I.R. NO. 91-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CEDAR GROVE,

Respondent,

-and-   Docket No. CO-91-240

CEDAR GROVE PBA LOCAL 81,

Charging Party.

SYNOPSIS

A Commission Designee declines to order the Township of Cedar Grove to pay increments at the expiration of the current contract. The Charging Party, Cedar Grove PBA Local 81, did not demonstrate that it and the Township had a meeting of the minds and that they agreed upon a contractual system of automatic increments in the recently expired agreement.

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Appearances:

       For the Respondent
       Stickel, Koenig & Sullivan, attorneys
        (Stuart R. Koenig, of counsel)

       For the Charging Party
       Loccke & Correia, attorneys
        (Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION

On March 7, 1991, Cedar Grove PBA Local 81 ("PBA") filed an

unfair practice charge with the Public Employment Relations

Commission ("PERC") against the Township of Cedar Grove

("Township"). The PBA alleged that the Township violated the New

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

("Act"), specifically subsections 5.4(a)(1), (2), (3), (5) and

(7)[1] when the Township declined to pay increments, during the

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1/   These subsections prohibit public employers, their
      representatives or agents from: "(1) Interfering with,
      restraining or coercing employees in the exercise of the

course of interest arbitration, as provided for in the parties'

recently expired agreement. The parties' agreement expired on

December 31, 1990. The PBA, through its application for an Order to

Show Cause, seeks to compel the Township to pay the increments.

An Order to Show Cause was executed on March 8, 1991 and I

conducted a hearing on the Order on March 17, 1991[2]

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

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1/   Footnote Continued From Previous Page

       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."

2/   Both parties presented evidence, filed briefs and argued
       orally at the hearing.

relief, the relative hardship to the parties in granting or denying the relief must be considered.[3]/

The PBA and the Township were parties to a contract that was effective for calendar years 1989 and 1990. Article 4 of the contract contains the following provision as to salary:

> SECTION A: Effective January 1, 1989, all employees covered by the provisions of this Agreement will receive an increase of 7% above their previous base rate, which new amount is shown in Schedule A "Wage Rates for 1989." The Sergeants' maximum rate shall be 111% of the Patrolmen's maximum rate.
>
> Effective January 1, 1990, all employees covered by the provisions of this Agreement will receive an increase of 7% above their previous base rate, which new amount is shown in Schedule A "Wage Rates for 1990." The Sergeants' maximum rate shall be 112% of the Patrolmen's maximum rate.
>
> A new probationary step shall be added to the salary schedule for police officers hired after January 1, 1989. Upon the successful completion of the basic police training course, a newly hired police officer shall advance to the first step of the salary schedule, and he shall be eligible to advance to step 2 as provided hereinafter.
>
> SECTION B: Patrolmen may, at the recommendation of the Chief of Police and discretion of the Township Manager, reach maximum pay at the completion of four (4) years.
>
> For employees hired after January 1, 1989, the anniversary date for purposes of salary increases in the pay grade shall be the first of the month

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3/   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).

of the hiring date. Patrolmen shall be eligible
to advance to the next step of the salary range
upon the anniversary date of hiring.
Exhibit C-4, DiGiacomo affidavit attachment.

The provision is silent as to when employees hired on or
before January 1, 1989 are eligible to advance to the next step of
the salary guide. PBA Trustee Stephen Baird testified that officers
hired before January 1, 1989 are eligible for increments on January
1 of each year (T16-17).

An increment structure typically provides for increases in
salary by "salary steps". Here, the contract appears to provide for
a salary schedule of four steps.$\underline{4}$/

Township representatives indicated that no salary
adjustment based on Article 4 of the contract would be effected
until a new contract was in place. The Township, through the
affidavit of Township Manager Joseph DiGiacomo, indicated that this
provision of the contract does not provide for <u>automatic</u>
increments. Rather, DiGiacomo states that whether an increment is
given is dependant upon the performance of the officer and the
recommendations and decisions of superiors. In the past, the
decision as to whether or not individual patrolmen received an
increment was made only after a new contract was resolved and
executed. In 1985, the increment for eligible officers was
instituted in July. The increment for 1986 was paid in May 1986.

$\underline{4}$/   The schedule itself was not introduced into evidence;
        accordingly, I am not completely certain of the structure of
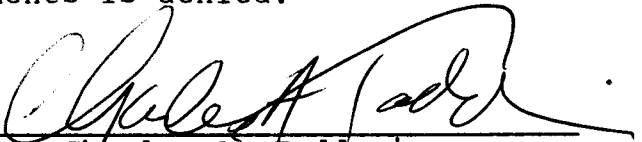   the salary schedule.

The increment for 1987 was paid in October 1987. In 1988, the

second year of a two-year agreement, the increment was paid in

January 1988. In 1989, the increment was paid in February 1989 and

in 1990, the increment was paid in January 1990.

Here, the PBA must demonstrate "that it and the County had

a meeting of the minds and that they agreed upon an increment system

requiring the automatic payment of increments as an existing term

and condition of employment at the time the contract expired".

Ocean County Sheriff, P.E.R.C. No. 86-107, 12 NJPER 341 at 347

(¶17130 1986), (emphasis added).

The portion of the contract before me, on its face, is not

an unequivocal, automatic increment structure. The contract

provision allows the Township a degree of discretion in granting or

denying increments.

Neither the past history of the parties concerning the

payment of increments nor the contract language supports clearly a

conclusion that increment payments are automatic. The affidavits

and testimony conflict on this point. Based on the foregoing, I

cannot conclude that there is a substantial likelihood that the

Commission will find that the instant contract reflects an automatic

increment structure and that the Township committed an unfair

practice when it failed to pay increments after the 1989-1990

contract expired. Inasmuch as the charging party has not

demonstrated a substantial likelihood of success on the merits of

its unfair practice charge claim, the application for an interim

order directing the payment of increments is denied.

                                        _____
                                        Charles A. Tadduni
                                        Commission Designee

DATED: April 5, 1991
         Trenton, New Jersey