

P.E.R.C. NO. 87-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-86-344-22

MIDDLESEX COUNTY SHERIFF'S  
OFFICERS, PBA LOCAL NO. 165,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a complaint based on an unfair practice charge filed by the Middlesex County Sheriff's Officers, PBA Local No. 165. The charge alleged that the County of Middlesex violated the New Jersey Employer-Employee Relations Act when, during successor contract negotiations, it refused to pay increments. The Chairman, in agreement with a Hearing Examiner and in the absence of exceptions, finds that the PBA did not establish that the contract provided for automatic increments.

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Appearances:

For the Respondent, Dominic J. Cerminaro, Esq.

For the Charging Party, Arlyne K. Liebeskind, Consultant

DECISION AND ORDER

On June 16, 1968 Middlesex County Sheriff's Officers, PBA Local No. 165 ("PBA") filed an unfair practice charge against the County of Middlesex ("County"). The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),<sup>1/</sup>

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<sup>1/</sup> 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; and (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."

when, during successor contract negotiations, it refused to pay salary increments.<sup>2/</sup>

The PBA asked for interim relief. The County answered that the PBA had not sought or received an automatic increment system during the interest arbitration proceedings resulting in the 1985 contract and instead the contract supported the County's position that base salaries would remain constant until a new contract was negotiated.

On July 17, 1986, Commission designee Charles A. Tadduni conducted a hearing. On August 1, 1986, he denied relief. I.R. No. 87-2, 12 NJPER 662 (¶17250 1986) He reasoned that the PBA had not shown a substantial likelihood of proving there was an automatic increment structure, rather than a negotiated distribution of monies available in 1985.

On August 13, 1986, a Complaint and Notice of Hearing issued.

On November 13, 1986, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. The County argued orally and the PBA filed a post-hearing brief.

On December 16, 1986, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 87-39, 12 NJPER \_\_\_\_ (¶\_\_\_\_ 1986)

The Hearing Examiner served his report on the parties and informed them exceptions were due by December 31, 1986. No exceptions were filed or extensions requested.

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<sup>2/</sup> The PBA amended the charge to specify the amounts allegedly due.

The full Commission has delegated authority to me to review cases in the absence of exceptions. I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-7) are accurate. I incorporate them here. Under all the circumstances, I am persuaded that the PBA has not met its burden to establish that Article VII provides for automatic increments rather than a specified salary until a new contract is negotiated.

ORDER

The Complaint is dismissed.



James W. Mastraini  
Chairman

DATED: Trenton, New Jersey  
January 30, 1987

H.E. NO. 87-39

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-86-344-22

MIDDLESEX COUNTY SHERIFF'S OFFICERS,  
PBA LOCAL NO. 165,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County did not violate §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally refused to make payment of salary increments to its Sheriff's Officers on January 1, 1986. After first citing Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978), and discussing the analysis therein as to whether or not the contractual relationship of the instant parties indicated that salary increments were to be paid automatically on January 1st of any given year or at the discretion of the employer after the conclusion of negotiations for a successor agreement, the Hearing Examiner concluded that there was a binding past practice since 1970 relieving the County of any obligation to make payment of automatic increments on January 1st. Essentially, the Charging Party failed to meet its burden of proving by a preponderance of the evidence that there was a binding past practice of automatic payment on January 1st. The testimony of its three witnesses conflicted with one another as to whether a practice supporting the PBA's position existed. Finally, there were no pertinent contractual provisions in the history of the parties' collective negotiations agreements which supported the Charging Party's contentions.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-39

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-86-344-22

MIDDLESEX COUNTY SHERIFF'S OFFICERS,  
PBA LOCAL NO. 165,

Charging Party.

Appearances:

For the Respondent  
Dominic J. Cerminaro, Esq.

For the Charging Party  
Arlyne K. Liebeskind, Consultant

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 16, 1986, and amended on July 1, 1986, by the Middlesex County Sheriff's Officers, PBA Local No. 165 (hereinafter the "Charging Party" or the "PBA") alleging that the County of Middlesex (hereinafter the "Respondent" or the "County") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that during negotiations for a successor collective

negotiations agreement to the agreement which expired on December 31, 1985, the Respondent failed to make payment of the automatic increments to certain Sheriff's Officers on and after January 1, 1986 when the increments became due; and when a successor agreement was executed on May 5, 1986, the Respondent illegally "froze" the step increments at the 1985 level instead of advancing eligible employees to the 1986 step; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. of the Act.<sup>1/</sup>

Prior to the issuance of the Complaint and Notice of Hearing in this case on August 13, 1986, a Commission designee considered an application by the Charging Party for interim relief, namely, an order that the Respondent immediately make payment of the alleged automatic increments due on and after January 1, 1986. Following a hearing on July 17, 1986, Charles A. Tadduni, on behalf of the Commission, determined that the Charging Party had not demonstrated a substantial likelihood of success on the merits and, therefore, denied the request for interim relief on August 1, 1986 (I.R. No. 87-2, 12 NJPER 662 (¶17250)).

