

I.R. No. 2009-24

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Respondent,

-and-

Docket No. CO-2009-333

PBA LOCAL NO. 167,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to require Mercer County to advance unit members through the parties' expired contractual salary guide and during negotiations for a successor agreement. Given the parties' practice of not advancing employees through the guide during negotiations leading to the 2005 - 2008 agreement, sufficient doubt existed as to the parties' contractual intent. Therefore, the Commission Designee could not conclude that a substantial likelihood of success existed. The Commission Designee denied the application but referred the matter to the Director of Unfair Practices for proceedings to defer the matter to the parties' arbitration provision.

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Appearances:

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

For the Charging Party, Klatsky, Sciarrabone &
DeFillippo, attorneys (David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On March 23, 2009, PBA Local No. 167 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Mercer County (County) violated 5.4a(1), (2), (3), (4), (5), (6) and (7)^{1/} of the New Jersey

^{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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a

(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The PBA alleged that the County repudiated the parties' collective agreement by failing to advance its members through the salary guide upon their appropriate anniversary date. The PBA cited contractual provisions to support its position and argued that the County declined to advance employees on the salary guide during negotiations for a successor agreement.

The unfair practice charge was accompanied by an application for interim relief seeking to require the County to advance employees on the guide and provide back pay from January 1, 2009. The parties submitted briefs, certifications and argued orally on the return date.

The County opposed the application and requested relief. It argued that the parties' practice was to not move employees on the guide after the expiration of the contract and during negotiations for a successor agreement. The County also disputed the interpretation of the contract clauses cited by the PBA.

The following pertinent facts appear.

1/ (...continued)
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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

The County and PBA are parties to a collective agreement effective from January 1, 2005 through December 31, 2008. Article 11 of the agreement provides for 2005-2008 salary ranges listing a nine-step guide and separate salary amounts for each step under the following headings: 1/1/2005; 1/1/2006; 1/1/2007 and 1/1/2008. Article 11.3 says: "All employees shall move one step on January 1st of each calendar year."

Article 32 provides:

This Agreement shall become effective January 1, 2005 and shall remain in full force and effect until December 31, 2008. The parties shall negotiate a successor Agreement. If a successor Agreement has not been entered into before January 1, 2009, then the terms and conditions of this Agreement shall continue to be in full force and effect until a new Agreement is entered into between the parties.

The County advanced employees through the salary guide effective each January, or the employees' anniversary dates, for 2005, 2006, 2007 and 2008. On January 1, 2009, no unit members were advanced on the above expired salary guide. On or about January 9, 2009, the PBA requested negotiations for a successor agreement. By letter of February 9, 2009, the PBA demanded the County move officers through the salary guide upon their appropriate anniversary date even during negotiations for a successor agreement. By letter of February 13, 2009, the County responded to the above demand stating in pertinent part:

Please be advised that in accordance with established past practice between the County and the . . . PBA . . . officers will not be advanced to the next step in the salary guide until a successor collective negotiations agreement has been negotiated and executed between the parties.

The County did not advance employees through the salary guide that expired by December 31, 2004 and during negotiations for the 2005-2008 agreement. In March 2009, the County proposed in negotiations a freeze in the advancement through the salary guide for 2009. No agreement was reached. Over the next two years, the County expects a significant budget shortfall due to health care and pension expenses. One County negotiations unit has agreed to a wage and step freeze for 2009.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations 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); 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).

The issue in this application is whether the facts demonstrate that movement through the salary guide constituted an automatic increment. If it does, the County would be obligated to pay such increments while continuing to negotiate for a new collective agreement. Galloway Twp. Bd. Ed. v. Galloway Twp. Ed. Assoc., 78 N.J. 25 (1978).

The PBA argued that salary guide movement as provided by Article 11 was automatic and intended to continue past the expiration of the agreement by virtue of Article 32. It also argued that the County's actions repudiated the agreement.

The County argued that it moved employees along the guide in each year of the Agreement, as required, but that it was the parties practice not to make such movement during negotiations for a successor agreement. It disputed the PBA's repudiation claim arguing that the contract did not require guide movement after its expiration, and that it made no change to the practice followed in the past.

While an inference could be drawn that the parties' contract intended salary guide movement survive the expiration of the agreement, given the parties practice during the negotiations for the 2005-2008 agreement, sufficient doubt has been established regarding the intent of the parties. Consequently, I am unable to conclude that the PBA has met the "substantial likelihood of success" standard that is required in interim relief proceedings.

Noting that this case primarily turns on the interpretation of the parties collective agreement, however, and absent facts supporting a claim of discrimination, and in recognition of the County's acknowledgment that arbitration is appropriate, I am returning this matter to the Director of Unfair Practices for deferral to the parties arbitration procedure.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied. This charge is returned to the Director of Unfair Practices to initiate deferral procedures.



Arnold H. Zudick
Commission Designee

DATED: May 5, 2009
Trenton, New Jersey