

I.R. No. 2020-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE/
COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-2020-196

POLICEMEN'S BENEVOLENT
ASSOCIATION LOCAL 197,

Charging Party.

SYNOPSIS

A Commission Designee restrains Passaic County Sheriff's Office/County of Passaic from unilaterally recouping compensation paid to correction officer unit employees, based upon an application for interim relief accompanying an unfair practice charge alleging that the County's conduct violates section 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq.

The Designee also determined to defer the matter to arbitration, pursuant to the majority representative's filing of timely grievances contesting the County's conduct and a contractual grievance procedure ending in binding arbitration.

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Appearances:

For the Respondent,
Florio Perrucci Steinhardt & Cappelli, LLC, attorneys
(Lester Taylor, of counsel)

For the Charging Party,
Crivelli & Barbati, LLC, attorneys
(Donald Barbati, of counsel)

INTERLOCUTORY DECISION

On January 27, 2020, Policemen's Benevolent Association, Local #197 (PBA) filed an unfair practice charge against Passaic County Sheriff's Office/County of Passaic (County), together with an application for interim relief seeking a temporary restraint, certifications, exhibits and a brief. The charge alleges that on or about January 8, 2020, County Budget Examiner Linda Arslanouk advised the PBA that specified corrections officers were overpaid for several years, dating to 2016. Four named officers were each allegedly overpaid, in the aggregate, between \$43,000 and \$57,000. The charge alleges that the County unilaterally began

garnishing their wages and reduced their pay, “. . .by removing them from the step of the salary guide that they were on before allegations of overpayment were made and placed them several steps back on the salary guide.” The charge also alleges that many other officers, “. . .have had their salary garnished without any explanation to each officer.”

The charge alleges that the parties' most recent memorandum of agreement extended from January 1, 2015 through December 31, 2018. The parties are in negotiations for a successor agreement. The County's conduct allegedly violates section 5.4a(1), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

On January 29, 2020, an Order to Show Cause with a temporary restraint issued, setting forth dates for the County's response, the PBA's reply and argument in a telephone conference call. On February 20, 2020, the parties argued their respective cases. The following facts appear.

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. (7) Violating any of the rules and regulations established by the commission.

The PBA represents non-supervisory correction officers employed by the County. The parties signed a memorandum of agreement (MOA) extending from January 1, 2015 through December 31, 2018. The parties' most recent collective negotiations agreement (CNA) extended from January 1, 2007 through December 31, 2014.

Article 7 of the CNA, "Salaries/Compensation," incorporates an attached salary guide, inclusive of seven steps, specified salaries and annual "effective dates" from January 1, 2007 through January 1, 2014. The CNA also includes a grievance procedure ending in binding arbitration (Article 3) (PBA exhibit B). Articles VII - "Compensation" of the MOA provides:

Effective upon ratification of the Agreement, the Salary Guide attached hereto as "Exhibit A" shall be incorporated in the Agreement and replace the current salary guide.

Effective January 1, 2015, employees will not move on the Salary Guide and will not receive a cost of living adjustment in his/her salaries.

Effective January 1, 2016, employees will move two (2) steps on the salary guide, and all those employees at maximum will receive a one percent (1%) cost of living adjustment.

Effective January 1, 2017, employees will move one (1) step on the Salary Guide and all those employees at maximum will receive a one percent (1%) cost of living adjustment.

Effective January 1, 2018, employees will move one (1) step on the Salary Guide, and all those employees at maximum will receive a

one percent (1%) cost of living adjustment
[PBA, Exhibit A]

Unit employee and County correction officers Sean Eliassen was hired by the County in 2016 and began employment on the "initial step" of the salary guide, earning \$38,301. On September 6, 2016, the PBA signed the MOA that was ratified in December, 2016. Following ratification, Eliassen was advanced two steps - to step three of the guide, and was paid a salary of \$47,420. In 2017, he was advanced to step four and paid a base salary of \$53,443. In 2018, Eliassen was advanced to step five of the guide, providing a base salary of \$60,807. In 2019, he was advanced to the sixth step, earning a base salary of \$67,708.

On or about January 3, 2020, Eliassen was informed by County Budget Examiner Linda Arslanouk that his salary would be "readjusted" because he'd been "overcompensated" since 2016. He was informed that recoupment would be done, ". . . by way of automatic wage withholding, a step reduction on the salary guide and a step freeze." The readjustment is to continue through 2023.

Eliassen certifies that the County initiated the "readjustment process" by reducing his gross bi-weekly salary from \$2,883.67 to \$2,596.13 and further deducting \$792.71, lowering his gross bi-weekly salary to \$1,803.42. Eliassen certifies that the drastic salary reduction, ". . . will have

devastating impact on [his] ability to meet financial obligations and pay for everyday living expenses" (Eliassen certification).

County corrections officer and unit employee James Dickson was hired by the County in 2016 and continues employment in that title. His initial step guide salary was \$38,301. Following ratification of the MOA, Dickson was advanced two steps on the guide, providing him a base salary of \$47,420. In 2017, he was advanced to step four and was paid a base salary of \$53,443. In 2018, Dickson was advanced to the fifth step and paid a base salary of \$60,807. In 2019, he was advanced to step six and paid a base salary of \$67,708.

On or about January 3, 2020, the County Budget Examiner informed Dickson that he'd been "overcompensated" since 2016 and that the County will readjust his salary by recoupment - automatic wage withholding, a step reduction on the salary guide and a step freeze. Dickson was informed that the "readjustment" would continue through 2023.

Dickson certifies that before "readjustment" began, his gross bi-weekly salary was \$2,821.17. His bi-weekly gross salary has been changed to \$2,533.63, from which \$674.08 is further deducted, leaving him a gross bi-weekly salary of \$1,976.49. Dickson certifies that the "drastic salary reduction" will have a "devastating impact on [his] ability to meet financial

obligations and pay for everyday living expenses" (Dickson certification).

