

I.R. NO. 91-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-91-212

BERGEN COUNTY PBA LOCAL 134,

Charging Party.

SYNOPSIS

Upon an application for Interim Relief brought by Bergen County PBA Local 134, a Commission Designee grants the requested relief based upon a charge alleging that the County of Bergen had violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq.

The PBA alleges the County violated the Act when, during negotiations for a successor to the parties' expired collective negotiations agreement, the County refused to pay automatic salary increments which were due to PBA unit members under the parties' expired agreement and existing past practice. The PBA argues that the County has thus unilaterally altered terms and conditions of employment during negotiations for a new agreement, a circumstance for which the Commission has granted numerous interim relief requests.

The County argues that no interim relief should be granted here because the PBA has not demonstrated a substantial likelihood of success on the merits of the case. The County contends that the deteriorated economic condition of the County renders the Galloway doctrine inapplicable here. Finally, the County argues that granting the interim relief sought will cause greater harm to the County and the public interest than denying the relief would cause to the PBA.

The Commission Designee concluded that the PBA had established a substantial likelihood of success on the merits of its case and that it would be irreparably harmed if the relief sought is not issued. The Commission Designee further concluded that the County had not demonstrated that granting the interim relief would harm it more than denying the relief would harm the PBA. Accordingly, the County was ordered to pay eligible employees their increments.

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Appearances:

For the Respondent
Diktas & Habeeb, attorneys
(Christos Diktas, of counsel)

For the Charging Party
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

INTERLOCUTORY DECISION

On February 19, 1991, Bergen County PBA Local 134 ("Charging Party" or "PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Bergen County Board of Chosen Freeholders and the Sheriff of Bergen County ("Respondent" or "County") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, the Charging Party alleges that the County violated subsections 5.4(a)(1) and (5) of the Act by refusing to pay salary increments which were due to Sheriff's Officers and Corrections Officers, effective January 1, 1991, under the parties'

expired collective negotiations agreement and existing past practice.^{1/}

Also on February 19, 1991, the PBA filed an application for interim relief with the Commission asking that the County show cause why an order should not be issued directing the County to pay salary increments due to Sheriff's Officers and Corrections Officers, pursuant to the parties' recently expired collective negotiations agreement and their existing past practice. N.J.A.C. 19:14-9.1.

On February 21, 1991, I executed an Order to Show Cause with a return date of March 14, 1991. At Respondent's request, the hearing on the Order to Show Cause was adjourned until March 27, 1991. 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. Both parties argued orally at the hearing and submitted briefs.

The Charging Party contends that the County has unilaterally altered terms and conditions of employment during negotiations by refusing to pay Sheriff's Officers and Corrections Officers their length of service salary increments. Charging Party

^{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. (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."

argues that by these actions, the County has refused to negotiate in good faith in violation of subsections 5.3 and 5.4(a)(5) and (1) of the Act. Charging Party contends that it has demonstrated a substantial likelihood of success on the merits of the case before the full Commission, arguing that the law is well settled that the Commission will grant interim relief where a unilateral change in terms and conditions of employment is effected during negotiations for a new collective negotiations agreement. Further, Charging Party notes that the Commission has concluded that an employer's action during negotiations of withholding payment of salary increments due to eligible employees has such a chilling effect on the negotiations process as to require interim relief.

The County argues that interim relief should not be granted because the Charging Party has not demonstrated a substantial likelihood of success on the merits of the case. The County contends that the economic condition of the County renders the Galloway doctrine inapplicable to this case. The County also argues that granting the interim relief sought will cause greater harm to the Respondent's and the public interest than denying the harm would cause to Charging Party.

