

P.E.R.C. NO. 2011-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF OCEAN,

Respondent,

-and-

Docket No. CO-2010-398

OCEAN COUNTY PBA LOCAL 258,

Charging Party.

COUNTY OF OCEAN and
OCEAN COUNTY SHERIFF,

Respondents,

-and-

Docket No. CO-2010-411

OCEAN COUNTY SHERIFF'S PBA LOCAL 379,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the motions for reconsideration of I.R. Nos. 2010-20 and 2010-23 filed by the County of Ocean and Ocean County Sheriff. In these decisions, a Commission designee ordered the respondents to immediately pay eligible employees the salary increments they were due. The Commission dismisses the motion as to I.R. 2010-20 as untimely. The Commission denies the motion as to I.R. 2010-23 finding that the contract language requiring payment of the increments is clear and the designee's decision followed relevant judicial and Commission precedent.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondents, John C. Sahradnik, County Counsel

For the Charging Party, PBA Local 258, Detzky & Hunter,
LLC, attorneys (Stephen B. Hunter, of counsel)

For the Charging Party, PBA Local 379, Klatsky,
Sciarrabone & DeFillippo, attorneys (David J.
DeFillippo, of counsel)

DECISION

The County of Ocean and Ocean County Sheriff have moved for reconsideration of I.R. No. 2010-20, __ NJPER __ (¶__ 2010), and I.R. No. 2010-23, __ NJPER __ (¶__ 2010). In those decisions, a Commission designee ordered the respondents to immediately pay

eligible employees the salary increments they were due retroactive to April 1, 2010. Ocean County PBA Local 258 and Ocean County Sheriff's PBA Local 379 oppose reconsideration. We deny the motion.

On April 21, 2010, PBA Local 258 filed an unfair practice charge against the County. The charge alleges that the public employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} by failing to pay eligible employees their automatic salary increments as required by "clear and unequivocal" contract language.

On April 30, 2010, PBA Local 379 filed an unfair practice charge against the County and the Ocean County Sheriff. That charge alleges that the public employers violated the Act, specifically 5.4a(1) through (7),^{2/} by repudiating the clear,

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 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/ 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
(continued...)"

concise and unambiguous terms of the parties' collective negotiations agreement, by failing to pay automatic increments.

The charges were accompanied by applications for interim relief seeking orders requiring the respondents to pay the increments retroactive to April 1, 2010. The Commission designee found these facts:

The County and PBA Local 258 were parties to a collective negotiations agreement covering County correction officers effective from April 1, 2006 through March 31, 2010. That agreement contained the following increment clause in Article 4, Section G:

Effective April 1, 2010, if no new Collective Negotiations Agreement has been negotiated and implemented as of that date, all Officers not at maximum shall automatically move to the next higher step of the salary guide, consistent with the practice set forth above which shall remain in effect until a

2/ (...continued)
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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

successor Agreement is signed and implemented.

The parties have had a history of eligible employees automatically receiving increments upon the expiration of the collective agreement.

The Sheriff and County and PBA Local 379 were parties to a collective negotiations agreement covering sheriff's officers effective from April 1, 2006 through March 31, 2010. That agreement contained the following increment clause in Article 4, Section C:

If no new Collective Negotiations Agreement has been negotiated and implemented as of the expiration date of this Agreement, all Officers not at maximum shall automatically move to the next higher step of the salary guide, consistent with the practices set forth above which shall remain in effect until a successor Agreement is signed and implemented.

The parties have had a history of eligible employees automatically receiving increments upon the expiration of the collective agreement.

On April 6, 2010, the County notified the unions that due to economic conditions and proposed legislation, it would not give increments to eligible employees based upon the expired salary guide. The County also noted that to maintain the workforce and not implement furloughs or layoffs, it would not give increments in the absence of a new collective agreement.

The County estimated the cost of increments for the PBA Local 398 unit to be \$411,181. The County and Sheriff estimated the cost of increments for the PBA Local 379 unit to be \$405,677. The respondents note that the County's revenues have declined, and that its pension and health benefit costs have increased causing it to reduce operating expenses and its capital improvement budget.

After the parties filed briefs and argued orally, on May 20, 2010 and May 28, respectively, the designee ordered the County in CO-2010-398 and the Sheriff and County in CO-2010-411 to pay the increments retroactive to April 1, 2010.

Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4. Motions for reconsideration of an interim relief decision must be filed within 15 days of service of the Commission designee's decision. Ibid.

