

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF SUSSEX,

Respondent,

-and-

Docket No. CO-84-191

PBA LOCAL 138, SUSSEX COUNTY  
CORRECTION OFFICERS,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, a Hearing Examiner appointed as the Commission's designee grants interim relief based upon a charge filed by PBA Local 138, Sussex County Corrections Officers, against the County of Sussex. The Charge alleges that the County had violated subsections 5.4(a)(1), (2), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused, during negotiations for a successor contract, to pay salary increments due to eligible employees in accordance with the terms of an expired interest arbitration award. Finding that the PBA had established a substantial likelihood of success on the merits and that it would suffer irreparable harm if denied the requested relief, the Commission's designee ordered the County to pay eligible employees the increments owed them in accordance with the terms of the expired interest arbitration award; and also ordered the County to pay eligible employees the monetary difference between the amount they would have received had the increments not been unilaterally withheld and the amounts they were in fact paid after January 1, 1984.

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Appearances:

For the Respondent, Yauch, Peterpaul & Clark, Esqs.  
(Frank J. Peterpaul, Esq.)

For the Charging Party, Loccke & Correia, Esqs.  
(Manuel A. Correia, Esq.)

INTERLOCUTORY DECISION

On January 30, 1984, PBA Local 138, Sussex County Correction Officers (the "Charging Party" or the "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") alleging that the County of Sussex (the "County" or the "Respondent") had violated the New Jersey Employer-Employee Relations Act, as amended N.J.S.A. 34:13A-1 et seq. (the "Act"). More specifically, it is alleged that the County violated subsections 5.4(a)(1), (2), (3), (5) and (7) of the Act by refusing to grant salary increments which were due to its employees, within the collective negotiations unit represented by Charging Party, under the terms of an "expired" interest arbitration award. <sup>1/</sup>

<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; (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

(continued)

Also on January 30, 1984, the PBA filed an Order to Show Cause with the Commission, asking that the County show cause why an Order should not be entered directing the Respondent to pay the salary increments pursuant to the parties' most recent interest arbitration award.

The Order to Show Cause was executed and made returnable on February 17, 1984. On that date, the undersigned conducted the Order to Show Cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. Both parties submitted briefs and argued orally at the hearing.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are quite similar to those applied by the courts when confronted with similar applications. The test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted. <sup>2/</sup> Both standards must be satisfied before the requested relief will be granted.

The record reveals the following facts concerning Charging Party's application for interim relief. On May 12, 1982, an Interest Arbitration Award was issued to these parties; said Award covered calendar years 1982 and 1983. The interest arbitration award in-

<sup>1/</sup> (continued) 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."

<sup>2/</sup> See, In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

cluded an automatic step increment wage system. <sup>3/</sup> The Interest Arbitration Award was confirmed in part, vacated in part, by the Sussex County Superior Court, Chancery Division, on October 15, 1982. Notably, for purposes of this proceeding, the automatic step increment wage system was confirmed by the Superior Court. The Judgment of the Superior Court is currently pending before the Appellate Division. <sup>4/</sup> In addition to the foregoing procedural history, the County had also filed a Petition for Scope of Negotiations Determination with the Commission on December 24, 1981. The Petition sought, inter alia, a negotiability determination concerning the interest arbitrator's adoption of the automatic step increment wage system proposed by the PBA. The Commission concluded that the salary step system was mandatorily negotiable and was thus a proper subject for interest arbitration. No appeal was taken from this decision. In re County of Sussex, P.E.R.C. No. 83-92, 7 NJPER 77 (¶14042 1982).

On November 15, 1983, the parties commenced negotiations for a successor agreement to cover calendar 1984. No agreement on a successor contract has been reached by the parties. The PBA

<sup>3/</sup> Mitrani Interest Arbitration Award, dated May 12, 1982, at p. 28a.

<sup>4/</sup> Appellate Division Docket No. 1260-82T3. Oral argument is scheduled in March 1984.

The undersigned is aware of Respondent's position that because of the pendency of the aforementioned appeal before the Appellate Division, interim relief should not be granted and the charge should proceed to a plenary hearing in the normal course -- ostensibly because the possibility exists that the Appellate Division could vacate the Interest Arbitration Award (or a part thereof) upon which Charging Party's interim relief claim is based. However, the undersigned notes that no stay of the Superior Court Judgment was procured from the Appellate Division. Further, N.J.S.A. 34:13A-20 provides: "Orders of the arbitrator shall be reviewable by the Superior Court... The pendency of such proceeding for review shall not of itself stay the order of the arbitrator." Accordingly, the undersigned is constrained to view the arbitrator's order in this matter, as confirmed by the Superior Court, as valid and binding upon the parties herein. Accord, R.2:9-5, 2:9-7.

filed a Petition to Initiate Compulsory Interest Arbitration on December 22, 1983.

As stated above, the May 1982 Interest Arbitration Award provides for an automatic step increment wage system; said increment system provides that on January 1 of each year, each unit employee shall advance one step classification within his/her respective rank. On January 1, 1984, several unit employees were in a position to advance one step classification, pursuant to the terms of the aforementioned Interest Arbitration Award. By January 30, 1984 (and as of February 17, 1984), no unit employee had been afforded an increment.

