

H.E. NO. 2008-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. CO-2005-261

CAMDEN COUNTY ASSISTANT PROSECUTORS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Camden County Prosecutor violated 5.4a(1) and (5) of the Act when the Prosecutor repudiated Article 4, Sections A and D of the parties' collective agreement by failing to distribute vacancy monies to assistant prosecutors' base salaries in 2004, 2005 and 2006 and by failing to include 2004 vacancy money in the salary pool before applying the contractual 4 percent increase for 2005. The parties' intent in negotiating Article 4 was that the Prosecutor could use vacancy monies to fill vacant positions or other positions or to distribute unused monies to other assistant prosecutors. The intent was to give the Prosecutor discretion within these alternatives on how to spend the money, not whether to spend it. All Prosecutors since the clause was first negotiated have consistently followed the original intent of the clause -- to keep the vacancy money in the pool of dollars for assistant prosecutors' salaries. Relying on the parties' past practice in administering Article 4, the Hearing Examiner rejected the County's argument that a budget shortfall prevented it from distributing the monies as required by the contract. A budget shortfall is not a valid basis for repudiating a collective agreement. She also rejected the County's contention that past practice is irrelevant because Article 4 is clear and unambiguous. The Hearing Examiner pointed out that both parties presented two different, but plausible, interpretations for the language at issue. Thus, the parties' past practice is meaningful. Finally, she rejected the County's new interpretation of Article 4 (D) regarding the words "balance" and "discretion".

The Hearing Examiner also recommends that the Commission dismiss the portion of the charge which asserts that the Prosecutor repudiated the parties' grievance procedure when he denied the Association's grievance regarding the distribution of the vacancy monies.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Deborah Silverman Katz, County Counsel
(Donna M. Whiteside, Assistant County Counsel)

For the Charging Party,
Loccke, Correia, Schlager, Limsky & Bukosky, attorneys
(Michael A. Bukosky, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On April 11, July 28, and August 8, 2005, the Camden County Assistant Prosecutors Association (Association) filed an unfair practice charge and amended charges against the Camden County Prosecutors Office (Respondent or Prosecutor). The charge and amendments allege that the Respondent violated 5.4a(1) and (5)^{1/}

^{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
(continued...)

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by repudiating the parties' grievance procedure when it refused to implement a grievance determination regarding a contractual salary provision and by repudiating that provision.

On September 15, 2005, a Complaint and Notice of Hearing issued (C-1, J-5).^{2/}

On December 1, 2005, Respondent filed its Answer (C-2, J-2) generally denying that it violated the Act. Specifically, it states that the Prosecutor denied the Association's grievance due to lack of funding and that, even if the contract permits additional compensation tied to vacancies, the Prosecutor exercised his discretion not to grant such compensation due to budget constraints. In 2004, Respondent contends, the Prosecutor exhausted any surplus salary funds because of contractual payments made to recent retirees for unused sick and vacation time. Thus, Respondent asserts, there were no discretionary vacancy funds from which to make additional raises to assistant

1/ (...continued)
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."

2/ "C" refers to Commission exhibits. "J" refers to the parties' joint exhibits in evidence.

prosecutors beyond the contractual 4% cost of living adjustment which they received for 2004.

On June 5 and July 28, 2006, the Association and Prosecutor respectively filed a motion and cross motion for summary judgment. On November 21, 2006, the Public Employment Relations Commission (Commission) denied the parties' motions. Camden County Prosecutor, P.E.R.C. No. 2007-27, 32 NJPER 358 (¶150 2006) (Camden Prosecutor I).

On December 13, 2006, due to the retirement of Hearing Examiner Susan Wood Osborn, the Director of Unfair Practices reassigned this matter to me pursuant to N.J.A.C. 19:14-6.4(a).

A hearing was held on May 8 and 9, 2007 at which the parties examined witnesses and presented exhibits.^{3/} Briefs were filed by July 27, 2007, and Charging Party filed its reply brief by August 10, 2007. Based on the record, I make the following:

FINDINGS OF FACT

1. The Camden County Prosecutor is a public employer within the meaning of the Act (1T11). The Camden County Assistant Prosecutors' Association represents the assistant prosecutors and is a public employee organization within the meaning of the Act (J-12, 1T12).