The motion for reconsideration of these two interim relief decisions was filed on June 8, 2010, 19 days after the issuance of I.R. No. 2010-20 and 11 days after the issuance of I.R. No.

2010-23. Accordingly, as to I.R. No. 2010-20, the motion is untimely and is dismissed.^{3/}

To obtain interim relief, a charging party must first demonstrate that it has a substantial likelihood of success on the merits. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982). A charging party must also demonstrate that irreparable harm will occur if the requested relief is not granted. Ibid. Finally, 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. Ibid.

The respondents argue that it seeks reconsideration of the designee's finding that "the failure to pay increments after the expiration of a contract and during negotiations for a new agreement is irreparable because it affects the balance required for good faith negotiations."

We have long held that the payment of automatic increments after the expiration of a collective negotiations agreement and during the pendency of successor contract negotiations is required by the Act. Hudson Cty., P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978). The Appellate Division has affirmed that holding.

^{3/} We note that on July 1, 2010, an interim relief decision was issued in a case involving the Ocean County Prosecutor and PBA Local 171. I.R. No. 2011-1, ___ NJPER ___ (¶__ 2010). A motion for reconsideration of that decision was filed on July 29, more than 15 days after issuance of the decision. The employer has moved for reconsideration of that administrative dismissal.

NJPER Supp.2d 62 (¶44 App. Div. 1979). We have also denied reconsideration of an interim relief decision ordering the State of New Jersey to pay salary increments to employees during successor contract negotiations. P.E.R.C. No. 87-21, 12 NJPER 744 (¶17279 1986), denying recon. of I.R. No. 87-4, 12 NJPER 713 (¶17266 1986).

The respondents' argument that there is no irreparable harm because there is a remedy of money damages is unavailing and has been rejected by this Commission and the courts. Money damages cannot remedy the chilling effect on the collective negotiations process.^{4/} In State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), the Commission Chairman summarized the first interim relief proceeding involving the withholding of increments, Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶14007 1977), where our designee found that the unilateral withholding of salary increments was unjustified. In summarizing Union Cty., the Chairman stated:

Additionally, on the question of irreparable harm, the Commission's designee found that more was at issue than the mere loss of the use of the money involved in the increment. He found that the unilateral withholding of

^{4/} These cases involve police officers within the meaning of the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a et seq. That statute has a similar declaration of public policy that prohibits changes in existing wages, hours and other conditions of employment during the pendency of proceedings before the arbitrator. N.J.S.A. 34:13A-21.

the increments by the employer introduced illegal economic coercion into the negotiations process. The implication of such action is that if the employees agree to the employer's position, they get their increments immediately; however, if they continue to negotiate, they must wait for the increments, if they get them at all; [footnote omitted]. This is totally antithetical to the public policy of this Act which is intended to substitute negotiations and impasse resolution procedures, such as mediation, for resort to economic and other forms of coercive pressure by either side. He found that monetary damages in the form of restored increments at the end of the case could not undo this "chilling effect" on the negotiations. Interim relief has the effect of depriving the employer of the ability to upset the balance in the parties' negotiations positions which the Act is designed to provide.

In referring to this "chilling effect" on the negotiations process, the Commission's designee was actually anticipating the reasoning of the Supreme Court in the Galloway [Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978)] case. As quoted supra, the Supreme Court stated that:

Such conduct by a public employer would also have the effect of coercing its employees in their exercise of the organizational rights guaranteed them by the Act because of its inherent repudiation of and chilling effect on the exercise of their statutory right to have such issues negotiated on their behalf by their majority representative. 78 N.J. at 49. (emphasis added)

[7 NJPER 534-535]

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.

We recognize and appreciate the respondents' arguments that the increments may exceed the percentage increases that will be negotiated in the successor collective negotiations agreement. If that is the case, the parties may arrange for recoupment, red-circling, or any other method of providing that employees receive only what has been negotiated on their behalf. Alternatively, as has happened with other employers and unions all over our State, these employers may sit with their unions and seek changes in obligations under existing or recently expired collective negotiations agreements in order to adjust to changed economic circumstances. What these employers cannot do is unilaterally strip the collective negotiations agreement of its undisputed meaning and effect.

ORDER

The motion for reconsideration of I.R. No. 2010-20 is dismissed. The motion for reconsideration of I.R. No. 2010-23 is denied.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. Commissioner Colligan recused himself.

ISSUED: August 12, 2010

Trenton, New Jersey