

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN &
COUNTY OF CAMDEN SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2013-195

CAMDEN COUNTY SHERIFF'S
OFFICERS PBA LOCAL 277 &
SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent violated the parties' collective negotiations agreements ("CNAs") and the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the Respondent informed the Charging Party that it was withholding all incremental and step movement pay increases on salary guides on all expired CNAs beginning in 2013.

The application seeks an Order requiring the Respondent to pay step movement increases; restraining the Respondent from repudiating the terms and conditions of employment; directing the Respondent to negotiate in good faith; and to post a notice setting forth the unfair practices committed by the Respondent.

The Charging Party asserted that the CNAs between the parties and the past practice required the payment of the step movement increases. An interest arbitration award was issued on June 13, 2011 that covers the period from January 1, 2008 through December 31, 2012 but was never reduced to writing and signed as required by New Jersey statute. Nevertheless, the Respondent paid the step increases on the salary guide as set forth in the interest arbitration award after it was issued.

Based on the certifications that were filed, the Commission Designee found that the past practice between the parties was not clear, that material facts in the case were in dispute, that the meaning of the provisions in the CNAs were not clear and the impact of the interest arbitration award that was not reduced to writing and signed, were all disputes as to the material facts of the charge that could not be resolved at the interim relief stage.

I.R. NO. 2013-11

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Charging Party.

Appearances:

For the Respondent, Brown & Connery, attorneys,
(Michael J. DiPiero, of counsel and on the brief)

For the Charging Party, Loccke, Correia, Limsky &
Bukosky, attorneys, (Michael A. Bukosky, of counsel and
on the brief)

INTERLOCUTORY DECISION

On January 14, 2013, Camden County Sheriff's Officer PBA/SOA Local 277 (collectively referred to as "PBA" except when specific issues regarding each unit are referenced) filed an unfair practice charge against the County of Camden ("County"), which was accompanied by an application for interim relief, a certification from Brian Madison, President of the PBA, a brief and a reply brief. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and the parties' collective negotiation

agreements (CNA)^{1/} when, on December 27, 2012, the County Sheriff informed members of the PBA and all other units that the County was withholding all incremental and step movement pay increases on salary guides on all expired CNAs. The charge also alleges that the parties are engaged in negotiations for a successor agreement. The County's conduct allegedly violates 5.4a(1), (2), (3), (5) and (7) of the Act.^{2/}

The application seeks an Order requiring the County to pay step movement increases; restraining the County from repudiating the terms and conditions of employment; directing the County to negotiate in good faith; and to post a notice setting forth the unfair practices committed by the County.

On January 15, 2013, I issued an Order to Show Cause specifying January 31 as the return date for argument via telephone conference call. The County filed a certification from

^{1/} The PBA and SOA have separate CNAs.

^{2/} 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."

Charles A. Billingham, the County's Sheriff, an opposition brief with exhibits and a sur-reply brief with an exhibit. On the return date, the parties argued their cases in a telephone conference call.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' CNAs have a term of January 1, 2003 through December 31, 2007. An interest arbitration award was issued on June 13, 2011 that covers the period from January 1, 2008 through December 31, 2012 but was never reduced to writing and signed as required by New Jersey statute.^{3/4/}

Even though the arbitration award was never reduced to writing and signed, the County paid the step increases on the salary guide as set forth in the interest arbitration award.

3/ See Camden Cty. I.R. No. 2012-18, __ NJPER __ (¶____) for the factual background:
[http://www.perc.state.nj.us/percdecisions.nsf/Issued%20Decisions/85257575007C2104852579FE006E4893/\\$File/IR%202012%20018%20IA-2010-003%20IA-2010-004.pdf?OpenElement](http://www.perc.state.nj.us/percdecisions.nsf/Issued%20Decisions/85257575007C2104852579FE006E4893/$File/IR%202012%20018%20IA-2010-003%20IA-2010-004.pdf?OpenElement)

4/ The Madison certification inexplicably claims that the interest arbitration award was reduced to writing and apparently executed by the parties at ¶3, "The County of Camden, as an employer, has agreed to certain contractual terms which are memorialized in a written collective bargaining agreement. (A true copy of this agreement is attached hereto as Exhibit "A") and at ¶9, "The current collective bargaining agreement provides a term from 2008 to 2012, but also that the contract "shall continue in force and effect year to year thereafter..." There was no "Exhibit A" attached to the PBA's submission, however, the County attached an unsigned draft CNA for the PBA unit (there was no draft agreement for the SOA unit) at "Exhibit D."

The parties were in negotiations for new CNAs since November 2012; on or about December 27, 2012, the County advised the PBA that it would not process movement on the interest arbitration salary guide beginning January 1, 2013.