^{3/} Transcript references to the hearing dates are "1T-" and "2T-", respectively.

2. There are about 60 to 65 employees in the Association's negotiations unit (J-6 attachment). The most recent collective agreement between the Association and the Prosecutor covered the period January 1, 2002 through December 31, 2005 (J-12).

3. Article 4 of that agreement concerns salaries and provides, in pertinent part:

A. Salary increases during the term of this Agreement shall be based upon a pool of dollars as established below and allocated to Assistant Prosecutors and Law Clerks at the discretion of the Prosecutor within statutory limitation. The pool of dollars shall be as follows:

1. Effective pay period 1 of 2002, 3.75% based on the total annual salaries including vacancies as existed on pay period 26 of 2001.

2. Effective pay period 1 of 2003, 4% based on the total annual salaries including vacancies as existed on pay period 26 of 2002.

3. Effective pay period 1 of 2004, 4% based on the total annual salaries including vacancies as existed on pay period 26 of 2003.

4. Effective pay period 1 of 2005, 4% based on the total annual salaries including vacancies as existed on pay period 26 of 2004.

B. Because the Prosecutor has discretion to distribute vacancy monies, he will enter into a separate agreement with the Assistant Prosecutors Association setting forth the amount of vacancy monies to be distributed.

* * *

D. In the event of the resignation, retirement, death or other termination of an assistant prosecutor or law clerk, the balance of their salary shall be used by the Prosecutor to fill the vacated position of the assistant prosecutor or law clerk or to hire additional assistant prosecutors or law clerks prior to the end of the last pay period of the calendar year the position is vacated. Any balance of that salary which has not been so used by the Prosecutor shall be distributed to the other assistant prosecutors and law clerks prior to the end of pay period 26 of that year in the Prosecutor's discretion (J-10).

Intent of the contract provision:

4. The collective agreement contains no salary guides or automatic step increment system (1T52-1T53). The salary structure has never been fixed. Rather, the Association has, since 1997, negotiated with the employer for salary increases by negotiating a percentage increase for the overall unit -- a "pool of dollars" -- and then permitting the Prosecutor discretion to decide individual salaries for the assistant prosecutors (1T41-1T43).

5. Current Acting Prosecutor Joshua Ottenberg headed the Association's negotiations team when it first negotiated the above contractual provisions in 1997. Judge Lee Solomon was the Prosecutor from 1996 through 2002 and led the employer's negotiations committee in 1997 for the negotiations of the 1997-1998 contract (J-10). Then First Assistant Prosecutor Joseph Audino served as the Prosecutor's administrative supervisor and was also a member of the employer's negotiations team.

Ottenberg, Judge Solomon, and Audino testified about the intent of the language in Article 4, and specifically sections 4(A) and (D). Their testimony is consistent and persuasive.

6. Ottenberg recalled that prior to the inclusion of Article 4 in the contract, the County pulled money left over from unfilled positions from the overall pool of dollars, making the percentage increases difficult to calculate (1T46). Ottenberg explained that the purpose of this clause was to keep any money left over as a result of vacancies in the unit's pool of money. Ottenberg, Solomon and Audino all consistently testified that the intent was "what goes in the pool stays in the pool." In that way, the pool would never shrink; it would only increase as a result of the percentage increases that were negotiated between the parties (1T43-1T46, 1T97-1T100, 2T10-2T15).

Solomon, in particular, recalled that the prosecutor's office was having difficulty hiring and keeping assistant prosecutors and the intent of Article 4 was to ensure that monies available for salaries would be adequate to address this problem - e.g. create a surplus to raise the base salaries of assistant prosecutors and/or to provide salary incentives for them. Thus, the line item for assistant prosecutor salaries would increase from year to year (2T10, 2T14-2T15).

As funds were freed up during the year as a result of vacancies, the Prosecutor would have discretion to either use the

money to hire new staff or distribute the "vacancy money" at the end of the year to the existing staff. But the Prosecutor had to do one or the other. If, for example, an assistant prosecutor earning \$100,000 a year retired, and the Prosecutor hired a new employee for \$40,000, the \$60,000 balance of the retiree's salary would stay in the pool and be distributed to the remaining staff any way the prosecutor saw fit (1T58-1T59). All witnesses testified that, consistent with that intent, prosecutors routinely followed that scheme from 1997 until 2004.

