

I.R. NO. 91-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF SUSSEX,

Respondent,

-and-

Docket No. CO-91-249

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

A Commission Designee orders the County of Sussex to pay increments in a charge brought by the Communication Workers of America. A contract existed between the Welfare Board and CWA concerning certain Welfare Board employees. In January 1990, after the elimination of the Welfare Board, the County was ordered to honor the contract between the CWA and the Welfare Board. County of Sussex, I.R. No. 90-12, 16 NJPER 122. That contract provided for the annual payment of increments. The County declined to pay increments. The terms and conditions of employment of an expired contract remain in full and effect pending negotiations. The failure to honor the provision of the most recently expired contract during negotiations has a chilling effect on negotiations. Therefore, the County was ordered to pay the increments.

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Appearances:

For the Respondent
Hansbury, Martin & Knapp, attorneys
(Fredric M. Knapp, of counsel)

For the Charging Party
John Loos, International Representative

INTERLOCUTORY DECISION

On March 18, 1991, the Communications Workers of America ("CWA") filed an unfair practice charge against Sussex County alleging that it had engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq., specifically subsections (1) and (5)^{1/} when after the expiration of the contract between it and Sussex County expired, the County failed to pay increment increases

^{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."

as provided for by the parties collective negotiations agreement. It was alleged that the parties had not reached a successor agreement and the failure to pay increases had a chilling effect on the negotiations. The CWA also requested interim relief. A Show Cause Order was signed and made returnable for April 3, 1991. A hearing was conducted on that date.^{2/}

Sussex County is the public employer of certain Welfare Board employees represented by the CWA. Prior to November 18, 1989, these employees were employees of the Sussex County Welfare Board. However, on or about November 18, 1989, the County eliminated the Welfare Board and Sussex County became the employer. In a prior proceeding, the County was ordered to honor the contract between the CWA and the Welfare Board. County of Sussex, I.R. No. 90-12, 16 NJPER 122.

The contract between the CWA and the Welfare Board expired on December 31, 1990. The contract provides in relevant part:

3. In 1989 and 1990, the employees, whose performance has been at least satisfactory and who have not reached the maximum of their range, shall be entitled to an annual merit increment on their assigned quarterly anniversary date. (Wage Schedule C3).

The contract also provides a salary structure consisting of 11 steps and 10 salary ranges with a particular dollar sum for each step and range. When the contract expired on December 31, 1990, the parties were engaged in negotiations for a successor agreement.

^{2/} Both parties submitted briefs and affidavits, introduced evidence, presented testimony and argued orally.

Although CWA asked that the increments be paid, the County has refused to pay annual increments. The CWA argued that increments were due on employees quarterly anniversary dates, i.e., in January, April, July or October.

The County's position is that it has no obligation to pay increments. Increments were not paid in the past when prior agreements expired. The County does not dispute that the same basic salary structure was in place in years past. The County also argues that it has insufficient funds to pay for annual merit increases.

The County argues by way of the certification of Thomas Bellucci, it does not have the financial resources to fund the salary increments. A review of the 1991 budget details a decline in administration appropriations for the County Welfare Agency from \$848,725 in 1990 to \$761,395 in 1991. Bellucci states that based upon this reduction, there are not sufficient funds available to provide for the increments in the Agreement and, if the County is ordered to provide funding for these increments, there will be substantial reductions in force of Welfare Agency employees and the County will suffer a reduction of services provided to the residents of Sussex County. Accordingly, there will be substantial and permanent harm to the residents of Sussex County if the Application for Interim Relief is granted. Bellucci further states that it has already allocated a 3% pay increase for the Welfare employees in its budget. The affiant asserts that payments of the increments will alone cost more than 2% above this budget pay hike.

