

I.R. NO. 93-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY BOARD OF CHOSEN FREEHOLDERS,

Respondent,

-and-

Docket No. CO-93-13

COMMUNICATION WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

A Commission Designee orders the Burlington County Board of Chosen Freeholders to pay incremental salary increases as per the expired contract between the County and the Communication Workers of America. It was held that the failure to abide by the recently expired agreement interferes with negotiations for a successor agreement.

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Appearances:

For the Respondent
Stephen J. Mushinski, County Solicitor

For the Charging Party
Michael J. Sweeney, of counsel

INTERLOCUTORY DECISION

On July 8, 1992, CWA Local 1044 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Burlington County Board of Chosen Freeholders engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq.; specifically subsections (a) (1), (2), (3), (5) and (7)^{1/} when it

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. (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. (5)

failed to pay increments on July 1, 1992 as provided for in the most recent collective negotiations agreement between the CWA and the County. The agreement expired by its terms on June 30, 1992 and the parties are currently negotiating a new agreement.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and made returnable for July 20, 1992. A hearing was conducted on that date.

Article III of the agreement provides for salary increases to be paid on January 1 in each of the three years of the agreement (1989, 1990 and 1991) and on July 1 of each year of the agreement "all employes who have at least eleven months of continuous full-time employment shall be eligible for a one step salary adjustment based upon the established Performance Evaluation System (Exhibit C)".

The contract contains a schedule of salaries which lists 34 salary ranges and 16 steps. There is also a column titled "INCR" (This is apparently an abbreviation for increment.) with a dollar amount listed for the annual increases for each salary range.

Exhibit C of the contract, at Article E states:

1. Annual increments shall only be denied when there is just cause for an unsatisfactory rating.

1/ Footnote Continued From Previous Page

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."

2. Increments shall be awarded on July 1 of each year of the contract.

The County argued that the contract does not provide for increments. Article III calls the disputed salary increases "salary adjustments" not increments.

Moreover, by affidavit of Augustus M. Mosca a county management specialist, the County maintains it never intended to agree to an incremental structure and therefore there was no meeting of the minds.

Finally, if the Commission were to find these salary adjustments are in fact increments, the County argues the contract limits the payment of increments to "each year of the contract".

Although the County argues that there was no "meeting of the minds", it is a fundamental canon of construction that the interest of the parties as clearly expressed in writing controls. Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983). The contract read as a whole is not ambiguous. It provides for increments and parole evidence to the contrary is not persuasive.

The law in this area is well settled. The Commission, as confirmed by the courts, has consistently held that automatic salary increments contained in an expired contract must be paid while the parties are negotiating for a new collective agreement. Galloway Tp. Bd.Ed. v. Galloway Tp. Ed.Assn., 78 N.J. 25 (1978); Union Cty. Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson Cty. Bd.Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4

NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); Newark Public Library, I.R. No. 84-9, 10 NJPER 321 (¶15154 1984).

In Newark Public Library, as here, the contract stated that increments are to be paid during the life of the contract and there was no statute or regulation requiring the payment of increments. The employer argued the contract language constituted a waiver of the obligation to pay increments. This argument was rejected. Newark relied on the analysis in State of New Jersey.

An examination of the contracts introduced into evidence with respect to these units of employees as well as other units of employees represented by other employee organizations also supports the Charging Parties' position that the language "during the terms of this Agreement" does not have the meaning urged by the State and could not constitute a waiver of the principle established in Galloway and other cases The nub of the instant controversy is what constitutes the status quo in light of the present facts and circumstances.

It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional periods of service measured by assigned anniversary


dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide which remains in effect requires that they move up one step and receive the appropriate salary increment. (emphasis added). In re State of New Jersey, supra, at pp. 18-22.

I am satisfied that CWA has established a substantial likelihood of success in establishing the existence of an incremental structure and will prevail at a full plenary hearing. Compare County of Ocean, P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986) and Monmouth County Sheriff and Monmouth County Board of Chosen Freeholders and Monmouth County PBA Local 240, I.R. No. 91-13, 17 NJPER 179 (¶22077 1991).

Accordingly, I hereby ORDER the Burlington County Board of Chosen Freeholders to pay the increments to its full-time employees as per the provision of its 1989-91 Agreement with the CWA.

This is an interim order only. The case will proceed to a full plenary hearing.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: July 23, 1992
Trenton, New Jersey