7. Judge Solomon described the budgeting process when he became Prosecutor:

. . . we apportioned a fund, a lump sum within the budget for assistant prosecutors salaries. . . at the end of the year, if we had any kind of surplus, but we would keep the amount in the assistant prosecutors salary budget line item the same. We could increase it from year to year but we wouldn't detract from it year to year, so that there was a surplus within it. If [a senior employee] leaves, that is \$100,000 that I would have available to me but I would keep it within the assistant prosecutor budget line item so that I could hire two entry levels at \$50,000 each. [Or]I could increase everybody's salary. I could handle it one way or the other but I would keep it within that pool of money (2T10-2T11).

Solomon recalled that in 1997, he needed to raid the assistant prosecutors' salary account to increase funds for investigators. Then Association President Ottenberg agreed to the one-time diversion of funds from the assistant prosecutors'

salary pool, but the Association insisted on contract language to insure that situation would not recur. The Prosecutor wanted language that would guarantee his discretion to decide how to distribute money to the staff (2T12-2T13).

To meet those goals, the parties developed the contract language that ultimately became Article 4(D) of the 1997-98 contract. Solomon concurred with Ottenburg that the concept was to preserve the salary pool. He explained,

If I allocated in our budget two million dollars for prosecutor salaries, that number would never go down. That number would stay within that pool and wouldn't be lost even if somebody retired (2T14).

8. Audino, who was the Prosecutor's administrative supervisor under both Solomon and former Prosecutor Vincent Sarubbi, testified that the prosecutor decided which individuals would receive pay increases and how much. Audino would then prepare the paperwork and submit it to the County as a "salary change request" (1T99-1T103). Audino explained what Article 4 required of the vacancy money:

. . . There's only two things you can do with it, either hire an assistant prosecutor or redistributed the balance of the vacancy money. There's no other thing to do with it (1T104).

When asked if the vacancy money amount was the retiree's full salary or a balance of his salary, Audino explained,

Well, it was balance in the sense that, if a \$75,000 employee left and a \$50,000 employee

was hired, the balance would be \$25,000 which would be distributed (1T104-1T105).

9. Ottenberg, Solomon and Audino all concurred that the contract language in Article 4D was implemented consistent with the parties' original intent and was consistently the practice as described above, until 2004.

10. During calendar year 2004, Assistant Prosecutors Stillwell and Kasselmann retired. Stillwell's salary was \$103,143 and Kasselmann's salary was \$115,027, for a total of \$218,170 in "vacancy money." Prosecutor Sarubbi decided to distribute the money from their salaries by giving salary increases.

The assistant prosecutors were divided into three tiers for salary-increase purposes - the senior tier members (tier 3) would each get \$2,888 added to their base pay; most of the assistant prosecutors in the middle tier (tier 2) would get \$3,638 added to base pay; and most employees in the junior tier (tier 1) would get \$4,388 added to base pay (1T52). To implement this determination, Sarubbi directed that a salary change order form (J-6) be prepared and submitted to the County administration for processing. The form named each employee and noted the requested change in their salary amount. The total of those salary increases accounted for the amount left as vacancy money - \$218,170. The salary change form contained the notation- "salary change per 2004 assistant prosecutors' contract re:

vacancy money (\$218,170)" - and noted an effective date of December 18, 2004 (J-6).

11. The County did not process the change request. When a third assistant prosecutor, Jack Weinberg, retired on December 1, 2004. Sarubbi submitted a second change order form (J-7) to the County, asking for additional salary increases to disperse the additional \$107,847 vacancy money to the remaining assistant prosecutors as additional increases in base pay (J-7). This change request allocated an increase of \$1,285 for employees in tier 3, a \$1,785 increase for employees in tier 2, and a \$2,285 increase for employees in tier 1 (J-7). The County also declined to process that request (1T71).

The Prosecutor subsequently learned that the County had taken money out of the Prosecutor's salary budget to pay for the recent retirees' lump-sum vacation and/or unused sick leave payments, thus depleting the "vacancy money" by that amount. Previously, the County had always made such payments from separate funding not part of the salary line of the Prosecutor's budget (1T112).

