

P.E.R.C. NO. 2000-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-H-99-283

NUTLEY PBA LOCAL 33,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Nutley violated the New Jersey Employer-Employee Relations Act when it reduced starting salaries of patrol officers during interest arbitration proceedings with Nutley PBA Local 33. The Commission orders the Township to cease and desist from refusing to negotiate with PBA Local 33, particularly by unilaterally altering starting salaries.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

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

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

DECISION

On March 2, 1999, Nutley PBA Local 33 filed an unfair practice charge against the Township of Nutley. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} by unilaterally reducing the starting salary of patrol officers during interest arbitration proceedings. The charge was accompanied by a request for interim relief.

^{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."

On April 23, 1999, a Commission designee restrained the Township from unilaterally reducing the starting salary of new patrol officers from \$28,000 to \$25,000 per year. I.R. No. 99-19, 25 NJPER 263 (¶30109 1999). The Township was also ordered to make affected employees whole for salary payments made at a rate less than \$28,000 per year.

After having received no response to a request to notify the Chair of what steps that Township had taken to comply with the Order in I.R. No. 99-19, the matter was referred to the General Counsel to initiate enforcement proceedings.

On August 18, 1999, the Township notified a Commission staff agent that it had complied with the order to pay all new hires in accordance with the salary schedule set forth in the expired collective negotiations agreement. On August 23, the PBA inquired of the Director of Unfair Practices as to whether a Complaint would issue absent an acknowledgment by the Township that it would refrain from such unilateral action in the future.

On October 6, 1999, the staff agent inquired of the parties as to whether the issuance of an interest arbitration award setting starting salaries rendered the Complaint moot. On October 18, the PBA responded that the case is not moot because no final determination has been made as to whether the Township violated the Act and because no forum has held the Township responsible for its failure to negotiate in good faith. The record does not indicate that the Township responded to the staff agent's inquiry.

On January 6, 2000, a Complaint and Notice of Hearing issued. The Township has not filed an Answer.

On January 27, 2000, the PBA filed a motion for summary judgment. The Township has not filed a response. On February 10, the Chair referred the motion to the Commission. N.J.A.C.

19:14-4.8.

The PBA has filed a certification and exhibits. No material facts are in dispute. Accordingly, summary judgment will be granted if the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). We summarize the pertinent facts.

The PBA is the majority representative of all full-time police officers and sergeants in the Nutley Police Department. The parties entered into a collective negotiations agreement covering calendar years 1996 and 1997. Under that agreement, the starting salary for a patrol officer is \$28,000.

The parties were unable to reach a settlement on the terms of a successor agreement and the PBA filed for interest arbitration in February 1998. Hearings were held on October 13, 1998 and January 4, 1999.

By letter dated January 5, 1999, the Director of Public Safety notified five new employees that their salary during their training period would be \$25,000. At no time did the Township negotiate with the PBA over a reduction in the starting salary.

N.J.S.A. 34:13A-21 requires that:

During the pendency of interest arbitration proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other....

In this case, the employer unilaterally reduced starting salaries during interest arbitration proceedings. Initial placement on the salary guide is a mandatorily negotiable issue. In general, an employer cannot set a new employee's starting salary without first negotiating with the majority representative. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 25 NJPER 357 (¶30151 App. Div. 1999), certif. granted; Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Stanhope Bor. Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990); Gloucester Tp., P.E.R.C. No. 87-42, 12 NJPER 805 (¶17308 1986); Somerset Cty., P.E.R.C. No. 86-136, 12 NJPER 453 (¶17171 1986).

The employer has offered no reason for not complying with its negotiations obligation and no reason for believing that its conduct cannot reasonably be expected to recur. Cf. Adarand Constructors Inc. v. Slater, __ U.S. __, 120 S. Ct. 722 (2000) (party asserting mootness must persuade the court that challenged conduct cannot reasonably be expected to start up again). Under these circumstances, finding a violation of 5.4a(5) and, derivatively a(1), issuing a cease and desist order, and ordering a posting are appropriate. Restoration of the status quo is no longer required because the employer has complied with the

interim relief order and an interest arbitration award has apparently issued setting starting salaries.

ORDER

The Township of Nutley is ordered to:

A. Cease and desist from refusing to negotiate in good faith with Nutley PBA Local 33, particularly by unilaterally altering starting salaries.

B. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: February 24, 2000
Trenton, New Jersey
ISSUED: February 25, 2000



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate in good faith with Nutley PBA Local 33, particularly by unilaterally altering starting salaries.

Docket Nos. CO-H-99-283

TOWNSHIP OF NUTLEY
 (Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"