On January 8, 2013, Sheriff Billingham, through his counsel, sent the following letter to all of the unions representing employees in the Sheriff's Office, in pertinent part, "Please be advised that effective immediately the Department is withholding incremental and step increases on all expired contracts. This action is necessary to ensure that all salary increases during the pendency of the negotiations are consistent with the financial limitations of the County."

The PBA filed for interest arbitration on January 14, 2013 and filed a grievance with the Sheriff on January 16, 2013, which was verbally denied, and then filed a formal step movement grievance with the County on January 24, 2012.

The PBA asserts that the County violated the CNAs and the Act when it refused to pay the salary step increases effective January 1, 2013 because the CNAs require the salary step increases to be paid and that the consistent past practice between the parties from 2008 through 2012 was for the annual movement of the Sheriff's Officers up the salary guide.^{5/}

^{5/} The Madison certification states at ¶7, "The parties have consistently honored the annual movement of Sheriff's

(continued...)

Additionally, the PBA argues that the County violated the CNAs while they were still in effect^{6/} and also during negotiations for successor CNAs.

PBA Unit CNA

The PBA unit CNA^{7/} provides in pertinent part at Article VII, Rates of Pay: "Section 1. Salaries - Each employee covered by this Agreement shall be paid in accordance with the below salary guide."

And at Article XXVII, Duration of Agreement:

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- 5/ (...continued)
Officers up the salary guide for the past five years, 2008, 2009, 2010, 2011 and 2012." The Billingham certification states at ¶7, however, "During the period following arbitrator Zausner's award, the parties have been following without objection a salary guide covering the years of the award 2008-2012. The schedule makes no provision for years after 2012."
- 6/ The Madison certification states at ¶6, "The first pay check of the new year is compensation for the previous two week of employment." and at ¶11, "Because step movement occurs in the first pay date of the new year, the step movement is for the prior year of the collective bargaining agreement. The collective bargaining agreement was thus, still in [sic] unexpired."
- 7/ N.J.S.A. 34:13A-8.2 provides that "public employers shall file with the Commission a copy of any contracts negotiated with public employee representatives following consummation of negotiations." This requirement applies to all public sector employers. In the instant case, neither party provided the executed CNAs covering the period from January 1, 2003 through December 31, 2007 as exhibits. However, the last executed CNAs were filed with the Commission and the two articles cited in this decision were referenced in the certifications.

This Agreement shall be in full force and effect as of January 1, 2003 through and including December 31, 2007.

This Agreement shall continue in full force and effect from year to year thereafter until one party or the other gives notice, in writing, no sooner than one hundred fifty (150) nor no later than one hundred twenty (120) days prior to the expiration of this Agreement.

SOA Unit CNA

The SOA CNA provides in pertinent part at Article VII, Rates of Pay: "Section 1. Wage Increases a. The specific annual salary shall be:"

The SOA CNA does not contain a duration of agreement clause.

Interest Arbitration Award

The interest arbitration award provided the following:

Term of the Contracts: January 1, 2008 through December 31, 2012

Wages:

Effective 1/1/08	1.0% increase
Effective 1/1/09	2.5% increase
Effective 1 /1/10	2.8% increase
Effective 1/1/11	2.8% increase
Effective 1/1/12	2.8% increase

All increases are to be retroactive to January 1 of the year in question.

The County's proposed insurance article shall replace Articles XII and XXV in the 2003-2007 contracts.

The Associations' proposal to add two vacation days when a new member is promoted to the rank of Lieutenant is awarded.

None of the other proposals is awarded.

The County responds that the interest arbitration award, only contemplates automatic salary increases for the years 2008 through 2012 and that the CNA language in Article VII, Rates of Pay, Section 1 supports not paying the automatic step increases in 2013. The County contends that the refusal to pay the automatic step increases is a contract interpretation issue and that the PBA has in fact recognized this since they have filed a step movement grievance.

The County further argues that the relative hardship to the parties in granting or denying relief weighs in favor of the County because only 36% of the "rank and file unit"^{8/} would be entitled to the step movement increases. The cost of those increases is approximately a 1.3% increase over the 2012 rate of pay. Additionally, the 1.3% increase does not include the cost of other "base salary"^{9/} items which increase that amount to

^{8/} The Petitions to Initiate Compulsory Interest Arbitration forms that were filed on January 14, 2013 and were attached as exhibits by the County, indicate that the PBA unit has 131 members and the SOA unit has 8 members. Presumably the term "rank and file" refers to the PBA unit.

