

I.R. NO. 2011-36

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Respondent,

-and-

Docket No. CO-2011-254

FRATERNAL ORDER OF POLICE LODGE #34,

Charging Party.

SYNOPSIS

The FOP filed an application for interim relief seeking an order requiring the County to pay salary increments upon the expiration of a collective negotiations agreement. The Chair denied the application, finding that the relative hardship to the parties weighs in favor of the County.

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Appearances:

For the Respondent, James F. Ferguson, County Counsel  
(Richard C. Andrien, Assistant County Counsel)

For the Charging Party, Plotkin Associates, LLC  
(Myron Plotkin, Labor Relations Consultant)

INTERLOCUTORY DECISION

On December 29, 2010, Fraternal Order of Police Lodge #34 filed an unfair practice charge against the County of Atlantic which was accompanied by an application for interim relief. The charge alleges that the County violated N.J.S.A. 34:13A- 5.4a(1), (2), (3), (5) and (7)<sup>1/</sup> of the New Jersey Employer-Employee

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

Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed to pay salary increments upon the expiration of the collective negotiations agreement. The application seeks an Order directing the County to pay increments plus interest retroactively to January 1, 2011 and to enjoin the County from engaging in conduct which violates the Act.

On January 14, 2011, a Commission designee issued an Order to Show Cause specifying February 14 as the return date for argument via telephone conference call. The County was directed to file a response by February 3. On the return date, the parties argued their cases. On February 24, I requested that the matter be transferred to me due to its important public policy implications. Another return date was scheduled for March 4, at which point the parties argued their cases telephonically. The following facts appear.

The FOP represents all Corrections Officers below the rank of sergeant. The County and FOP are parties to a collective negotiations agreement with a term of January 1, 2003 through December 31, 2006. On April 2, 2010, an arbitrator issued an award with a term of January 1, 2007 through December 31, 2010.

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1/ (...continued)  
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."

The award was appealed by the County, and on August 12, 2010, the Commission remanded the award to the arbitrator. P.E.R.C. No. 2011-8, 36 NJPER 307 (¶117 2010). On September 1, the arbitrator issued a supplemental award. The County filed a supplemental appeal. On February 3, 2011 the Commission vacated the award and remanded it to the arbitrator for issuance of a new award within 30 days. P.E.R.C. No. 2011-56, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_).

On December 22, 2010, the County informed the FOP's attorney that although the payment of salary increments upon the expiration of a collective negotiations agreement is "the practice [that] is normally followed", it is no longer "efficacious or reasonable to do so", and that effective January 1, 2011, the County "will not move any officers through the salary guide on expired contracts."

The FOP has filed the certification of George Hebert, a corrections officer who has been employed by the County for 15 years. Hebert asserts that for as long as he has been employed by the County, it has been the County's consistent past practice to pay salary increments for the succeeding year if a contract had expired. The County has filed the Certification of Diana Rutala, its Deputy County Administrator. Rutala certifies that "the full cost of implementing the existing guide for 2011 would result in an increase of \$363,100 or a 4.71% increase."

The FOP asserts that given the County's past practice of paying salary increments upon the expiration of a collective negotiations agreement, its failure to continue to do so on January 1, 2011 is a unilateral change in terms and conditions of employment without negotiations as well as a repudiation of the collective negotiations agreement. It further asserts that the County's decision not to pay salary increments will irreparably harm the negotiations process and will cause its members financial harm.

The County responds that it has a duty to spend public funds wisely and that the negotiations landscape has changed as demonstrated by a 2.0% property tax cap levy. The County also references the recently enacted interest arbitration law. It argues that both of these legislative enactments will significantly restrict the salary increases that can be given inclusive of salary increments. The County also asserts that payment of the salary increments will likely result in increases that exceed the amounts that can legally be granted, and that if overpayment is made, officers would be required to remit the excess payments to the County. The County contends that such an adjustment process would be unfair to the officers and an administrative burden. It also asserts that whatever salary guide provisions are contained in a new agreement would be paid retroactively.

Interim relief is extraordinary relief, and the granting of such relief requires the "most sensitive exercise of discretion." Crowe v. De Gioia, 90 N.J. 126, 132 - 134 (1982). A determination as to whether interim relief should be granted is guided by four fundamental principles. Ibid. The first is that interim relief should not be granted except when necessary to prevent irreparable harm. The second principle is that interim relief should not be granted if the legal right underlying the movant's claim is unsettled. A third rule is that interim relief should not be granted where material facts are in dispute and the movant has not made a preliminary showing of a reasonable probability of ultimate success on the merits. The final test is a weighing of the relative hardship to the parties in granting or denying relief. Ibid.

The test that is dispositive in this case is the fourth test which is a weighing of the relative hardship to the parties.<sup>2/</sup> Unit members will incur some level of financial hardship if their salary increments are not paid immediately. However, that hardship is outweighed by the County's hardship if it was ordered to immediately pay the salary increment. P.L. 2010, c. 44 became effective on July 13, 2010 and is applicable to the next local

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<sup>2/</sup> I acknowledge the case law which the FOP asserts supports its position regarding its substantial likelihood of success and the existence of irreparable harm. However, because I find the relative hardship to the parties to be the dispositive factor, I have not addressed the other factors.

budget year.<sup>3/</sup> That law reduced the property tax cap levy from 4.0% to 2.0% - - i.e. a county or municipality may not increase property taxes more than 2.0% over the prior years rates. While P.L. 2010, c.44 does not explicitly limit increases in employees' salaries to 2.0%, it is reasonable to determine that the financial constraints thrust upon the County by the 2.0% property tax cap levy will result in reduced increases awarded to unit members than have been awarded in the past. The County's immediate payment of a 4.71% salary increment may result in an overpayment. The FOP argues that the County could recoup any excess payments made to unit members. However, under these circumstances where the likelihood of recoupment is substantial, it is inefficient to order the County to pay the salary increment only to have it recoup money when the interest arbitration award issues. Additionally, it is inexpedient to have unit members receive money immediately when they may have to return some amount of that money. The FOP alleges that the County has an ability to pay the salary increment irrespective of the 2.0% property tax cap levy, however, that allegation should be borne out during a full evidentiary hearing.

Moreover, P.L. 2010 c.105 established significant changes to the interest arbitration process. Among the more significant

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3/ The County operates under a calendar year budget.

changes is the requirement that an arbitrator will not render any award which, on an annual basis, increases base salary items by more than 2.0% of the aggregate amount expended by the public employer on base salary items in the preceding year.<sup>4/</sup> The law became effective January 1, 2011, however, the portion of the law establishing the 2.0% base salary cap is applicable only to collective negotiations agreements expiring on January 1, 2011 or later. The award that is currently remanded to the arbitrator involves a contract which expired on December 31, 2010. However, the next contract which is reached via either a voluntary settlement or an interest arbitration award will likely comport with the spirit of P.L. 2010, c.105.

Having given careful consideration to the 2.0% property tax cap levy, the hardship to the County if it were required to immediately pay the salary increment outweighs the hardship to unit members in not immediately receiving the salary increment. Therefore, the FOP has not satisfied one of the requisite elements to allow for the granting of interim relief. The FOP's application for interim relief is denied.

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<sup>4/</sup> I note that under the new law, the parties or the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal percentages.



ORDER

The application for interim relief is denied.<sup>5/</sup>

  
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P. Kelly Hatfield  
Chair

DATED: March 7, 2011  
Trenton, New Jersey

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<sup>5/</sup> This case shall proceed to a full evidentiary hearing.