The County concedes that the parties' expired agreement contains "a salary 'step system' pursuant to which the covered employees received incremental salary increases...based upon the number of years of the employee's service." (Respondent's brief at 2). The County further concedes that, pursuant to Galloway Tp. Bd.

of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978), it is an established principle of public sector labor law that the status quo must be maintained during the course of collective negotiations and that the unilateral alteration of existing terms and conditions of employment during negotiations is an unlawful refusal to negotiate. However, the County argues that this rule is based upon a presumption that the public employer is in the same or better financial condition than it was when it negotiated the expired agreement. The County argues that in requiring it to pay incremental salary increases pursuant to an expired agreement, Galloway assumes that a salary step system will be included in the successor agreement. As a matter of practical and economic reality, the employer is thus denied the opportunity to negotiate a salary structure which does not include a step system with the significant salary increases which result from such a system. If compelled to make the payments sought, the County argues that its interest and the public interest will be irreparably harmed in that the County's economic condition will suffer decline, its deficit will be increased, additional layoffs and cuts will be necessitated which will further disrupt County services and other employees will receive reduced wage increases.

The record reveals the following facts.

Bergen County PBA Local 134 is the exclusive majority representative for all Corrections Officers and Sheriff's Officers employed by the Sheriff of Bergen County and the Bergen County Board

of Chosen Freeholders. The Bergen County Board of Chosen Freeholders and the Sheriff of Bergen County are the public employers within the meaning of the Act of the employees involved in the instant matter. The PBA and the Board of Chosen Freeholders and the County Sheriff are parties to a collective negotiations agreement covering the period from January 1, 1988 through December 31, 1990.

The PBA and the employers are negotiating a successor collective negotiations agreement to the one which expired on December 31, 1990. For many years, regardless of whether a successor collective negotiations agreement had been negotiated and finalized between the employers and the PBA, Corrections Officers and Sheriff's Officers were provided with one additional increment on the negotiated salary guide contained in the parties' most recently expired agreement, effective with the start of each new calendar year. The incremental increase to eligible employees was provided in accordance with the parties' expired collective negotiations agreement and their existing past practice.

As of February 19, 1991, the County declined to provide step increment increases to eligible Corrections Officers and Sheriff's Officers.

The Sheriff has stated in writing to the County that the increments at issue should be paid to eligible Sheriff's Officers and Corrections Officers.

The County contends that its economic condition was stable when the parties negotiated and finalized the 1988-90 agreement.

Today, the County has a \$10 million deficit which has necessitated the layoff of 320 County employees. However, the County has not disputed that the parties' 1988-90 agreement and existing past practice provide Sheriff's Officers and Corrections Officers with a step increment compensation system.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing such applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations of the charge in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

An employer's unilateral alteration of existing terms and conditions of employment during negotiations constitutes a refusal to negotiate in good faith in violation of the Act. Galloway. During negotiations for a successor agreement, salary increments of an automatic nature which are contained in an expired contract must be paid to eligible employees. Where an employer unilaterally discontinues salary increments during negotiations, the Commission

^{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).

has concluded that such conduct violates the Act, even where the increment program was established not through the parties' expired written agreement but through a past practice. Galloway; and Hudson Cty. Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt. No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978).

In State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981), the Commission ordered the employer to pay salary increments which were due to employees under the terms of the parties' expired agreement. The Commission stated:

It must be emphasized that it is not the contracts per se which are being extended. Rather, it is the terms and conditions of employment which were in effect at the time that the contracts expired which are being maintained. Those terms included a salary structure which provided for the payment of increments upon the passage of additional periods of service measured by assigned anniversary dates. The employees involved herein have successfully completed that additional period of service. Their proper placement on the salary guide which remains in effect requires that they move up one step and receive the appropriate salary increment.

State of New Jersey at p. 536.

In Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4041 1978), a Commission Designee considered the effects of certain types of unilateral employer action:

Particular types of unilateral action relating to terms and conditions of employment, such as the non-payment of salary increments, may so undercut the negotiations process and adversely affect the

ability of a majority representative to effectively represent its particular constituency that traditional monetary awards that would be ordered at the conclusion of a case would not effectively remedy a violation of the Act....To permit the Board not to pay increments during the pendency of negotiations for a successor agreement would be to permit the Board to apply illegal pressure on negotiations proposals in order to receive increments in fact due under the old agreement....

Union Cty., at p. 14.

Based upon the foregoing, it appears that the Respondent has established a substantial likelihood of success on the legal/factual allegations of the charge -- that the employer violated the Act when it unilaterally refused to advance eligible unit employees along the incremental salary schedule contained in the parties' expired agreement. It further appears that the PBA will be irreparably harmed if the relief sought is not issued.