12. Since the 2004 vacancy money was not distributed to the remaining assistant prosecutors in their 2005 salaries as the Prosecutor had requested, the 4 percent salary increase for 2005 was applied to a smaller salary pool, resulting in each employee receiving less than if the pool had remained constant (1T83).

Thus, on November 29, 2004, the Association filed a grievance over the County's failure to approve raises for the assistant prosecutors as requested by the Prosecutor and to distribute the vacancy monies (J-1).

On February 16, 2005, Prosecutor Sarubbi responded to the grievance (J-2). In that response, he agreed with the Association's interpretation that Article 4 required a distribution of the vacancy funds to remaining staff, but noted that no vacancy funds remained for 2004. Accordingly, he denied the remedy of the grievance based upon the lack of available funds (J-2).

_____13. Initially, the Association was unaware of the County's rationale for declining to approve the Prosecutor's salary distribution requests. Sometime in May 2005, the Association learned that the County had a new interpretation of Article 4(D); namely, it now considered only the balance of that year's unpaid salary as money available for possible distribution to employees in the form of a bonus (1T74-1T75).

On July 18, 2005, the Association made a demand to negotiate over the alleged unilateral change in the interpretation of Article 4(D) (J-4). It received no reply, and an amendment to this charge was filed on July 28, 2005.

14. At the end of 2005, there was apparently again vacancy money left after four new assistant prosecutors had been hired in

2005. Sarubbi sent a memorandum (J-8) to County Human Resources Director Frank Cirii, explaining that he intended to use the 2005 vacancy money to minimally increase salaries of all assistant prosecutors, appreciably raise salaries of those lowest paid, and increase the starting salary for new hires from \$40,000 to \$45,000.^{4/} Attached to J-9 is a salary change form, effective December 15, 2005, which shows vacancy money totaling \$156,097 and a list of all assistant prosecutors, together with their current base salaries and their new salaries after the proposed raises had been applied (J-8).

15. By the end of 2006, Joshua Ottenberg had been appointed as acting prosecutor. On December 15, 2006, Ottenberg and Association President Mindy Mellits entered into an agreement (J-9) for the distribution of the 2006 vacancy money. The parties agreed that of the \$513,110 total vacancy money for 2006, \$238,431 would be allocated for increases for the assistant prosecutors effective December 16, 2006. The remainder would be held to fill vacancies, to fund promotions, and to hold open the salary slots of the acting prosecutor and the acting first assistant prosecutor. The agreement further provides that if either the acting prosecutor or the acting first assistant, or both, are made permanent in their respective positions, then

^{4/} Whether this disposition of the 2005 vacancy money was a result of discussions with the Association, pursuant to Article 4(B) of the contract, is not noted in the record.

their vacancy money will be distributed as increases to the assistant prosecutors, retroactive to December 16, 2006.

Attached to J-9 is a salary change form with a list of the assistant prosecutors and their adjusted salaries effective December 15, 2006. The J-9 attachment notes that the vacancy money for the previous year had not been distributed. The County has not acted on the change form J-9.

ANALYSIS

N.J.S.A. 34:13A requires an employer to negotiate over terms and conditions of employment, reduce the agreement to writing and sign it. An employer will be held to violate the Act when it repudiates the terms of the negotiated agreement. While an employer that merely breaches the agreement will not be found to have violated its negotiations obligation, an abrogation of a contract clause that is so clear on its face that an inference of bad faith arises from a refusal to honor it violates the Act. Additionally, where the employer changes a consistent practice in administering a clause, a repudiation will be found. New Jersey Dept. Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In its charge, the Association first alleged that the Prosecutor repudiated the grievance procedure of the collective agreement when he sustained the Association's grievance but declined to implement a remedy. The Commission decided this

issue in Camden Prosecutor I. Although it denied the motion for summary judgement, the Commission found that, while a refusal to implement a grievance decision where the grievance has been sustained is a violation of the Act, the Prosecutor here denied the grievance.

In particular, the Commission noted that, while the Prosecutor agreed with the Association that they are entitled to unspent vacancy money, he found that there was no vacancy money remaining to be distributed. Thus, the Commission found that the Prosecutor did not violate 5.4a(5) of the Act by repudiating the grievance procedure. Accordingly, I recommend that the Commission dismiss that portion of the charge. Contrast Borough of Keansburg, P.E.R.C. No. 2004-29, 29 NJPER 506 (¶160 2003) (where Borough Council violated Act when it refused to implement grievance resolved in union's favor by police chief).