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<sup>1/</sup> 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 and (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."

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 13, 1986. Pursuant to the Complaint and Notice of Hearing, a hearing was held on November 13, 1986, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The Respondent argued orally and the Charging Party filed a post-hearing brief on December 4, 1986. The Respondent advised on December 8, 1986 that it would not file a post-hearing brief.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the oral argument of the Respondent and the post-hearing brief of the Charging Party, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The County of Middlesex is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Middlesex County Sheriff's Officers, PBA Local No. 165 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.



3. The 1985 collective negotiations agreement, effective January 1 through December 31 of that year, contains the following provisions, upon which the Charging Party relies as providing a contractual base for its claim that automatic salary increments are due (see J-1):

II. MAINTENANCE OF BENEFITS

This Agreement shall not be construed to deprive any employee of any previously granted benefit, right, privilege or protection granted by the Laws of the State of New Jersey, Resolutions, Ordinances or Promulgations of the County of Middlesex, Rules and Regulations of any State Agency, or any applicable provision of the United States Constitution.

III. MAINTENANCE AND MODIFICATION OF WORK RULES

...Proposed new rules or modifications of existing rules affecting working conditions as set forth above and otherwise, which are not exclusively within the discretion of management, shall be negotiated with the PBA prior to implementation.

VII. WAGES AND PAY PERIODS

...Effective January 1, 1985, and for the duration of this contract, employees covered under the terms of this Agreement shall be paid within the following salary ranges:

|                   | <u>SHERIFF'S OFFICER<br/>COURTS</u> |            | <u>SHERIFF'S OFFICER<br/>NON-COURTS</u> |
|-------------------|-------------------------------------|------------|---|
| Starting 1st year | \$15,848                            |            | \$16,980                                |
| 2nd year          | \$17,151                            |            | \$18,375                                |
| 3rd year          | \$18,070                            |            | \$19,359                                |
| 4th year          | \$18,980                            |            | \$20,335                                |
| 5th year          | \$19,754                            |            | \$21,164                                |
| 6th year          | \$23,496                            | - 1-1-85 - | \$25,174                                |
|                   | \$24,200                            | - 7-1-85 - | \$25,929                                |
|                   | * * *                               |            |   |

XXV. EMPLOYEE'S RIGHTS

...12(d) "Transfer to Sheriff's Officer Title" - Salary in the new position will be one step less than it would have been had he/she started in the Sheriff's Department originally...

XXX. Savings Clause

It is mutually understood and agreed that all benefits currently enjoyed by employees shall remain in effect and become part of this Agreement.

XXXV. Duration of Contract

...All of the provisions of this Agreement shall remain in full force and effect until a successor collective bargaining agreement is negotiated...

4. Joseph DeMarino, the Respondent's Sheriff from November 1970 through December 31, 1979, testified without essential contradiction that when he became Sheriff in 1970 he found no "rhyme or reason" regarding the salary situation of Sheriff's Officers. Over the course of several years he was able to place Sheriff's Officers on a par with police officers, creating four salary steps with a fifth step being the salary for a "full-fledged" Sheriff's Officer. At the outset, salary changes occurred on the anniversary date of hire but by around 1975 this had been changed so that the salary changes occurred on January 1st of any given year. All of the above was done through the course of negotiations with the PBA herein and approved by the Board of Chosen Freeholders. Finally, DeMarino testified that Sheriff's Officers proceeding from steps one through five receive their increment automatically even as negotiations for a successor agreement continued on and after January 1st of the given year.

5. Robert Belluscio, who was President of the PBA and in the negotiations unit during the tenure of DeMarino, supra, testified that by 1973 there were five steps and that until the change from anniversary date to January 1st a Sheriff's Officer would receive the negotiated salary increase but not move up a step until his or her anniversary date. Significantly, Belluscio testified further that between 1970 and 1979 the County's practice was not to pay increments after the expiration date of the prior agreement and that the PBA "did nothing."

