I.R. NO. 96-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS
PROSECUTOR'S OFFICE,

Respondent,

-and- Docket No. CO-96-224

PBA LOCAL 327,

Charging Party.

SYNOPSIS

A Commission Designee orders the County of Morris Prosecutor's Office to pay salary increases to employees in the unit represented by PBA Local 327. The most recent collective negotiations agreement, expressly provides for the payment following the expiration of the contract. It was found that Local 327 has a substantial likelihood of prevailing before the Commission.

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Appearances:

For the Respondent,
O'Mullan & Brady, attorneys
(Daniel W. O'Mullan, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On February 13, 1996, PBA Local 327 filed an unfair practice charge against the County of Morris Prosecutor's Office, alleging that the County is in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5)[1/] in that on January 1, 1996, at the expiration of the

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1/ These subsections 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."

collective negotiations agreement between Local 327 and the County, the County refused to pay members of Local 327 their increments or step advancements in accordance with the negotiated agreement.

Local 327 also filed an order to show cause. The order was executed and after several adjournments, was heard on March 15, 1996.

The County opposes the application. It acknowledges that, pursuant to the Agreement between the parties, the affected employees are eligible to receive increments in 1996 even though the collective negotiations agreement between the parties had expired on December 31, 1995. However, it maintained the employees are contractually eligible to receive increments on their anniversary dates, not on the first of the year.

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).

Is is not disputed that prior to the 1992-1995 agreement, employees represented by Local 327 did not enjoy a salary increment structure.

The 1992-1995 agreement at Article 19, Section 1 provides:

> Effective January 1 of each year of this Agreement employees shall have their salaries increased to the next successive salary step as listed on Schedule A [the salary guide], attached hereto. Each successive year following the expiration of this contract, the step system shall continue in full effect whether or not a successor agreement has been marked.

It is Local 327's position that pursuant to this language increments were to be paid effective January 1, 1996.

John McGill, the Director of Labor Relations for the County of Morris, testified that it was the understanding of the parties that the contract provided for increments to be paid on January 1, during the life of the contract only. Upon the expiration of the contract, the payment of increments would be paid on the employees anniversary date. This was designed to bring the payment of increments in Local 327's unit in line with other law enforcement units within the County.

Robert W. Linn testified that he served as the labor relations consultant to the County during these negotiations and his understanding of the operation of the contract is in accordance with that of John McGill.

Cathi Fenske testified on behalf of Local 327 that there was no understanding between Local 327 and the County that upon the expiration of the contract, the incremental structure would become

an anniversary structure. Ms. Fenske testimony referred to the record made of the Memorandum of Agreement taken before the Interest Arbitrator, Martin F. Scheinman. Mr. Scheinman mediated a settlement between the parties and memorialized that agreement in a transcript. He reviewed the agreement on the record with the approval of the parties. Scheinman states on the record that there would be automatic movement from one step to the next lower step in each succeeding year and the schedule would be considered automatic. "(E)very individual who is currently an employee of this bargaining unit, will be at $39,659 by 1995 with automatic increase as of January 1, 1996 to the next step in the column." [Transcript dated August 18, 1993, page 3, line 22.]

Ms. Fenske also testified that she was aware that other police units in the County have increments due on an anniversary date but that was reflected in their contractual agreements.

The parties submitted copies of the contracts both expired and current between the County and PBA Locals 151 and 298. Those contracts which were in effect subsequent to July 1, 1992 are silent as to when increments were to be paid. However, the contract for Local 298 which ran from January 1, 1990 to June 30, 1992 in its Schedule A, Salary Guide, states "Anniversary increments on this salary guide shall be in accordance with Article 24, Section 6." Also, the contract between the County and PBA Local 151 dated January 1, 1989 through December 31, 1990 in Schedule A, Salary Guide refers to anniversary dates.

I am satisfied that Mr. McGill and Ms. Fenske testified in good faith that the contracts with the other police units in the County are silent as to when increments are to be paid and in those units increments are paid on an employee's anniversary date. Nevertheless, on the basis of the entire record before me, I am satisfied that the charging party has demonstrated that it has a substantial likelihood of success in prevailing on the facts in this matter.

Article 19, Section 1 of the Agreement, unlike the agreements in other units, makes an express reference to payment of increments on January 1 of each year. The Memorandum of Agreement as memorialized by transcript, unequivocally states increments are due January 1, 1996. I do not find that silence of the most recent contracts in the other police units as to when increments are to be paid controlling. The language of the contract between Local 327 and the County, in light of the earlier memorandum of understanding, is clear and unambiguous. I find that increments under the contract were due on January 1, 1996.

The Commission, as affirmed by the Courts, has consistently held that it is an unfair practice for an employer to unilaterally alter the status quo[2/] concerning employment conditions during

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2/ Terms and conditions of employment, rather than contractual provisions themselves constitutes the status quo. Although they may have been created by a contract, contract rights do

Footnote Continued on Next Page

negotiations; one cannot unilaterally act and simultaneously negotiate about the same issue. Any alteration of a term and condition of employment before impasse impermissibly interferes with the negotiation process. This interference is irreparable in nature and can only be remedied by the granting of an interim order. Galloway. Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979) aff'd and modified App Div. Dkt No. A-1572-79 (4/1/81); State of New Jersey; City of Vineland, I.R. No. 81-1, 7 NJPER 234 (¶12142 1981) interim order enforced and leave to appeal denied App. Div. Dkt No. A-1037-80T3 (7/15/81).

Accordingly, I find that PBA Local 327 has demonstrated that it has a substantial likelihood of prevailing on the facts and I hereby ORDER the Prosecutor's Office of Morris County to pay increments which were due to all employees represented by Local 327 in accordance with the provision of Article 19, Section 1 of the Agreement.

Edmund G. Gerber
Commission Designee

DATED: March 22, 1996
Trenton, New Jersey

2/ Footnote Continued From Previous Page

not survive the life of the contract, only terms and conditions of employment remain in effect during negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25, 48 (1978).; State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12142 1981).