The Association also claims that the Prosecutor repudiated Article 4(D) of the collective agreement when the vacancy money was not distributed to the remaining staff in the form of raises added to their base. Additionally, it also argues that Article 4(A) was violated in that the 2005 contractual increase in the pool was applied to a diminished pool because the vacancy money was removed from the pool.

Section D leaves to the discretion of the Prosecutor how to use the funds created when an assistant prosecutor leaves: he may

either fill the vacant position, fill other positions, or distribute the unused salary to the other assistant prosecutors. While the contract clause ends with the phrase, ". . .in the Prosecutor's discretion", the record is clear that the intent of the parties in negotiating section D was to give the Prosecutor's discretion on how (within the three alternatives) to spend the money, not whether to spend the money. The record is clear that all Prosecutors since the clause was first negotiated have consistently followed the original intent of the clause - to keep the vacancy money in the pool.

The Prosecutor followed the contractual requirement when he submitted salary change requests to the County at the end of 2004, the intent of which was to redistribute the unused salary money of the three retirees to other assistant prosecutors. The County advised the Prosecutor that it had already taken the unused salary money to pay retirees for terminal benefits - benefits that were traditionally paid out of a non-salary account. But the contract refers to "unused salaries," not unused salary and benefit payments. The Prosecutor should have been permitted the discretion to distribute the 2004 unused salary money to the remaining assistant prosecutors, consistent with the contract provision and the parties' past practice in interpreting the contract requirements. The prosecutor also requested a distribution of vacancy monies at the end of 2005 and

again at the end of 2006. The County took no action on the 2005 salary change request or the 2006 request. Thus, I find that Section D of Article 4 was repudiated when the vacancy money for 2004, 2005 and 2006 was not redistributed to the employees.

After the County declined to approve funding for the distribution of the 2004 vacancy money, the percentage increases to the pool in early 2005 were then necessarily based upon a diminished pool of money. Thus the Respondent repudiated Article 4(A) of the contract by diminishing the pool before applying the contract cost of living raise.

The Respondent raises as a defense that it did not have sufficient funds in the Prosecutors' "salary line item" of its budget to continue to maintain the practice of distributing the vacancy money as required by Article 4(D). A budget shortfall, however, is not a valid basis on which an employer may lawfully repudiate a collective negotiations agreement.

Recently, in Camden County Prosecutor and Camden Council 10, P.E.R.C. No. 2006-24, 31 NJPER 322 (¶128 2005), the Commission addressed a similar claim. In that matter, the County argued that although the Prosecutor signed a contract with Council 10 providing for \$500 bonuses, the agreement could not be honored because the Prosecutor's salary line item was insufficient to fund the bonuses due to retirement payouts at the end of 2004. The Commission rejected this argument finding that the Prosecutor

is the public employer with the authority to fix salaries and negotiate collective agreements over compensation. Citing N.J.S.A. 2A:158-7 and In re Application of Bigley, 55 N.J. 53 (1969), the Commission reasoned that if the County did not provide sufficient funding for the Prosecutor's Office to pay on its contractual obligations, the Prosecutor must then apply to the Superior court for an order directing the County to fund the expenditure. Camden Council 10 at 224. See also, Mercer County Prosecutor, 172 N.J. Super. 411 (App Div. 1980).

Therefore, like the Camden Council 10 case, I find that the Respondent is obligated to make contractual salary increases consistent with the intent and practice of Article 4, notwithstanding its budget dilemmas.

Citing Kampf v. Franklin Life Insurance Co., 33 N.J. 36, 43 (1960) and Levinson v. Weintraub, 215 N.J. Super. 273, 276 (App. Div. 1987), certif. denied, 107 N.J. 650 (1987) as well as other cases, the Respondent argues that the contract language in Article 4(D), referring to the "balance of that salary which has not been so used [to hire new personnel] . . .", is clear and unambiguous and, therefore, past practice is not relevant. I find that this language is not so clear on its face that there can be only one interpretation; even the parties have presented two different, but plausible, interpretations of the Article 4

language. Therefore, the parties practice in interpreting this clause is meaningful.^{5/}

The Respondent also contends that the word "balance" referred to in this section means the amount unpaid in salary for that particular year. Even if the contract language could be so interpreted, the employer may not unilaterally decide on a new meaning of the contract language. The record clearly demonstrates that the parties' original intent, as well as the long history of the parties' practice, was to treat "balance of the salary" as the difference of the retirees' salaries and the amount spent on new hires.