^{9/} P.L. 2010 c. 105 provides (codified as N.J.S.A. 34:13A-16.7a): Definitions relative to police and fire arbitration; limitation on awards

As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item

(continued...)

almost 2%. The County is subject to both P.L. 2010, c. 44, which limits property tax levy cap to 2%, and to P.L. 2010 c. 105, which requires that an interest arbitrator 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.^{10/11/} As a result, if

(...continued)

agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

10/ P.L. 2010 c. 105 provides (codified as N.J.S.A. 34:13A-16.7b): Definitions relative to police and fire arbitration; limitation on awards

An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

11/ Under P.L. 2010, c. 44, the County is not restricted to limit any increases in employees' salaries to 2.0%; however, it is reasonable to assume, that the 2.0% property tax levy cap will result in reduced salary increases awarded to unit members than have been awarded in the past. Under P.L. 2010

(continued...)

the step movement increases were paid to the 36%, there would be virtually no money left for the remaining officers or those who received the increases may be required to reimburse the County after the interest arbitration awards are issued.

Additionally, the County asserts that, "With so much of the annual budget increases going to automatic increases in the expired contracts, the Sheriff is unable to freely allocate resources within his organization, and is unable to reasonably negotiate equal pay across the workforce."

Finally, the County argues that the PBA cannot demonstrate that they will suffer irreparable harm because they filed for interest arbitration on January 14, 2013, and the arbitrators only have 45 days to issue an award after being selected; thus the matter will be resolved upon the issuance of the awards.^{12/}

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a

^{11/} (...continued)

g. 105, 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.

^{12/} The SOA unit interest arbitrator was assigned on January 31, 2013 and the award is due on March 18, 2013; the PBA unit interest arbitrator was assigned on February 27, 2013 and the award is due on April 15, 2013.

final Commission decision on its legal and factual allegations^{13/} and that irreparable harm will occur if the requested relief is not granted. Further, 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. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

The facts presented do not support the finding of a substantial likelihood of success.

^{13/} Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

I find that the CNA provisions set forth above are ambiguous as to whether the step movement increases were "automatic" as the salary guides in the CNAs that expired in 2007 were tied to a specific year (2003 through 2007). It is not clear if the PBA unit duration clause requires the payment of automatic step increases and furthermore, the SOA unit CNA does not even contain a similar duration clause. The interest arbitration award is similarly tied to specific years from 2008 through 2012.

When CNA provisions are ambiguous, the Commission has looked to the past practice between the parties. In Sussex Cty., P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982), the Commission held:

Generally, a past practice which defines terms and conditions of employment is entitled to the same status as a term and condition of employment defined by statute or by the provisions of a collective agreement. In re Watchung Borough, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981). Where a collective agreement is silent or ambiguous on the issue at hand, past practice controls. In re Rutgers, The State University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982); In re Barrington Board of Education, P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), appeal dismissed App. Div. Docket No. A-4991-80 (1982); In re Twp. of Jackson, P.E.R.C. No. 81-76, 7 NJPER 31 (¶12013 1980).

Additionally, the Commission has held that "allegations setting forth 'at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction.'

Contract disputes must be resolved through negotiated grievance procedures." Camden Cty Pros. P.E.R.C. No. 2012-42, 38 NJPER 289 (¶102 2012) citing, State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In this case, based on the certifications, the past practice between the parties is not clear; material facts in this case are in dispute (see footnote 5). The County's certification states that the parties have been following the salary guide in the interest arbitration award covering the period of 2008-2012; the award was issued on June 10, 2011. It is not clear what happened from 2008 up to the issuance of the award. Based on the PBA's certification, the parties could have followed the salary guides from the CNAs that expired in 2007 for 2008 - through the June 2011 issuance of the interest arbitration award, or in the alternative, not paid any step increases from 2008 through June 2011 and then paid the retroactive step increases. The meaning of the CNA provisions; the impact of the interest arbitration award that was not reduced to writing and signed; and the actual past practice between the parties are all disputes as to the material facts of the charge that cannot be resolved at this preliminary stage.

Moreover, I find that the relative hardship to the parties in granting or denying relief clearly weighs in favor of the County based on the 2% tax levy cap and the 2% salary cap.

Although the County/interest arbitrators can deviate from the 2% caps as set forth in footnote 11, it is reasonable to assume that the upcoming awards would not substantially exceed 2% per year during the terms of the CNAs. Thus, if the 36% were paid their step movement increases, either the rest of the officers would receive little or no increase or the 36% would have to reimburse the County to some extent, which would create a hardship for the County and the officers who were paid the increments. Since these matters are before interest arbitrators and in the grievance arbitration procedure, it should be resolved shortly and all the officers can be paid accordingly. In this case it would be inefficient to order the County to pay the salary increments only to have it recoup money when the interest arbitration awards are issued. Additionally, it is inexpedient to have unit members receive money immediately when they may have to return some amount of that money in the near future.

Based on the above, I find that the PBA has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, that the PBA will not suffer irreparable harm, that material facts are in dispute and that the relative hardship weighs in favor of the County, all requisite elements to obtain interim relief.^{14/} The

^{14/} As a result, I do not need to conduct an analysis of the other element of the interim relief standard.

application for interim relief must be denied. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



David N. Gambert
Commission Designee

DATED: March 7, 2013

Trenton, New Jersey