

I.R. NO. 92-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY SHERIFF AND COUNTY OF
HUDSON,

Respondent,

-and-

Docket No. CO-92-130

HUDSON COUNTY SHERIFF'S PBA LOCAL
NO. 334,

Charging Party.

SYNOPSIS

A Commission Designee declines to order the Hudson County Sheriff and the County of Hudson to pay increments pursuant to a contract between the employer and the Hudson County Sheriff's Officers, PBA Local 334. It was found that the salary structure of the separate salary guides lacks consistency and there is no history of paying increments. Accordingly, there is a question as to whether the PBA has a substantial likelihood of success at a plenary hearing.

I.R. NO. 92-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY SHERIFF AND COUNTY OF
HUDSON,

Respondent,

-and-

Docket No. CO-92-130

HUDSON COUNTY SHERIFF'S PBA LOCAL
NO. 334,

Charging Party.

Appearances:

For the Respondent
Genova, Burns & Schott, attorneys
(Stephen E. Trimboli, of counsel)

For the Charging Party
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

INTERLOCUTORY DECISION

On October 29, 1991, the Hudson County Sheriff's Officers, PBA Local 334 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Sheriff of Hudson County and the County of Hudson ("Sheriff") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1; specifically, subsections 5.4(a)(1), (2), (3),

(5) and (7)^{1/} when they failed to comply with the automatic step movement provisions of the compensation schedule in the recently expired collective negotiations contract even though the parties are currently negotiating for a successor agreement.

The charge was accompanied by an Order to Show Cause which was executed and made returnable for November 13, 1991. A hearing was conducted on that date.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

1/ 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. (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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The collective negotiations agreement for the affected employees expired on June 30, 1991 and although the parties have been involved in negotiations, a new contract has not been signed.

The PBA claims that step increases should have been paid on October 1. They were not paid and the PBA brought this action.

The record does not establish that increments were paid to unit employees prior to 1984. At the expiration of the July 1, 1984 to December 31, 1987 contract, no agreement was in place. The Sheriff did not pay increments. The then majority representative, the FOP, filed an unfair practice charge with this Commission. The parties entered into a settlement agreement resolving that unfair practice charge and executed the recently expired contract. That contract, at Article II contains six different salary guides, as follows:

I. FOR EMPLOYEES HIRED PRIOR TO OCTOBER 1, 1988:

A. Retroactive to January 1, 1988, employees on Steps 1 through 7 of the 1987 salary guide shall move to the next higher step on the 1987 guide and be paid in accordance with the settlement of the unfair practice charge filed by the FOP 36A with PERC (Docket No. CO-89-67) as follows:

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

	12/31/87 Salary	Effective 1/1/88
Step 1	12,700	14,200
Step 2	14,200	15,800
Step 3	15,800	17,300
Step 4	17,300	19,100
Step 5	19,100	21,100
Step 6	21,100	22,500
Step 7	22,500	24,000
Step 8	24,000	24,000

B. Superior Officers and employees on Step 8 of the 1987 guide as of 12/31/87 shall receive a One Thousand (\$1,000.00) Dollar lump sum payment.

C. Effective and retroactive to October 1, 1988, the following Step Guide shall be implemented for non-superior officers and automatic movement on the Steps shall take place on October 1 of each year, except for employees earning \$15,800 as of 12/31/87 whose salaries shall be controlled by paragraph D of this Article.

Step A	\$16,000.00
Step B	\$18,500.00
Step C	\$21,000.00
Step D	\$23,500.00
Step E	\$26,000.00
Step F	\$28,500.00
Step G	\$31,000.00

Implementation of this guide for employees hired prior to October 1, 1988 shall be as follows:

<u>12/31/87</u> <u>Salary</u>	<u>1/1/88</u>	<u>10/1/88</u>	<u>10/1/89</u>	<u>10/1/90</u>
12,700	14,200	16,000	18,500	21,000
14,200	15,800	16,000	18,500	21,000
15,800	17,300	----See Section D, below----		
17,300	19,100	21,000	23,500	26,000
19,100	21,100	23,500	26,000	28,500
21,100	22,500	23,500	26,000	28,500
22,500	24,000	26,000	28,500	31,000
24,000	1,000 as a cash bonus	28,500	31,000	2,500 as a cash bonus

D. Notwithstanding the alphabetical step guide and the salary guide set forth in paragraph C of this Article, the following is the sole and exclusive guide for employees earning \$15,800 on 12/31/87:

<u>12/31/87</u> <u>Salary</u>	<u>1/1/88</u>	<u>10/1/88</u>	<u>1/1/90</u>	<u>11/1/90</u>
15,800	17,300	19,100	22,500	26,000

E. Employees who reached maximum (Step G) on October 1, 1989 shall receive a Two Thousand Five Hundred (\$2,500.00) Dollar lump sum bonus payable on October 1, 1990.