6. Leonard Muuss, who has been a negotiator for the PBA since 1979, testified that in his experience a Sheriff's Officer never received the "new value" of the step to which he was being advanced before the settlement of the successor collective negotiations agreement. These settlements traditionally followed the expiration of the prior contract. The only exception to this, according to Muuss, was in the limited situation of transfers. Once the successor agreement was consummated, the increments due Sheriff's Officers would be paid retroactive at the "new value." Muuss' explanation for why there has never been any contractual provision regarding the automatic nature of the increments or steps was that the County was concerned that if it was put into the agreement then the unit members would expect payment and the County would have lost a bargaining point. He insisted that the PBA was always assured by the County that increment payments were and would be automatic.

7. The Charging Party placed in evidence excerpts from two collective negotiations agreements, one for the year 1980(CP-1) and one for the two-year period, 1981 and 1982 (CP-2), which disclosed only that the five salary steps for Sheriff's Officers have existed consistently over the period from DeMarino's tenure, ending in 1979, through the 1985 agreement (J-1, supra).<sup>2/</sup>

8. The PBA also submitted a grievance arbitration award, dated September 10, 1986, wherein a Sheriff's Officer, who was transferred, was placed at his proper step on the salary guide (CP-3).<sup>3/</sup>

9. The only witness produced by the Respondent, Henry H. Orszulski, its Labor Relations Specialist for the last seven years, testified in agreement with PBA witnesses Belluscio and Muuss that there had never been a time within his knowledge that increments were paid before the execution of the successor agreement.

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<sup>2/</sup> The Charging Party makes much of the fact that the County paid increments on January 1, 1982, which was the commencement of the second year of the two-year agreement (CP-2, supra). This is not probative on the issue since the County was contractually obligated to do so on that date. Here, the question is whether the County was legally obligated to make automatic payment of increments at the expiration of J-1, supra.

<sup>3/</sup> The Hearing Examiner perceives no relevance to the issue at hand in two other documents proffered by the parties as joint exhibits, namely, a Superior Court decision by Judge David D. Furman (J-2) and an interest arbitration award, dated January 18, 1979 (J-3).

DISCUSSION AND ANALYSIS

The Respondent County Did Not Violate §§5.4(a)(1) And (5) Of The Act When It Failed To Pay Its Sheriff's Officers Increments On January 1, 1986.

In concluding that the County did not violate the Act by its refusal to have paid increments to Sheriff's Officers on January 1, 1986, several salient facts found above require repeating in order to distinguish this case from other cases decided by the Commission and/or its designees:

1. The "Wages and Pay Periods" provision of Article VII of J-1 speaks in terms of "salary ranges" and thereafter provides for "salary ranges" from the first year to the sixth year in irregular "steps," with increases ranging from 4.8% to 18.9%.<sup>4/</sup>

2. Former Sheriff DeMarino, who served from November 1970 through December 31, 1979, clearly testified that the chaos in salaries of Sheriff's Officers was rationalized between 1970 and 1975 and that Sheriff's Officers who proceeded from Steps 1 through 5 beginning in the mid-1970's received their increment automatically (see Finding of Fact No. 4, supra). However, Belluscio, the President of the PBA during the tenure of DeMarino, contradicted DeMarino by testifying that between 1970 and 1979 the County's practice was not to pay increments after the expiration date of the prior agreement and that the PBA "did nothing" (see

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<sup>4/</sup> The other provisions of the agreement (J-1) do not appear to the Hearing Examiner to be probative on the issue: see Article II, Article III, Article XXV, Article XXX and Article XXXV (see Finding of Fact No. 3, supra).

Finding of Fact No. 5, supra). Further, Muuss, the PBA's negotiator since 1979, testified significantly that in his experience a Sheriff's Officer never received the "new value" of the step to which he was being advanced before the settlement of the successor collective negotiations agreement and that these settlements traditionally followed the expiration of the prior contract. Muuss then testified that once the successor agreement was consummated the increments due were paid retroactively at the "new value." Finally, Muuss' explanation as to why there was never any contractual provision regarding automatic increments or steps was that the County was concerned that it might have lost a bargaining point in so agreeing. (As to the testimony of Muuss, supra, see Finding of Fact No. 6).

