

I.R. NO. 91-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY SHERIFF AND
MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS,

Respondents,

-and-

Docket No. CO-91-200

MONMOUTH COUNTY PBA LOCAL 240,

Charging Party.

SYNOPSIS

In an application for interim relief brought before the Public Employment Relations Commission by the Monmouth County PBA, Local 240 against Monmouth County Sheriff and the Monmouth County Board of Chosen Freeholders, a Commission designee declines to restrain the County. The PBA argued that the recently expired contract between it and the County created an incremental salary structure which would survive the expiration of the contract. There was no established practice of paying increments. The salary provision of the contract did not expressly provide for increments and the testimony at the interim relief hearing concerning the parties understanding was conflicting. The PBA did not establish it has a substantial likelihood of success on the facts before the Commission.

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Appearances:

For the Respondents
Robert J. Hrebek, attorney

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

INTERLOCUTORY DECISION

On February 7, 1991, the Monmouth County PBA, Local 240 ("PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission against the Monmouth County Board of Chosen Freeholders and the Sheriff of Monmouth County ("County"). It was alleged that the County violated N.J.S.A. 34:13A-5.1 et seq., specifically subsections 5.4(a)(1) and (5)^{1/} when after the

^{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."

collective negotiated agreement between the parties expired on January 1, 1991 and while negotiations were in progress for a successor agreement the County advised the PBA that it would not pay increments. The PBA alleges that there was an existing past practice and prior agreement which established that correction officers were to receive an additional salary step increment as of the first day of each calendar year.

An Order to Show Cause was executed and a hearing on the order was conducted on February 27, 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 relief, the relative hardship to the parties in granting or denying the relief must be considered.^{3/}

The PBA and the County were signatories to a contract that was effective from November 1, 1987 through December 31, 1990. Specifically, the contract provides for salaries as follows:

^{2/} Both parties presented evidence, filed briefs and argued orally.

^{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).

1. STARTING SALARIES:

effective November 1, 1987	\$19,000
effective January 1, 1989	\$20,000
effective January 1, 1990	\$21,000

2. IMMEDIATE SALARY ADJUSTMENT:

[effective November 1, 1987 through December 31, 1988]

PRESENT RANGE	ADJUSTED SALARY
\$17,500--\$18,477	\$21,000
\$18,812--\$19,988	\$23,000
\$20,962--\$22,575	\$25,000
\$25,800--\$27,950	\$28,000
\$30,630	\$33,000

3. JANUARY 1, 1989 SALARY INCREASE:

[effective January 1, 1989 through December 31, 1989]

1988 SALARY	1989 SALARY
\$19,000	\$22,000
\$21,000	\$23,000
\$23,000	\$25,000
\$25,000	\$28,000
\$28,000	\$33,500
\$33,000	\$33,500

4. JANUARY 1, 1990 SALARY INCREASE:

[effective January 1, 1990 through December 31, 1990]

1989 SALARY	1990 SALARY
\$20,000	\$23,000
\$22,000	\$24,000
\$23,000	\$25,000
\$25,000	\$28,000
\$28,000	\$34,000
\$33,500	\$34,000

The Association argues that these salary steps which were not in earlier contracts constitute an increment structure. An increment structure typically provides for increases in salary by

"salary steps" based upon length of service.^{4/} Although the contract incorporates salary steps, it does not expressly link the salary steps with length of service.

Ron Villano, labor consultant for the PBA, testified that at the negotiations for the 1987-1990 contract, the County submitted a contract proposal which included a salary step program. Villano asked if the correction officers would continue to receive increments after the contract expired. According to Villano, Robert Hrebek, labor counsel for the County, took the contract proposal and drew diagonal lines through columns on the salary chart. The lines extended beyond the columns on the chart. Hrebek explained that employees would move on the guide along the diagonal lines and would receive increments after the contract expired.

Hrebek testified that he recognized the hand writing on the proposal as his own but he did not remember stating that the proposed salary structure would survive the contract. His understanding of the proposed salary structure was that it was not an increment structure and it was not his understanding that the salary step would survive the contract.

The parties signed the contract proposal and later executed the contract quoted above. It is not disputed that the County characterized the salary structure as a salary "step plan". However, by way of affidavit, the Monmouth County Sheriff William

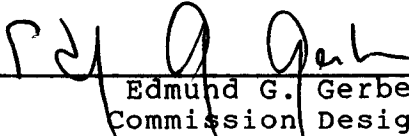
^{4/} e.g., an employee with 10 years of service shall receive \$25,000, 11 years of service \$26,000, etc.

Lanzano stated that his use of the term "step plan" was not meant to imply a length of service increment payment. Rather, it was a characterization of the new three year salary guide which he believed had been adopted for the duration of the contract.

Here the PBA "must prove 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 or condition of employment at the time the contract expired". Ocean County Sheriff, P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986).

Given there was no past history of increments and the contract is silent as to increments, the testimony here is pivotal. It is also conflicting. I cannot say there is a substantial likelihood that the Commission will find that the contract contained an increment system and that the County committed an unfair practice.

Accordingly, the application for an interim restrain is denied.



Edmund G. Gerber
Commission Designee

DATED: March 8, 1991
Trenton, New Jersey