

I.R. No. 2011-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY
PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. CO-2011-115

MERCER COUNTY PROSECUTOR'S
PBA LOCAL 339,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based upon an unfair practice charge alleging that the public employer refused to direct step movement on salary guides for detectives and investigators set forth in a now-expired collective negotiations agreement. The parties are engaged in interest arbitration proceedings.

The Designee determined that the contract provisions express an intention to maintain the step movements after the agreement expired, notwithstanding a factual dispute over whether step payments were issued after previous agreements expired and during successor negotiations. The Designee found that the parties had negotiated a "dynamic status quo" and ordered that the step increases be paid.

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Appearances:

For the Respondent, Genova, Burns & Giantomasi,
attorneys
(Brian W. Kronick, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys
(Richard Loccke, of counsel)

INTERLOCUTORY DECISION

On September 17, 2010, Mercer County Prosecutor's PBA Local 339 (PBA) filed an unfair practice charge against the Mercer County Prosecutor (Prosecutor), together with an application for interim relief, certification, exhibits and a brief. The charge alleges that on August 24, 2010, the Prosecutor refused to direct step movement on salary guides for detectives and investigators set forth in the parties' collective negotiations agreement which extended from January 1, 2006 through December 31, 2009. The charge alleges that the parties are engaged in interest arbitration with an assigned arbitrator, following the filing of

an interest arbitration petition (Docket No. IA-2010-069). The charge also alleges that the expired agreement provides in Article 6 (Salaries) that ". . . the annual automatic step movement system shall continue" and in Article 34 (Termination) that "this agreement shall remain in full force and be effective during the period of negotiations." The Prosecutor's conduct allegedly violates 5.4a(1), (2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The application seeks an Order requiring the Prosecutor to pay the annual step increases, among other things.

On October 1, 2010, I signed an order to Show Cause, specifying October 21 as the return date for argument on the application in a telephone conference call. I also directed the Prosecutor to file an answering brief, together with opposing certification(s) and proof of service upon the PBA by October 15,

^{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. (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 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."

2010. On October 15, the Prosecutor filed its response. On the return date, the parties argued their cases in a conference call. The following facts appear.

The Prosecutor and the PBA signed a collective negotiations agreement extending from January 1, 2006 through December 31, 2009. In September 2009, the PBA requested negotiations for a successor agreement. A petition requesting the initiation of compulsory interest arbitration was filed on February 4, 2010 (IA-2010-069).

Article 6 (Salaries) of the agreement provides:

6.1 Salaries for employees covered by this agreement shall be set forth as Appendix A annexed.

6.3 The annual automatic step movement system shall continue. All employees with at least one year of service shall annually advance one step position. Incremental step moves for persons not at maximum pay rate shall be on October 1, 2000 and on each July 1, in each year thereafter.

Article 34 (Termination) provides:

This agreement shall be effective as of the first day of January 2006 and shall remain in full force and effect until the 31st day of December 2009. It shall be renewed from year to year thereafter unless either party shall give written notice of its desire to modify the agreement . . . This agreement shall remain in full force and be effective during the period of negotiations. [Article 34.2]

On unspecified dates during 2010, certain unspecified members of the PBA unit became eligible for step movement, ". . .

pursuant to the most recent contract, many prior contracts, and a longstanding practice for step movement," according to the PBA president.

Maureen Sparano is the senior personnel technician in the Mercer County Office of Employees' Relations and has worked in the office for 20 years. She ". . . maintains pay raises and increased salaries based upon contractual steps." Her involvement is ". . . to increase each individual salary, based upon the contract, when the time arises for a percent or step increase." She certifies that in the past 20 years:

. . . [W]e have not moved any contract on step without an active contract. The sole exception was an increase that resulted from a recent arbitration decision. Once a new contract is approved, the percent increase or step increase gets implemented from the time stated in the contract. All members receive retro-pays and retroactive movements on the guide at that time.