Substantially similar certifications have been filed by County corrections officers and unit employees Christopher Koodray and Dwayne Lovely. They too were hired in 2016, advanced on the guide consistent with correction officers Eliassen and Dickson and were similarly advised in January, 2020 of "overpayment" to them.

Koodray's bi-weekly gross salary was decreased from \$2,883.67 to \$2,596.13 and further reduced by \$779.17, lowering his gross bi-weekly salary to \$1,816.96. Lovely's bi-weekly gross salary of \$3,024.71 (inclusive of a night differential and education pay) was reduced to \$2,722.79, from which an additional \$602.07 was deducted, resulting in a gross bi-weekly salary of \$2,120.72. Both employees certify that the salary reduction, ". . . will have a devastating impact on [their] ability to meet financial obligations and pay for everyday living expenses" (Koodray and Lovely certifications).

On January 21, 2020, PBA filed four grievances with County Sheriff Richard Berdnik contesting the respective "wrongful reductions" in wages, garnishment and withholding of salaries and step reductions of corrections officers Eliassen, Dickson, Koodray and Lovely and on behalf of all similarly situated corrections officers (PBA Exhibit C). In its response, the County has

submitted copies of similar grievances filed by the PBA on behalf of corrections officers Michael Bustios and David Hunt (County exhibit).

The parties are in negotiations for a successor collective negotiations agreement.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain 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. DeGioia, 90 N.J. 126, 132-134, (1982); Whitmeyer 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).

Section 5.3 of the Act provides:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

To prove a violation of this section, a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J.

322 (1989); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

As a rule, employees have a right to negotiate over compensation they receive for the duties they perform. See, e.g., Hunterdon Cty. Freeholder Bd. and CWA; Woodstown-Pilesgrave Reg. H.S. Dist Bd. of Ed. v. Woodstown-Pilesgrave Ed. Ass'n, 81 N.J. 582 (1980); State of New Jersey (Dept of Human Services), P.E.R.C. No. 97-106, 23 NJPER 194, 197 (¶28090 1997). Both the salary step system and an employee's placement on a salary guide are mandatorily negotiable. Sussex Cty., P.E.R.C. No. 83-92, 9 NJPER 77 (¶14042 1983); Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986). Just as salary increases are mandatorily negotiable, so too are salary reductions. Camden Cty., P.E.R.C. No. 94-121, 20 NJPER 282 (¶25143 1994); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35, 36 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80J8 (5/24/82).

A public employer's unilateral recoupment of purported overpayments in compensation to unit employees has been found to violate section 5.4a(1) and (5) of the Act and to be an appropriate source of interim relief restraints. City of Orange Tp., P.E.R.C. No. 2001-46, 27 NJPER 124 (¶32046 2001); City of Orange Tp., I.R. No. 2000-16, 26 NJPER 326 (¶31131 2000); City of Camden, I.R. No. 2010-12, 36 NJPER 59 (¶27 2010); City of Orange

Tp., I.R. No. 2007-9, 33 NJPER 99 (¶134 2007); Cf. Borough of Dunellen, P.E.R.C. No. 97-30, 22 NJPER 370 (¶27194 1996).

The County does not contest the facts set forth in the PBA's unfair practice charge and accompanying certifications (brief at 4-5). It asserts that a temporary restraint, ". . . for purely monetary damages is improper under the law" and should not be considered "irreparable harm" (brief at 4).

In each of the detailed accountings set forth in the four certifications by unit employees, the County has apparently and unilaterally commenced recoupment of wages amounting to about one-third of each specified unit employee's bi-weekly gross salary. In the absence of any factual dispute, it appears that the wage reductions were accomplished by unilateral wage withholding, step reductions and freezes. Accordingly, I find that the PBA has established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed by the Act, undermines labor stability and constitutes irreparable harm. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). The County's apparent unilateral changes in the specified terms and conditions of employment during the course of the parties' negotiations for

a successor agreement undermines the PBA's ability to represent its members, resulting in irreparable harm.

I also find that the public interest is advanced by requiring the County to adhere to tenets of the Act specifying that parties must negotiate before implementation of changes in terms and conditions of employment. Based upon evidence produced to date, I find that the harm to the PBA and affected unit employees if recoupments are allowed to proceed is greater than harm to the County if the temporary restraint on recoupment remains intact. The County did not show a significant financial benefit from recoupment but the financial detriment to certain employees appears to be significant.

Finally, I find that this matter is deferrable and deferred to binding grievance arbitration. Deferral is the preferred mechanism when an unfair practice charge essentially alleges a violation of section 5.4a(5) interrelated with an alleged breach of contract and no procedural barriers bar arbitration (PBA brief at 5 provides: "It is the [PBA's] position that the officers were properly paid in accordance and consistent with Article VII of the MOA agreed-upon by the parties"). See Brookdale Comm. Coll., P.E.R.C. No. 83-131, 9 NJPER 266 (¶14122 1983). The Commission shall retain jurisdiction over the charge so that if the award is challenged, it can assure itself that the procedures were fair

and regular and the result is not repugnant to the Act. Stafford
Tp. Bd. of Ed., P.E.R.C. No. 90-17, 14 NJPER 527 (¶20217 1989).

ORDER

The temporary restraint issued on January 29, 2020 shall remain in effect, pending the parties' participation in a grievance arbitration and resulting award on the merits of the several grievances, copies of which are exhibits in this case. The restraint shall expire upon the parties' receipt of that award(s) or upon a mutually signed agreement resolving the grievance.

/s/ Jonathan Roth
Jonathan Roth
Commission Designee

DATED: February 20, 2020
Trenton, New Jersey