

I.R. NO. 99-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-99-283

NUTLEY PBA LOCAL 33,

Charging Party.

SYNOPSIS

During interest arbitration, the Township of Nutley unilaterally changed the starting salary for newly hired police officers. The Commission Designee found that such change during on-going negotiations may have a chilling effect on employee rights guaranteed by the Act. The Designee restrained the Township from unilaterally changing newly hired patrol officers' salaries and ordered it to make employees whole for any reduction in wages they may have suffered.

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Appearances:

For the Respondent,
Savage & Serio, attorneys
(Beverly M. Wurth, of counsel)

For the Charging Party,
Abramson & Liebeskind, Consultants
(Arlyne Liebeskind, consultant)

INTERLOCUTORY DECISION

On March 2, 1999, Nutley PBA Local 33 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Nutley (Township) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleges that the City violated N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The unfair practice charge was accompanied by an

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

application for interim relief. On March 4, 1999, an order to show cause was executed and a return date was initially scheduled for March 25, 1999, and, subsequently, rescheduled at the PBA's request to April 20, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

Apparently, the Township and the PBA were parties to a collective agreement covering the calendar years 1996 and 1997, and have engaged in successor collective negotiations, but were unable to reach a voluntary settlement. It appears that the parties have proceeded to interest arbitration, hearings have been completed and post-hearing briefs are scheduled for submission.

The expired collective agreement contains a provision in Article VII, Section 1, which provides the first step salary for a patrol officer is \$28,000 per year. The PBA contends that on January 4, 1999, the Township submitted its revised final offer to the arbitrator which contained an "academy rate" of \$25,000 for newly hired police officers (retroactive to January 1, 1999).

1/ Footnote Continued From Previous Page

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."

Apparently, on or about January 1, 1999, the Township hired five police officers. It appears that on or about January 5, 1999, the Township informed the newly hired officers that they would be paid at an annual rate of \$25,000 during their training period. The Township asserts that it advised the new hires that in the event the arbitrator rejected the Township's position concerning an "academy rate" of pay, the Township would make appropriate retroactive salary adjustments.

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).

There appears to be no dispute that on or about January 5, 1999, the Township unilaterally changed the starting salary rate for newly hired police officers during the pendency of the interest arbitration process. Salary is a mandatorily negotiable term and condition of employment. Englewood Bd. of Ed. v. Englewood Teachers Ass'n., 64 N.J. 1 (1973). The initial placement on the salary guide

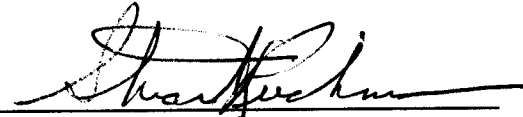
is also mandatorily negotiable. Belleville Ed. Ass'n. v. Belleville Board of Education, 209 N.J. Super. 93 (App. Div. 1986); Stanhope Borough Board of Education, P.E.R.C. No. 90-81, 16 NJPER 178 (¶1076 1990). A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978). Further, a unilateral change of a term and condition of employment during the pendency of interest arbitration constitutes a violation of N.J.S.A. 34:13A-21. Consequently, applying the above-cited cases here, I find that the PBA has shown that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. Moreover, under Galloway, I find that the Township's unilateral change in employees' placement on the salary guide undermines the PBA's ability to represent its members and results in irreparable harm.

Considering the public interest and the relative hardship to the parties, I find that the public interest is furthered by adhering to the tenants expressed in the Act which require the parties to negotiate prior to implementing changes in terms and conditions of employment. Maintaining the collective negotiations process results in labor stability and promotes the public interest. In assessing the relative hardship to the parties, I find that the scale tips in favor of the PBA. The Township experiences a lesser degree of hardship by being required to adhere to the

previously agreed upon terms of the collective agreement. However, the PBA will be irreparably harmed as the result of a unilateral change in a term and condition of employment during the pendency of collective negotiations.

ORDER

The Township is restrained from unilaterally reducing newly hired patrol officers' salaries from \$28,000 to \$25,000 per year. The Township is ordered to make affected employees whole for salary payments made at a rate less than \$28,000 per year. This interim order will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.


Stuart Reichman
Commission Designee

DATED: April 23, 1999
Trenton, New Jersey