

I.R. NO. 87-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

DOCKET NO. CO-86-344

MIDDLESEX COUNTY SHERIFF'S OFFICERS,  
P.B.A. LOCAL NO. 165,

Charging Party.

SYNOPSIS

A Commission Designee denies the Charging Party's Application for Interim Relief where the Charging Party alleged that the Respondent refused to pay unit employees salary increments which were due to the employees under the parties' previously expired collective negotiations agreement. The Commission Designee found that there is no statutory mechanism which provides for the payment of increments here, there is no past practice for paying automatic step increases and the parties' expired agreement contains no specific language or other indicia which demonstrated that the parties intended to construct an automatic increment salary structure. Accordingly, having failed to demonstrate a substantial likelihood of success on the merits of its claim, Charging Party's requested interim relief is denied.

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Appearances:

For the Respondent  
Dominic J. Cerminaro, Esq.

For the Charging Party  
Abramson & Liebeskind, Consultants  
(Arlyne K. Liebeskind, Consultant)

INTERLOCUTORY DECISION AND ORDER

On June 16, 1986, Middlesex County Sheriff's Officers, PBA Local No. 165 ("Charging Party" or "PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the County of Middlesex ("Respondent" or "County") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

More specifically, the PBA alleged that the Respondent violated subsections 5.4(a)(1) and (5) of the Act by refusing to grant salary increments which were due to employees in the

collective negotiations unit it represents under the terms of the parties' expired collective negotiations agreement.<sup>1/</sup>

On June 16, 1986 and as supplemented on June 23, 1986, Charging Party filed an Application for Interim Relief with the Commission, asking that the County show cause why an order should not be entered directing the County to pay the salary increments due to unit employees under the parties' most recently expired agreement.

The Order to Show Cause was executed and made returnable on July 17, 1986. On that date, I conducted an Order to Show Cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. Charging Party called and examined one witness at the hearing; Respondent cross-examined the witness. Both parties argued orally and submitted briefs.

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

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<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; (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."

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 Charging Party contends that the County has unilaterally altered terms and conditions of employment by refusing to pay unit employees salary increments which the Charging Party argues are automatic and thus are required to be paid by the employer pursuant to the terms of the expired (1985) agreement between the County and the PBA. The Charging Party argues that the County's failure to pay the increments due to the employees will irreparably harm the PBA by undercutting the negotiations process and adversely affecting the ability of the PBA to effectively represent the unit employees.

The County contends that increments have historically not been treated as separate from the overall employee compensation package. The County argues that the "increments" which the PBA is seeking are not automatic in any sense. The County notes that there are no statutes or regulations which require the payment of increments to these employees; that there is no past practice which supports the PBA's position that the payment of increments is

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

automatic; and finally, that there is no language or other indicia in the parties' expired agreement which support the PBA's allegation that the County is presently obligated to pay increments to employees.

The record reveals the following facts with regard to the Charging Party's application for interim relief.

The County and the PBA are parties to an expired collective negotiations agreement which covers a unit of Sheriff's Officers for the period from January 1, 1985 through December 31, 1985. The parties' 1985 contract was reached via the Commission's interest arbitration process: an award was issued by an interest arbitrator on April 21, 1986 and the parties executed an agreement covering 1985 on May 5, 1986. During the negotiations and interest arbitration process for the 1985 contract, the PBA requested that the County pay Sheriff's Officers the increments that were allegedly due to them based upon the expired 1984 contract; the County refused and the step increases were not then paid. No legal proceedings were commenced to compel increment payments. The 1985 step increases were paid retroactively as they were included in the parties' 1985 agreement.

Once the 1985 agreement was executed (May 5, 1986), the parties began negotiations for a 1986 agreement and, simultaneously, the PBA demanded 1986 increment payments which they alleged were due for certain unit employees pursuant to the terms of the expired 1985 agreement. The County refused to pay any salary increases unless

and until the parties reached an agreement covering 1986. The County contends that there is no automatic increment system in the 1985 contract or the 1984 contract.

In the certification supporting its interim relief application, the PBA alleged that when successor agreements between the County and the PBA had been reached prior to the expiration of the existing agreement, then as of January 1 of the year of the successor agreement, employees received automatic increments based upon years of experience as outlined in the salary guide. However, at the Order to Show Cause hearing, the County asserted that in the last 7-8 years, the County and PBA Local 165 (Sheriff's Officers) had not reached an agreement for a successor contract prior to the expiration of the then-existing agreement. While the PBA's witness disputed that assertion, on cross-examination, he was unable to identify any contract that was executed prior to the expiration of the existing agreement. The PBA eventually conceded this point on the record -- that no successor agreement in recent memory had been reached prior to the expiration of an existing agreement. Further, the PBA's representative stated that the circumstances referred to in the certification concerned a two-year agreement covering 1981-1982 where, on January 1, 1982, employees were moved up on the salary guide in accordance with their experience and step increases were paid accordingly.

The parties' expired 1985 agreement (Exhibit C-6) contains

the following article (VII at p. 9) regarding wages:

All employees in the bargaining unit being carried on the County payroll, or on approved leaves of absence, will receive the following Negotiated Wage Increase retroactive to January 1, 1985.

