

I.R. NO. 96-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-96-246

BERGEN COUNTY POLICE PBA LOCAL 49,

Charging Party.

SYNOPSIS

A Commission Designee declines to order the County of Bergen to pay certain salary increases upon the expiration of a contract and prior to the implementation of the new contract. The employees in question have historically been paid pursuant to a formula based upon a sampling of salaries in police departments in the County. The multi-year contract provided for interim salary increase on January 1 pending the establishment of salaries in the other police departments in the County. It was found that the PBA has not demonstrated that it has a substantial likelihood of success in proving the granting of such salary increases created a term and condition of employment.

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Appearances:

For the Respondent,
Edwin C. Eastwood, Jr., attorney
(Peter A. Scandariato, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

INTERLOCUTORY DECISION

On February 27, 1996, the Bergen County Police PBA Local 49 filed an unfair practice charge with the Public Employment Relations Commission alleging that the County of Bergen engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (4), (5) and (7).^{1/}

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

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It alleges that:

The County and the PBA are parties to a series of collective negotiations contracts since approximately 1977. All of the contracts have contained a provision for a January compensation adjustment and during that time, the parties have never been able to execute a new agreement prior to the expiration of the existing contract. Nevertheless, the annual pay adjustment has been paid every year.

The most recent contract which expired on December 31, 1995, has a January pay adjustment, at Paragraph 7, Article VIII. The parties have yet to reach a successor agreement, but an automatic annual pay adjustment has not been paid for 1996.

It is alleged that this failure to pay the annual adjustment constitutes a change in terms and conditions of employment made during the collective bargaining process.

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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 unfair practice charge was accompanied by an order to show cause. The order was executed and ultimately made returnable for March 15, 1996.

The employer opposes the application. It admits that in prior years under similar circumstances, the County anticipated a salary increase would be negotiated into the successor contract and paid the annual salary adjustment. However, no wage increase is anticipated in 1996. It alleges the PBA is attempting to subvert the bargaining procedures by using the litigation to gain salary increases for its members that will not be forthcoming in the collective negotiations process.

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 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).

Article VIII of the contract which expired on December 31, 1995 provides, in pertinent part:

1. The base annual salaries for the year 1994 for all Employees covered by this Agreement are set forth in Schedule A. This salary schedule reflects the parties' efforts to have placed the salaries for all Bergen County Police Officers at a representative position based upon the maximum Police Officer's salary (top step) being at the ninety-fifth (95%) percentile of those Bergen County law enforcement agencies listed in Appendix B.


2. Each year the annual salaries for all Employees covered by this Agreement shall be computed based upon the current year maximum base annual salary (top step) for Patrolmen or Prosecutor's Senior Investigators in Bergen County law enforcement agencies list in Appendix B. The maximum Bergen County Police Officers' base annual salary (top step) for each year shall be at the ninety-fifth (95%) percentile of the maximum base annual salaries for Patrolmen or Prosecutor's Senior Investigators in the respective agencies list in Appendix B. Not less than ninety-five (95%) percent of those agencies shall have a maximum base annual salary for Patrolmen for said year which is below the maximum base annual salary of the Bergen County Police Officer. All computations shall be from the top of the list.

7. Recognizing that some of the agencies listin Appendix B may finalize their annual pay rates after January 1 of each of either of the said years, the parties to this contract agree that there shall be an adance payment across-the-board annually payable as soon as practicable after January 1 of each year for all Employees covered by this Agreement. Final pay rate adjustments as provided herein shall be made not later than September 1 of each year, respectively, for each of the years covered under this Agreement. The annual advance payment due on January 1 of each year, or as soon thereafter as it can be paid, shall be Two Thousand Two Hundred Fifty (\$2,250.00) Dollars.

Paragraph 7 is part of the negotiated salary package in which salary increases are based upon a formula which cannot be computed at the time the salary increase is due. Accordingly, unit members would receive an advance in anticipation of a salary increase. There is nothing in Paragraph 7 which, by its terms, survives the contract. This is unlike an incremental structure which is based on years of service. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25, 48 (1978). It appears that earlier advance payments made when no contract was in place were purely voluntary.

The PBA has not demonstrated it has a substantial likelihood of success in prevailing here. The Commission is likely to find that the County's past history of paying the salary adjustment in anticipation of a salary increase at the beginning of the year, even though no contract was in place, was a purely voluntary act on the part of the County with no precedential value.

The PBA has not met its heavy burden here. The PBA has not shown that it has a substantial likelihood of success in prevailing at a full plenary hearing. Its application is denied.


Edmund G. Gerber
Commission Designee

DATED: March 22, 1996
Trenton, New Jersey