3. The excerpts from the collective negotiations agreements for 1980 and 1981-82 do not in any way contradict the testimony of Belluscio and Muuss, supra (see Finding of Fact No. 7, supra).

4. Finally, the testimony of the Respondent's only witness, Henry Orszulski, buttresses the position of the County and is completely consistent with the testimony of Belluscio and Muuss that there has never been a time in his tenure that increments were paid before the execution of a successor agreement (see Finding of Fact No. 9, supra).

\* \* \* \*

As the Commission noted in Ocean Cty. Bd. of Chosen Freeholders et al., P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986):

The PBA bears the burden of proving its unfair practice allegations by a preponderance of the evidence. N.J.A.C. 19:14-6.8. Specifically it must prove that it and the County had a meeting of the minds and that they agreed upon an incremental system requiring the automatic payment of increments as an existing term or condition of employment at the time the contract expired...(12 NJPER at 347).

Refusal to pay increments during successor contract negotiations may unilaterally alter existing working conditions under §5.3 of the Act<sup>5/</sup> and thus violate §5.4(a)(5) of the Act: Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). Whether a refusal to make payment of increments violates the Act depends upon whether or not the payment is automatic and is required to preserve the status quo or, whether such payment is discretionary and thus a matter to be resolved in collective negotiations (78 N.J. at 49).

In Galloway, the Court held that a refusal to pay increments to teachers during successor contract negotiations violated the Act since a statute (N.J.S.A. 18A:29-4.1) compelled such payment. In the instant case, however, there is no statute which compels the payment of increments and, additionally, there is no past practice on the part of the County of automatically paying increments on January 1st of any given year. For the Hearing Examiner to hold that the County was required to pay automatic

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<sup>5/</sup> N.J.S.A. 34:13A-5.3 provides in part, that: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

increments to its Sheriff's Officers on January 1, 1986, as the PBA has requested, then such a holding must be predicated upon a finding that the County and the PBA had contractually agreed to that obligation: Essex Cty., P.E.R.C. No. 82-41, 7 NJPER 610 (¶12272 1981); Rutgers, The State University, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd. App. Div. Dkt. No. A-1572-79 (1981); and State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

In deciding whether or not the County contractually agreed to the payment of automatic increments to Sheriff's Officers on January 1st of any given year, the normal principles of contract construction must be applied. Namely, the Hearing Examiner must examine the totality of circumstances to determine what the parties' contractual agreement was regarding the payment of automatic increments or, indeed, whether there was any meeting of the minds on the issue: Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983) and Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983). As the Commission has said on many occasions: "The polestar of contractual interpretation is to discover the parties' intention. Atlantic Northern Airlines, Inc. v. Schwimmer, 12 N.J. 293, 301 (1953)...Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208 (1979)..." (12 NJPER at 347).

Now, applying the above legal principles and precedent to the facts of the instant case, the Hearing Examiner starts with the negotiations history of the parties. It is true that former Sheriff DeMarino was responsible for having rationalized the salary



structure for Sheriff's Officers, establishing a five-step salary structure, so that salary changes occurred on January 1st of any given year. This is not disputed. However, although DeMarino testified that the Sheriff's Officers proceeded from Steps 1 through 5, receiving their increments automatically, he was contradicted by the testimony of Charging Party witness Belluscio, the President of the PBA during DeMarino's tenure from November 1970 through December 1979. Belluscio testified quite clearly that between 1970 and 1979 the County's practice was not to pay increments after the expiration of the prior agreement and that the PBA "did nothing."

Since the Charging Party must prove its case by a preponderance of the evidence then, plainly, the contrary testimony of two witnesses on such a critical issue as the past practice regarding increment payments militates against a finding that the Charging Party has carried its burden of proof. Additional complications in meeting its burden of proof arise from the testimony of the Charging Party's third witness, Leonard Muuss, who has been a negotiator for the PBA since 1979, and who testified that in his experience a Sheriff's Officer has never received the "new value" of the step to which he or she was being advanced before the settlement of the successor collective negotiations agreement. Muuss stated that these settlements traditionally followed the expiration of the prior contract. Muuss testified further that once the successor agreement was consummated then the increments due would be paid retroactively at the "new value." Finally, the

testimony of Muuss as to why there was never a contractual provision regarding the automatic nature of the payment of increments is interesting but not probative on the issue, namely, that the County would have lost a bargaining point if such a contractual provision was incorporated into the parties' agreement. As previously found, the Hearing Examiner attaches no significance to the County having paid increments on January 1, 1982 at the mid-point of a two-year agreement (see Finding of Fact No. 7, supra).