Effective January 1, 1985, and for the duration of this contract, employees covered under the terms of this Agreement shall be paid within the following salary ranges:

	<u>SHERIFF'S OFFICERS COURTS</u>	<u>SHERIFF'S OFFICERS NON-COURTS</u>
Starting 1st year	\$15,848	\$16,980
2nd year	\$17,151	\$18,375
3rd year	\$18,070	\$19,359
4th year	\$18,980	\$20,335
5th year	\$19,754	\$21,164
6th year	\$23,496 - 1-1-85 -	\$25,174
	\$24,200 - 7-1-85 -	\$25,929

There is no statute or regulation which governs the payment of salary increments to Sheriff's Officers.

The dispute in this matter -- the non-payment of salary increments during contract negotiations -- has been the subject of numerous Commission and court decisions. The law governing this issue is clear: salary increments of an automatic nature which are contained in an expired contract must be paid during the period of negotiations for a successor contract.<sup>3/</sup> Further, the law

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<sup>3/</sup> Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978); Union County Reg. 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

governing the granting of interim relief in such circumstances is equally clear.<sup>4/</sup> Where a Charging Party seeking interim relief demonstrates that increments contained in an expired agreement are of an automatic nature, the Commission and courts have concluded that the non-payment of such increments during negotiations will cause irreparable harm to the union representing the affected employees. Additionally, where a Charging Party seeking interim relief can show that the increments in question are automatic or non-discretionary, the substantial-likelihood-of-success component will also be satisfied. Where it appears, however, that the increments may not be automatic -- where they are specifically tied to employee performance or contract negotiations or myriad other conditions precedent -- then there is no longer a substantial likelihood of success on the merits.<sup>5/</sup>

I find that there is no statutory mechanism which provides for the payment of increments here, and there is no past practice of

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3/ Footnote Continued From Previous Page

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); 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); Newark Public Library, I.R. No. 84-9, 10 NJPER 321 (¶ 15154 1984).

4/ See discussion supra, at pp. 2-3.

5/ Borough of Fanwood, I.R. No. 85-5, 10 NJPER 606 (¶ 15284 1984); Ocean County Board of Chosen Freeholders, I.R. No. 84-14, 10 NJPER 398 (¶ 15184 1984), P.E.R.C. No. 86-107, 12 NJPER 341 (¶ 17130 1986).



paying automatic step increases here, despite the opportunity having been present.

The PBA had relied upon the parties' expired 1985 contract (Exhibit C-6). That contract covers a one-year period. The contractual wage article (supra, p. 6) contains no language which indicates automatic movement along a salary scale. Compare the language in the instant contract to that in the contract in the Newark Public Library matter (supra, n. 3). In Newark, the contract provided as follows:

All eligible employees on recommendation of their department heads or supervisors shall receive in 1981, 1982, and 1983, a one step salary increase at the time of their anniversary date. 6/

There is no similar language in the instant contract.

Even the absence of such contract language, however, is not dispositive. In City of Vineland (supra, n. 3), there was no contract language which indicated movement along a salary guide. Commission Designee Gerber, however, found that the expired, two-year contract contained a salary structure for 1979 and 1980 which evidenced employees' movement along the salary guide based upon their increased length of service. He concluded that that movement would continue on January 1, 1981. He further

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6/ Similar language may be found in Exhibit C-6(B) (at p. 2), a document originally proffered by the Charging Party. C-6(B) is a grievance arbitrator's award involving Middlesex County and another PBA local. In that matter, the arbitrator determined that based upon the contract language, certain employees were entitled to step increments.

concluded that the union's acquiescence in the City's non-payment of increments under previous expired contracts did not constitute an irrevocable waiver of its right to press for increment payments properly payable under subsequent, expired agreements.

The instant matter, however, is more closely analogous to Ocean County (supra, n. 5) than to Vineland. In the Ocean County interim relief matter, the Charging Party complained because the employer failed to pay increments after the 82-83 contract expired. The contract contained a two-year salary schedule with eight (8) steps for each year. There was no explanatory language and the step increases on the guide were completely irregular. Faced with directly conflicting contentions concerning the meaning of the contract wage structure, the Commission Designee denied interim relief. The Commission, subsequently, concluded that the parties had never reached a meeting of the minds on the contractual salary structure and dismissed the complaint.

In the instant matter, there is a one-year expired contract which contains a salary structure providing for specified salary amounts. These amounts correspond to six (6) experiential levels of service. The PBA argues that this is an automatic increment structure. The PBA says there is an unwritten "understanding" that on each January 1, employees move from their current step to the next highest step. The County denies that there is any such understanding. It argues instead that the whole matter of compensation increases is determined anew each year via

negotiations. As in Ocean, there is no across-the-board percentage increase in the contract. Also as in Ocean, the salary structure evidences no regularity or internal consistency -- the dollar increases between steps range from \$910 to \$4400; the percentage increases between steps are similarly extreme, ranging from 4.1% to 22%. While the PBA presents a cogent argument in support of its position, absent some instructive contractual language or other appropriate indicia, one may just as persuasively argue that the salary structure in this matter is simply a device for spreading the employer's pot of money among employees during one given year.

Based upon all of the foregoing, I am unable to conclude that the salary structure presented here is an automatic increment system. Thus, the Charging Party has not demonstrated a substantial likelihood of success on the merits. Accordingly, the Charging Party's application for interim relief is hereby denied.

BY ORDER OF THE COMMISSION



Charles A. Tadduni  
Commission Designee

DATED: August 1, 1986  
Trenton, New Jersey