F. Effective October 1, 1988, Superior Officer salaries shall be as follows:

<u>RANK</u>	<u>Eff. 10/1/88</u>	<u>Eff. 10/1/89</u>	<u>Eff. 10/1/90</u>
SGT.	29,500.00	32,500.00	35,500.00
CPT.	32,000.00	35,000.00	38,000.00
CWO			
CCO	33,000.00	36,000.00	40,000.00
CSO	34,000.00	37,000.00	42,000.00

II. FOR EMPLOYEES HIRED ON OR AFTER OCTOBER 1, 1988:

Employees hired on or after October 1, 1988 shall be paid according to the following incremental step guide, automatic movement on which shall occur on October 1st of each year.

New Hiree until Academy Trained	\$15,500
Step 1	\$16,000
Step 2	\$17,250
Step 3	\$18,500
Step 4	\$19,750
Step 5	\$21,000
Step 6	\$22,250
Step 7	\$23,500
Step 8	\$24,750
Step 9	\$26,000
Step 10	\$27,250
Step 11	\$28,500
Step 12	\$29,750
Step 13	\$31,000

New officers will be placed on one of the aforementioned steps 1 - 13. The Sheriff, in his discretion, shall determine initial placement.

Salary guide I.C. provides that "the following Step Guide shall be implemented for non-superior officers and automatic

movement on the Steps shall take place on October 1 of each year" and salary guide II provides that "employees hired on or after October 1, 1988 shall be paid according to the following incremental step guide, automatic movement on which shall occur on October 1st of each year".

None of the other guides refer to automatic movement on the guide. It is the PBA's position that these contract provisions require the payment of increments.

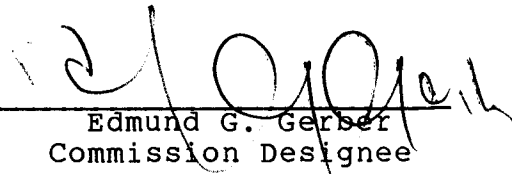
Terms and conditions of employment remain in effect after a contract expires and must be maintained during negotiations. Movement on a salary guide based upon the passage of a specific period of service must be maintained as part of the terms and conditions of employment of those employees. Galloway Tp. Bd. of Ed. v. Galloway Township EA, 78 N.J. 25, 49 (1978) and State of New Jersey, I.R. 82-2, 7 NJPER 532 (¶12235 1981)

The Sheriff argues that the salary structures do not create the obligation to pay increments. Rather, the affidavit of the employer's negotiator states that these complex salary schedules were the outgrowth of difficult and protracted negotiations and it was never the intention of the Sheriff to grant increments to employees.

The history of increments for these employees is unclear. Although several of the guides are consistent as to salaries, overall they are confusing and lack a consistent structure. Some refer to annual increments, some

don't, most do not relate to years of service. Nor is there a consistent uniform movement to a top salary within a given number of years. Although salary schedule II does refer to payment of increments, it does not relate the steps on the guide to years in service and the salaries are not consistent with guide I.C. The lack of consistency in the salary structure, the lack of a history on increments and the lack of a distinction between an annual increment increase and a negotiated salary increase prevents me from stating that the PBA has a substantial likelihood of success in prevailing at a plenary hearing. Ocean Cty Sheriff's Dept., I.R. No. 84-114, 10 NJPER 398 (¶15184 1984); Monmouth Cty Sheriff, I.R. No. 91-13, 17 NJPER 179 (¶22077 1991). The proper application of the salary guides can only be determined after a full plenary hearing. The PBA has not met the high Commission standard for the granting of interim relief.

Accordingly, its Application for Interim Relief is denied.


Edmund G. Gerber
Commission Designee

DATED: Trenton, New Jersey
November 26, 1991