

I.R. NO. 2012-15

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. CO-2012-197

MORRIS COUNTY PROSECUTOR'S  
PBA LOCAL 327,

Charging Party.

Appearances:

For the Respondent, Knapp, Trimboli & Prusinowski, LLC,  
attorneys (Stephen E. Trimboli, of counsel and on the  
brief; Michael McAndrew, on the brief)

For the Charging Party, Loccke, Correia, Limsky &  
Bukosky, attorneys (Marcia J. Tapia, of counsel; Merick  
H. Limsky, of counsel and on the brief)

INTERLOCUTORY DECISION

On January 26, 2012, Morris County Prosecutor's PBA Local 327 (PBA) filed an unfair practice charge against the Morris County Prosecutor (Prosecutor), which was accompanied by an application for interim relief seeking temporary restraints, a certification, and a brief. The charge alleges that on January 10, 2012, the Prosecutor informed members of the PBA that they would not receive step movement pay increases on salary guides as set forth in the parties' collective negotiations agreement (CNA) until a new CNA was executed. The parties' CNA has a term of January 1, 2007 through December 31, 2010 (extended to December

31, 2011 by an extension agreement). The charge also alleges that the parties are engaged in negotiations for a successor agreement. The Prosecutor's conduct allegedly violates 5.4a(1), (2), (3), (5) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The application seeks an Order requiring the Prosecutor to pay step movement increases.

On January 30, 2012, I issued an Order to Show Cause without temporary restraints specifying February 17 as the return date for argument via telephone conference call. I also directed the Prosecutor to file an answering brief, together with opposing certification(s) and proof of service upon the PBA by February 13, 2012. On February 13, the Prosecutor filed its response. On the return date, the parties argued their cases in a conference call. The following pertinent facts appear.

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<sup>1/</sup> 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. (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) 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 CNA at Article XIV, Section 1, states:

Effective January 1 of each year, employees hired on or prior to November 5, 1997, shall have their salaries increased to the next successive salary step as listed on Schedule A, attached hereto.

Employees hired after November 5, 1997, shall have their salaries increased to the next successive salary step, as listed on Schedule A, attached hereto, on their respective anniversary dates of hire.

All employees hired on or after January 1, 2001 shall be paid in accordance with Schedule B, attached hereto.

Each successive year following the expiration of the contract the step system shall continue in full effect whether or not a successor agreement has been reached.

In pertinent part, the Extension Agreement to the CNA provides:

THIS ADDENDUM to the main labor contract is made and entered into this the 20<sup>th</sup> day of October, 2010 by and between the County of Morris, a County Government of the State of New Jersey, Prosecutor of Morris County and the Police Benevolent Association Local 327, hereby agree as follows:

1. Duration: January 1, 2011 through December 31, 2011.
2. The parties have agreed to extend the terms and conditions of the existing Collective Bargaining Agreement between the parties for the duration of time referenced above except as modified herein.
3. Any terms and conditions not contained herein shall remain in full force and effect until a successor agreement has been negotiated.

4. Salary:

a. Effective January 1, 2011 there shall be a zero percent (0%) increase to the salary guide.

b. Effective January 1, 2011 there shall be no step movement on the salary guide.

6. The purpose of the parties entering into this Agreement is due to the economic climate at this time. Notwithstanding, absent of a succeeding contract extension or collective bargaining agreement by December 31, 2011, the parties will abide by the terms and condition of the January 1, 2007 through December 31, 2010 Collective Bargaining Agreement.

The Prosecutor has filed the certification of the County of Morris Manager of Labor Relations, Allison Stapleton. Stapleton participated in the negotiations for the extension agreement and was a signatory; she asserts the following, in pertinent part, with respect to the step movement:

5. One of the terms of the extension agreement was that step movement would cease after January 1, 2011. There was no agreement that step movement would resume at any specific time. Further, we conveyed to the Charging Party that due to existing economic conditions, we could make no commitments with respect to future salary increases, and that any future increases would need to be the subject of negotiations.

8. No step increases were paid on January 1, 2011. The Charging Party did not demand payment of the increments at that time, and did not take legal action to compel payment of increments at that time.

ANALYSIS

To obtain interim 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. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer 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). In Little Egg Harbor Tp., the designee stated:

[t]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

The issue in this application is whether the facts demonstrate that the step movement through the salary guide constituted an "automatic" increment. If it does, and the PBA meets the other requisite elements to obtain interim relief, the Prosecutor would be obligated to pay such step movement increases

while continuing to negotiate for a new CNA. Ocean Cty. and Ocean Cty. Sheriff, P.E.R.C. No. 2011-6, 36 NJPER 303 (¶115 2010).

The PBA argued that salary step movement, as provided by Article XIV, Section 1, "Each successive year following the expiration of the contract the step system shall continue in full effect whether or not a successor agreement has been reached," was automatic and should have been implemented after the expiration of the extension agreement on December 31, 2011.

The Prosecutor argued that the "step system" as set forth in the CNA was modified by the extension agreement in paragraph 4.b., "Effective January 1, 2011 there shall be no step movement on the salary guide," so that step movements were no longer automatic at the expiration of the CNA.

In Ocean Cty. and Ocean Cty. Sheriff, the Commission denied motions for reconsideration from the employers after a Commission designee ordered them to immediately pay eligible employees automatic salary increments. In that decision, the Commission found that the contract language was not ambiguous:

The contract language in this case is clear. The contract the County and Sheriff entered into with PBA Local 379 specifies that if no new contract has been negotiated and implemented as of the expiration date of the agreement, which is March 31, 2010, all officers shall move to the next higher step on the salary guide. The respondents entered into these agreements with their unions and

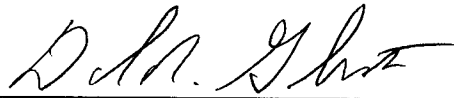
are seeking our assent in repudiating those agreements. We decline to do so.

[Id. at 305]

In this case, the contract language from the CNA and the extension agreement as to whether the "step system" is "automatic" is ambiguous and not clear. These are disputes as to the material facts of the charge that cannot be resolved at this preliminary stage. Thus, I find that the PBA has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.<sup>2/</sup> The application for interim relief must be denied. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



David N. Gambert  
Commission Designee

DATED: March 15, 2012  
Trenton, New Jersey

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<sup>2/</sup> As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.