Thus, on the basis of the foregoing proofs of the Charging Party only, no binding past practice has been proven by a preponderance of the evidence wherein the County automatically paid increments on either the anniversary date of employment or, beginning in 1975, on January 1st of any given year. Given the lack of any provision in the various collective negotiations agreements of the parties over the years, providing for automatic payment of increments on January 1st, the Hearing Examiner now considers whether there are any other provisions in the collective negotiations agreements, most recently for 1985 (J-1), from which an agreement by the County to pay increments automatically on January 1st may be inferred. The Charging Party points first to Article II, "Maintenance of Benefits," which provides, essentially, that the agreement shall not be construed to deprive any employee of a previously granted benefit, right, etc. Since the question of whether or not the benefit of an automatic increment is the issue, Article II throws no probative light on the question. Article III

incorporates the provisions of §5.3 of the Act, supra, regarding proposed new rules or modifications of existing rules and, it, too, is not probative on the issue at hand. Similarly, Articles XXV, XXX and XXXV, dealing, successively, with transfers, the savings clause and the duration of the contract, do not buttress the Charging Party's case. Finally, Article VII, pertaining to wages and the salary structure is cited by the Charging Party. However, when the salary structure and the five steps are examined, one first notes the introductory paragraph and its statement that employees "shall be paid within the following salary ranges." The phrase "salary ranges" in the context of five steps, which deviate from as little as 4.8% differential to as much as an 18.9% differential does not suggest to the Hearing Examiner the type of salary structure within which automatic incremental movement from year to year would occur.<sup>6/</sup> Thus, in the opinion of the Hearing Examiner, there is no contractual basis in the 1985 collective negotiations agreement (J-1) from which to infer that the County was obligated to make payment of automatic increments to Sheriff's Officers on January 1, 1986.

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<sup>6/</sup> Even in Ocean Cty., supra, the disputed salary guide, as to which the Commission found there was no agreement for the payment of automatic increments, was far more susceptible to the conclusion that automatic increments were contemplated by the parties than Article VII of J-1 (see Finding of Fact No. 3, supra).

The Hearing Examiner would be remiss in not discussing briefly a case relied upon heavily by the Charging Party in support of its position: City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981). In that case the Commission's designee concluded that the employer was obligated to make payment of automatic increments during negotiations for a successor agreement. There the expired agreement contained a salary schedule, which, in three columns, set forth the years of service and two salary columns, entitled "1979" and "1980" where the salary columns corresponded to years of service. After first citing Galloway, supra, the Commission's designee referred to a section of the Police and Fire Arbitration Act (N.J.S.A. 34:13A-21) wherein it is provided, inter alia, that a party may consent to changes in terms and conditions of employment during the pendency of negotiations "...without prejudice to his rights or position under this...Act..." The Commission's designee relied upon the foregoing statutory provision in finding that the city was obligated to payment of automatic increments during negotiations for a third or fourth contract, notwithstanding that the City did not pay increments at the expiration of the first two contracts. Thus, it was held that the past history of non-payment by the City could not constitute a binding past practice and there was no waiver of the right of the union there to seek an order for payment of automatic increments.

The Hearing Examiner distinguishes Vineland on the basis that there is here a binding past practice of non-payment of

increments by the County on either the anniversary date or January 1st since 1970, a period of 16 years. Thus, the PBA herein does not get the benefit of the holding in Vineland that there was no binding past practice because of N.J.S.A. 34:13A-21. Vineland involved at most three prior collective negotiations and employer non-payment of increments on January 1st, a situation vastly different from the 16 years of non-payment of increments on either the anniversary date or January 1st.

Although the facts in Ocean Cty., supra, essentially involved the question of whether there was a meeting of the minds as to whether a salary guide was to be applied "automatically" on the anniversary date of the contract, the reasoning of the Commission affords additional support for the conclusion of the Hearing Examiner that the County did not violate the Act when it refused to make payment of increments to the instant Sheriff's Officers until the conclusion of negotiations for the 1986 successor agreement.

\* \* \* \*

Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it refused to make payment of increments to its Sheriff's Officers on January 1, 1986.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



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Alan R. Howe  
Hearing Examiner

Dated: December 16, 1986  
Trenton, New Jersey