

I.R. NO. 93-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY BOARD OF
CHOSEN FREEHOLDERS,

Respondent,

-and-

Docket No. CO-93-338

SOMERSET COUNTY CORRECTION OFFICERS,
PBA LOCAL 177,

Charging Party.

SYNOPSIS

A Commission Designee entered an interim order compelling Somerset County Board of Chosen Freeholders to pay salary increments pursuant to a recently expired collective negotiations agreement. The County argued that although the contract does provide for the paying of increments on the anniversary date of the contract, the Association made a demand in negotiations to reduce the number of steps on the salary guide. It argued that the contract provision for increments is applicable only if the nine-step salary guide is maintained. It was held that the Association's demand in negotiations does not obviate the obligation to pay increments pending the resolution of negotiations.

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Appearances:

For the Respondent
Shanley & Fisher, attorneys
(Mark Diana, of counsel)

For the Charging Party
Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On March 30, 1993, the Somerset County Correction Officers, PBA Local 177 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Somerset County Board of Chosen Freeholders committed an unfair practice when on January 1, 1993, it failed to pay increments pursuant to a collective negotiations agreement which expired on December 31, 1992. The parties are currently engaged in negotiations for a successor agreement. The PBA further alleged that the failure to provide pay increments during negotiations for a successor agreement constitutes irreparable harm. It is claimed that these actions

violate N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/} PBA Local 177 also filed an Application for Interim Relief. An Order to Show Cause was executed and a hearing was ultimately conducted on April 28, 1993.

The County opposes the application and argues that the contract does not provide for payment of increments under the circumstances here.

The contract, at Article II, Section A, provides:

Wages for employees covered by this Agreement shall be as set forth in Appendix A annexed. This contract contains an annual step increment system for correction officers which provides each correction officer with an advancement of one (1) step on the salary guide each year until the maximum pay rate (Step #9) is reached.

Appendix A contains a nine-step salary guide and states "this contract provides for an automatic annual step increment system for correction officers which provides each correction officer with an advancement of one step on the salary guide each year until the maximum (step #9) is reached." This agreement is the first one between these parties which contains an increment structure.

^{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."

The Board argues that during current negotiations for a successor agreement, a demand made by the Association was to reduce the number of steps on the salary guide. It argues that the contract provides increments would be paid at the expiration of the contract only if the nine-step guide was retained. Since the Association does not agree with that interpretation, there was no meeting of the minds as to the interpretation of the contract and interim relief should be denied.

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.^{2/}

The contract language is clear and unambiguous. Correction officers have worked an extra year commencing January 1, 1993 and should advance one step on the guide unless the maximum pay rate has been reached. I believe that there is a substantial likelihood that

^{2/} 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).

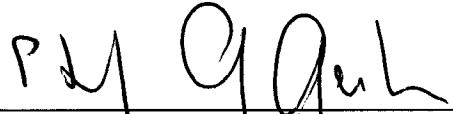
the Commission will find that there is an increment structure in the contract which requires the payment of increments effective January 1, 1993. The Association's demand in negotiations to alter the terms of the salary guide does not obviate the obligation to provide increments pending the resolution of those negotiations. The fact that the salary guide may be altered through negotiations at some time in the future, does not somehow alleviate the obligation to maintain the status quo during negotiations.

Admittedly, if the County were to agree to the PBA's demand to alter the salary guide after the payment of increments, there might be some logistical difficulties. Nevertheless such difficulties must be measured against the obligation to maintain the status quo. The obligation to maintain the status quo is paramount here. County of Bergen, I.R. 91-20, 17 NJPER 275 (¶22124 1991); State of New Jersey, I.R. No. 82-3, 7 NJPER 532 (¶12235 1981); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) and Alexandria Tp. B/E, I.R. No. 84-5, 10 NJPER 1 (¶1500 1983).

I further find that there is a substantial likelihood the Commission will find the County's conduct constitutes an unfair practice and the harm which flows from that unfair practice is irreparable in nature. Accordingly, it is hereby ordered that the County of Somerset pay its correction officers increments pursuant

to Article II, Section A and Appendix A of the recently expired collective negotiations agreement.^{3/}

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: May 5, 1993
Trenton, New Jersey

^{3/} This order is an interim one only and the matter will go forward to a plenary hearing.