The Respondent argues that the Charging Party is not entitled to the relief requested because it has failed to demonstrate a substantial likelihood of success on the merits and has not shown that irreparable harm will occur if its requested relief is not granted. Respondent notes that it has long and consistently maintained that there should not be an increment wage system in the parties' agreement; that no agreement was ever reached by the parties containing an automatic step increment wage system; that the Interest Arbitration Award granted employees a step increment system for 1982 and 1983 only; and that Charging Party refused to negotiate in good faith prior to January 1, 1984 and is therefore not entitled to injunctive relief.

The dispute in this matter, the payment of increments, is an issue which has been the subject of prior litigation and judicial review. Decisions of the Commission and the Courts have addressed this issue in various factual settings. It has been

held consistently that salary increments contained in an expired contract must be paid during the period of negotiations for a new contract; even where the majority representative has acquiesced in the employer's non-payment of increments after the expiration of two earlier contracts, the Commission's designee declined to find this was a binding past practice and held that the non-payment of increments after the expiration of the third (and most recent) contract was violative of the Act; where an employer unilaterally discontinued salary increments during negotiations and where the increment program had been established not in the parties' expired written agreement but through a past practice, the Commission held such conduct to be violative of the Act; and the Commission has found an employer violated the Act where the employer discontinued unilaterally the payment of increments during negotiations for a first contract, even where the increment program had been established unilaterally by the employer prior to the time that the employees had first become organized. <sup>5/</sup> In In re State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), the Chairman of the Commission ordered the employer to pay salary increments which were due to employees pursuant to the terms of the parties' expired contract. The Chairman stated:

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

<sup>5/</sup> Galloway Twp. Bd/Ed v. Galloway Twp. Ed. Assn, 78 N.J. 25 (1978); In re Union County Reg. H.S. Bd/Ed, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson County Bd/Chosen Freeholders V. Hudson County 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); In re 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).

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. In re State of New Jersey, supra, at 7 NJPER 536.

The County's maintenance of a position opposed to the increment system may go to the wisdom of utilizing such a compensation program; however, the employer's opposition thereto in no way affects its negotiability or enforceability as a term and condition of employment.

Further, there is nothing in the Interest Arbitration Award itself which would place a limitation upon the operation of the automatic step increment wage system after 1982 and 1983. With regard to any dispute concerning the "meaning" of the Interest Arbitrator's Award vis-a-vis the increment system, the undersigned, after having read the Award, concurs with the Commission's conclusion that:

The arbitrator selected the PBA's economic proposal because the prior wage schedule was "...replete with problems and inequities" and because the new salary step system "would give a sense of order to the salaries paid within the bargaining unit," thus allowing employees to measure their career prospects and reducing turnover. In re County of Sussex, P.E.R.C. No. 83-92, 7 NJPER 77 (¶14042 1983)(citations omitted).

Finally, with regard to the County's affirmative defense that the Charging Party is barred from the requested injunctive relief due to its refusal to negotiate in good faith prior to

January 1, 1984, the undersigned would note that even assuming arguendo that all of the facts alleged in paragraphs 8-12, at pages 5-6 of the County's brief are true, such facts would not establish a claim that the Charging Party had refused to negotiate in good faith prior to January 1, 1984.

The Courts and the Commission have recognized the irreparable nature of the harm resultant from the denial of increments during negotiations. In Galloway, the Supreme Court stated:

...The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. Unilateral changes disruptive of this status quo are unlawful because they frustrate the "statutory objective of establishing working conditions through bargaining."

...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.

Galloway, supra, n. 5, at pp. 48-49. See also, In re State of New Jersey, supra, p. 5.

Based upon the foregoing, the undersigned finds that the PBA herein has a substantial likelihood of success on both the law and the facts at a plenary hearing and further concludes that the PBA will suffer irreparable harm if it is denied the requested interim relief.

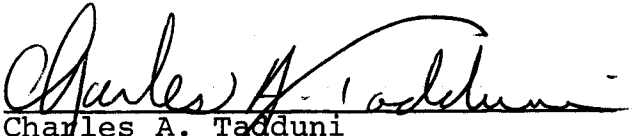


ORDER

IT IS HEREBY ORDERED that the County of Sussex immediately pay to the eligible employees in the unit represented by PBA Local 138, Sussex County Corrections Officers, their salary increments in accordance with the step increment system contained in the parties' May 12, 1982 Interest Arbitration Award, during the course of negotiations and interest arbitration for a successor agreement.

IT IS FURTHER ORDERED that the County of Sussex pay the affected employees the monetary difference between the amount the eligible employees would have received had their increment not been unilaterally withheld and the amounts they were in fact paid subsequent to January 1, 1984.

BY ORDER OF THE COMMISSION

  
Charles A. Tadduni  
Commission Designee

Dated: February 23, 1984  
Trenton, New Jersey