Mary Harrington testified on behalf of CWA. She reviewed the County's figures which accompanied Bellucci's certification and computed the increments due all the individual employees of the Welfare Board. The County did not dispute the accuracy of Harrington's figures. On the basis of Harrington's figures, the payment of increments would cost \$16,846 and not \$44,099 as certified to by Bellucci. The cost of these increments would be approximately 1% of the budgeted salary increase for Welfare employees and therefore within the 3% salary figure budgeted by the County. CWA points out that the 1991 budget has not been adopted by the County. The figures that Bellucci used were from a budget proposal. Although the 1991 budget allocation of \$761,395 is less than the budget for 1990 of \$848,725, there still was a budget surplus in 1990 of \$201,724 and the proposed budget is 34% above the actual expenses in 1990 of \$567,000. Finally, CWA points out that the expenses of the County Welfare Agency are not subject to the CAP law.

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.^{3/}

The evidence before me fails to demonstrate that the payment of increments would be financially devastating to the County.^{4/}

3/ 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).

4/ The New Jersey Supreme Court in City of Atlantic City v. Laezza, 80 N.J. 255 (1979) in addressing the impact of an interest arbitrator award on a municipality's expenditure under the CAP law stated:

...these awards will not necessarily compel the City to increase its overall blue or white collar expenditures. Municipal officials retain discretion to diminish the size of the work force and limit the areas in which personnel will be deployed, inasmuch as these decisions unquestionably [are] predominantly managerial function[s] which cannot be delegated to an arbitrator not accountable to the public at large. State v. State Supervisory Employees Assn, 78 N.J. 54, 88 (1978); See Irvington PBA, supra, 80 N.J. at 288-289. The arbitral decisions merely establish the level of benefits to be accorded those individuals whom the City wishes to hire or retain. As such, the amount of expenditures which must be incurred to implement the awards are within the municipality's control...

Accordingly, even if the County had significant financial difficulties, such an argument would not necessarily be controlling here. See also PBA Local 29 v. Tp. of Irvington, 80 N.J. 271 (1979).

The County also argued that in the past, when a contract expired but no new contract was in place, increments were not paid. This past practice will not constitute a waiver of the express terms of the contract. The language of the contract is controlling. N.J. Department of Veterans Affairs, P.E.R.C. No. 89-76, 15 NJPER 90, 92 (¶20040 1989); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶14040 1978); See also City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981).

The obligation to negotiate carries with it the obligation to maintain existing terms and conditions of employment until a new agreement is reached.

(It is) a generally accepted principal in both public and private sector labor relations that the unilateral alteration of terms and conditions of employment, e.g. salaries, during the course of collective negotiations for...a contract to succeed an expired agreement, constitutes an illegal refusal to negotiate in good faith.

The Commission and the Courts have thus recognized that normally the very act of unilaterally modifying a particular term and condition of employment, at least in the absence of a genuine post-fact-finding impasse, contradicts, in and of itself, the meaning of collective negotiations inasmuch as ordinarily one cannot unilaterally act and still collectively negotiate about the same subject. The status quo relating to terms and conditions of employment may be established by relying upon past practices or prior negotiations agreement.

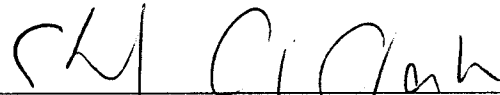
Hudson Cty. v. Hudson Cty. PBA Loc. 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd App. Div. Dkt. No. A-2444-77 (4/9/79)

The Act is intended to promote labor stability. It would be totally antithetical to the public policy of the Act to

substitute economic and other forms of coercive pressure for negotiations and impasse resolution procedures. See State of New Jersey and CWA, I.R. No. 82-2, 7 NJPER 532 (¶12234 1981).

Here the County had the obligation to pay increments commencing January 1. The County's failure to do so interfered with negotiations.

Accordingly, IT IS HEREBY ORDERED that the County pay increments to all those Welfare Department employees who were entitled to receive merit increments under the recently expired contract.



Edmund G. Gerber
Commission Designee

DATED: April 5, 1991
Trenton, New Jersey