In negotiations for the parties' successor agreement, the Prosecutor has proposed "a freeze in advancement" on the salary guide for 2010, owing to a projected \$43m shortfall in revenue over the next two years. Mercer County will face increased costs of the pension system, health care benefits and prescription plan premiums. In collective negotiations with other units, Mercer County has secured step freezes. It has also requested that other groups reopen negotiations to avoid potential layoffs.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain interim relief, a charging party must 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 Commission has 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. NJPER Supp. 2d 62 (¶44 App. Div. 1979). The Commission recently reaffirmed this holding in two consolidated police cases, Ocean Cty. and Ocean Cty. Sheriff, P.E.R.C. No. 2011-6, 36 NJPER 303 (¶115 2010). The Commission noted that under the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a et seq, public employers are prohibited from changing existing wages, hours and other conditions of employment during the pendency of proceedings before the arbitrator. N.J.S.A. 34:13A-21.

In Ocean Cty. Prosecutor, I.R. No. 2011-1, 36 NJPER 249 (¶92 2010), the Designee ordered the payment of automatic salary increments following the expiration of the parties' collective negotiations agreement. The expired agreement set forth these provisions:

This Agreement shall be in full force and effect from April 1, 2006 through March 31, 2010, or until execution of a successor agreement. [Article 39]

The annual salaries for employees covered by this contract shall be as set forth on Appendix A annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. [Article 6]

I glean little or no substantive difference between the disputed provisions in Ocean Cty. Prosecutor and the relevant contract provisions in this matter. (The provisions in this case do not disavow an "automatic incremental structure." See Hawthorne Bd. of Ed, I.R. No. 98-11, 23 NJPER 638 (¶28311 1997)).

The Designee in Ocean Cty. Prosecutor wrote that the parties had a "history and practice" of eligible employees automatically receiving increments after the expiration of the collective agreements. This case presents a factual dispute; the PBA certifies that eligible employees received payments for annual step movements by "longstanding practice"; the Prosecutor certifies that such payments were not issued after collective agreements expired and during successor negotiations.

I do not find that the factual dispute is "material," in light of the parties' contract provisions expressing an intention to maintain annual step movements following the expiration of a collective agreement and during negotiations for its successor. That the PBA may have deferred the annual payment(s) one time or more during negotiations (after the agreement expired) does not negate or change the provisions' meaning. See Sussex Cty., I.R. No. 91-15, 17 NJPER 234 (¶22101 1991); New Jersey Sports and Exposition Auth., P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987). Under all the circumstances, I find that the PBA has met its burden to show that it has a substantial likelihood of success on the merits of the charge.

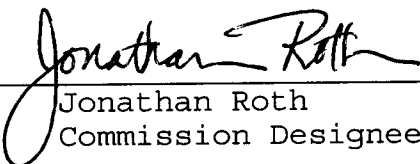
The Prosecutor argues that the harm which the PBA will suffer is "financial in nature" and not irreparable (brief at p. 14). "Money damages cannot remedy the chilling effect on the collective negotiations process." Ocean Cty. and Ocean Cty. Sheriff, P.E.R.C. No. 2011-6, slip op. at p. 7-8. See also, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). I find that the County's refusal to direct step movement during the pendency of interest arbitration proceedings causes irreparable harm. See N.J.S.A. 34:13A-21.

The Prosecutor contends that payment will undermine the proposal to freeze salary step movement in 2010. In light of Article 6 of the collective negotiations agreement, I find that

the parties have already negotiated over step movement and they have negotiated a "dynamic status quo" at least until a successor agreement is signed. See Galloway Tp. Bd. of Ed. The County also has described its finances as "dire." If that is the case, the parties may arrange for recoupments, red-circling or another method of assurance that employees receive only what will be negotiated or awarded. The Prosecutor can also seek negotiated changes in its obligations under the recently expired agreement to adjust to changed circumstances.

ORDER

The application for interim relief is granted. The County shall immediately implement annual step increases to unit employees both retroactively and prospectively, as appropriate until this case is resolved^{2/}.


Jonathan Roth
Commission Designee

DATED: October 26, 2010
Trenton, New Jersey

^{2/} The charge will be processed by the Director of Unfair Practices.