The Respondent next contends that the contract does not require adding the vacancy money to the employees' base pay, only that the money be "distributed." While the County is correct in this regard, the parties' long history has been to "distribute" the vacancy money as increases to employees' base salary.

Finally, the Respondent argues in its Answer that the contract gives the Prosecutor discretion as to whether to distribute the vacancy money. The record is clear that the parties have long interpreted the "discretion" portion of this

^{5/} The County also argues, citing County of Morris v. Fauver, 153 N.J. 80, 103 (1998) and Schenck v. HJI Assoc., 295 N.J. Super. 445, 450 (App. Div 1996), certif. denied 149 N.J. 35 (1997), that where the contract terms are clear, the court may not rewrite the contract to substitute different terms. These cases are also inapposite because I find the contract language unclear and subject to varying interpretations.

contract provision as the Prosecutor's discretion to either hire new employees or distribute the money any way he or she determines is appropriate to the remaining assistant prosecutors. But he must do one or the other. The Respondent's proposed new interpretations of the contract language amounts to a specific repudiation of the contract under Human Services, and is a violation of its duty to negotiate in good faith.

CONCLUSIONS

_____I recommend that the Commission find the Camden County Prosecutor did not violate 5.4a(5) by repudiating the contractual grievance procedure when he denied the Association's grievance.

I recommend that the Commission find the Camden County Prosecutor violated 5.4a(1) and (5) of the Act when he repudiated Article 4, Section D of the contract by failing to distribute the vacancy monies to the assistant prosecutors's base salaries, effective the 26th pay period in 2004, 2005 and 2006.

I recommend that the Commission find the Camden County Prosecutor violated 5.4a(1) and (5) of the Act when he repudiated Article 4, Section A of the contract by failing to include the 2004 vacancy money in the pool before applying the 4 percent increase to the pool, effective the first pay day in 2005.

RECOMMENDED ORDER

_____I recommend that the Commission order the Respondent to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by the Act, particularly by repudiating Article 4, Sections (A) and (D) of the collective negotiations agreement.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees, particularly by failing to distribute vacancy money to assistant prosecutors in 2004, thus repudiating Article 4, Sections (A) and (D) of the collective negotiations agreement.

B. Take the following affirmative action:

1. Immediately adjust the base salaries of assistant prosecutors to reflect the distribution of vacancy money in accordance with the Prosecutor's 2004, 2005 and 2006 Salary Change Requests [J-6, J-7, J-8, J-9].

2. Within 30 days, take the steps necessary to pay those assistant prosecutors their salary increases retroactive to the effective dates as contained in the Prosecutor's 2004, 2005 and 2006 Salary Change Requests, together with interest at the rate set by R. 4:42-11(a).

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof

and, thereafter being signed by the Respondent's authorized representative, shall be 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.

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

Wendy L. Young
Hearing Examiner

DATED: August 13, 2007
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by August 23, 2007.



RECOMMENDED



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 interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by the Act, particularly by repudiating Article 4, Sections (A) and (D) of the collective negotiations agreement.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees, particularly by failing to distribute vacancy money to assistant prosecutors in 2004, thus repudiating Article 4, Sections (A) and (D) of the collective negotiations agreement.

WE WILL immediately adjust the base salaries of assistant prosecutors to reflect the distribution of vacancy money in accordance with the Prosecutor's 2004, 2005 and 2006 Salary Change Requests [J-6, J-7, J-8, J-9].

WE WILL, within 30 days, take the steps necessary to pay those assistant prosecutors their salary increases retroactive to the effective dates as contained in the Prosecutor's 2004, 2005 and 2006 Salary Change Requests, together with interest at the rate set by R. 4:42-11(a).

Docket No. CO-2005-261

CAMDEN COUNTY PROSECUTOR'S OFFICE
(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, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372