discontinued the clothing allowance benefit while the parties were in negotiations and interest arbitration. The County argues that, because the contract benefit delineates a certain dollar amount for each enumerated year, once the contract expires, there is no benefit to maintain. That is, it argues that the benefit sunsets with the contract's expiration.

It is well settled that after a contract expires, existing terms and conditions of employment must continue until the negotiations obligation is satisfied. An employer violates 5.4a(5) of the Act by unilaterally modifying or eliminating existing benefits during collective negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978).^{3/} Moreover, N.J.S.A.

^{3/} In addition to ordering the continuation of automatic increment payments, the Commission has granted injunctive relief in situations where other terms and conditions of employment have been unilaterally modified during negotiations or interest arbitration. See Nutley Tp., I.R. No. 99-19, 25 NJPER 262 (¶30109 1999) (unilateral change in starting salaries); State of New Jersey (SLEC), I.R. No. 96-31, 22 NJPER 257 (27134 1996) (paid union leave time); Cherry Hill Tp., I.R. No. 96-30, 25 NJPER 212 (¶30096 1996) (health benefit payments); Harrison Tp., I.R. No. 83-3, 8 NJPER 462 (¶13217 1982) (work schedules).

34:13A-21 expressly prohibits any change in terms and conditions of employment while the parties are engaged in the interest arbitration process.

However, where the contract by its terms terminates a benefit on a date certain, such a benefit does not survive the termination date. See Bogota Board of Education, I.R. 95-9, 20 NJPER 445 (¶25229 1994). Here, unlike Bogota, the language of the contract provision does not explicitly and specifically end the benefit as of a certain date, nor does the contract contain a waiver of the uniform allowance benefit during negotiations.^{4/} Rather, the dates in the uniform allowance clause define when the benefit increases.

Accordingly, I find that the Association has demonstrated a substantial likelihood of success in prevailing on the merits of this matter.^{5/}

The PBA argues that the unilateral alteration of the status quo during negotiations so adversely affects its ability to represent the unit that a traditional award at the conclusion of the

^{4/} See also Asbury Park Housing Auth., I.R. No. 97-5, 22 NJPER 380 (¶27201 1996), finding the prescription drug benefit enumerated in the contract year by year, continues after the contract ends; and State of New Jersey (SLEC), finding no waiver of a paid union leave provision.

^{5/} The County cites State of New Jersey (SLEC), where interim relief was denied when a uniform allowance was discontinued after contract expiration. However, in that matter interim relief was denied, not on the merits but on the lack of irreparable harm.

case will not effectively remedy the violation of the Act.

Galloway; Evesham Tp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

The County argues that the corrections officers are not irreparably harmed by doing without their uniform allowance, notwithstanding the contractual requirement that they maintain their uniforms at all times. The County cites State of New Jersey (SLEC), where the Commission's Chair found no irreparable harm resulting from the employer's failure to pay the uniform allowance.


Ordinarily, issues of monetary remedy are not irreparable. However, in circumstances such as here where the parties are engaged in negotiations and interest arbitration, the repudiation of an ongoing economic benefit undermines the majority representative's ability to represent its unit and chills the employees' rights to negotiate collectively. The effect of the County's unilateral action was to reduce the benefit to zero and make the PBA bargain it back. In effect, restoring the existing benefit now levels the economic playing field for negotiations.

State of New Jersey (SLEC) is distinguishable. In that matter, the employer had proposed in negotiations that the uniform allowance be eliminated entirely and/or replaced with a voucher system of reimbursement. Here, the employer has not proposed to eliminate the cash payment of uniform allowance or even to reduce the payment amount. Rather, the County has taken the position in negotiations that the benefit be continued at the current level. I

find that the possible harm to the County is minimal since both parties are seeking in negotiations to maintain the clothing allowance benefit at some level.^{6/}

ORDER

Accordingly, I hereby ORDER that the County of Burlington restore the annual uniform allowance of \$625 for each eligible employee during negotiations and interest arbitration for a successor agreement. The County is hereby ORDERED to pay each eligible employee the \$625 uniform allowance due April 1, 2001 as soon as practicable.



Susan Wood Osborn
Commission Designee

DATED: May 21, 2001
Trenton, New Jersey

^{6/} The County did not argue that it or the public interest would be harmed if interim relief were granted.