However, the County argues that meeting the substantial likelihood of success/irreparable harm standard is insufficient for securing interim relief here. The County argues that if compelled to make these payments, its interests and the public interest will be irreparably harmed due to the cuts which would then be required. The County also argues that if compelled to make these payments, it would be denied the opportunity to negotiate a salary structure which does not include a step increment system.

The Commission and the Courts have considered and rejected such defenses to similar requests for interim relief. See Rutgers, The State University and Rutgers University College Teachers

Association, et al., P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979),
aff'd as mod. App. Div. Dkt. No. A-1572-79 (4/1/81); Galloway;
Hudson Cty. and Cty. of Sussex, I.R. No. 91-15, 17 NJPER ____ (¶ ____
1991).

The County may oppose the incremental salary structure in negotiations and seek to supplant that structure with a less costly one. However, the County's opposition to the incremental structure, however justifiable, does not affect the negotiability or enforceability of that structure as a term and condition of employment. In Hudson Cty., the Commission found that the County violated the Act when it unilaterally discontinued the established practice of increment payments to eligible unit employees without prior notification or negotiations with the majority representative. The Commission stated:

...the employer, by failing to reinstitute the status quo, demonstrates his continued bad faith. Such conduct by an employer negates the possibility of any meaningful negotiations on the subject. Requiring the employee organization to negotiate under such conditions would place it in an untenable position by allowing the employer to benefit from his unfair practice through the improved negotiating leverage he has obtained as a result of his unilateral withdrawal of a then existing benefit. Such a result would undermine...the requirement of good faith negotiations as a method for insuring labor peace.

Hudson Cty. at p. 90.

Finally, with regard to the County's economic argument, in City of Atlantic City v. Luezza, 80 N.J. 255 (1979), the Supreme Court considered an argument concerning the financial impact of an interest arbitration award on municipal finances. The Court stated:

...these awards will not necessarily compel the City to increase its overall blue or white collar expenditures. Municipal officials retain discretion to diminish the size of the work force and limit the areas in which personnel will be deployed, inasmuch as these decisions unquestionably [are]...managerial function[s] which cannot be delegated to an arbitrator.... The arbitral decisions merely establish the level of benefits to be accorded those individuals whom the City wishes to...retain. As such, the amount of expenditures which must be incurred to implement the awards are within the municipality's control....

Atlantic City at p. 267. (citations omitted).

Similarly, in New Jersey State PBA, Local 29 v. Town of Irvington, 80 N.J. 271 (1979), the Court stated:

We realize that the Town will be forced to make economies in order to implement this arbitral award. This alone, however, does not render the award unreasonable.

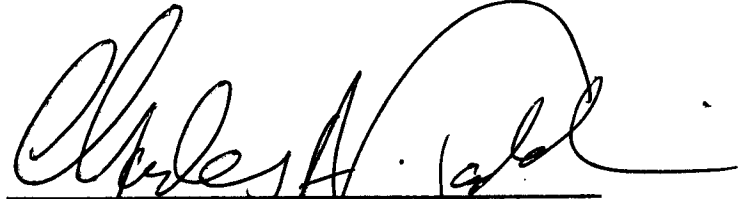
Irvington at p. 296.

See also Cty. of Sussex.

Based upon the foregoing, the PBA has demonstrated that it has a substantial likelihood of success on the legal and factual issues presented in the charge and that irreparable harm will befall Charging Party if the requested interim relief is not granted. Further, the County has not established that it would bear greater irreparable harm if Charging Party's interim relief request is granted than Charging Party would bear if the relief is denied.

Accordingly, **IT IS HEREBY ORDERED** that the Respondent, County of Bergen, immediately pay to those eligible Bergen County Sheriff's Officers and Corrections Officers the salary increments

due to them pursuant to the incremental salary structure in the parties' expired collective negotiations agreement (1988-90) and the parties' past practice.



Charles A. Tadduni
Commission Designee

DATED: April 19, 1991
Trenton, New Jersey