

I.R. No. 84-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY BOARD OF CHOSEN FREEHOLDERS
AND OCEAN COUNTY SHERIFF,

Respondents,

-and-

Docket No. CO-84-328

OCEAN COUNTY SHERIFF'S DEPARTMENT, P.B.A.
LOCAL 258,

Charging Party.

SYNOPSIS

A Commission Designee declines to issue temporary restraints where a charging party claimed that an employer denied to pay increments pursuant to a salary schedule in an expired contract. The charging party failed to establish that the salary schedule corresponded to a salary structure which provided for the payment of increments based upon a clearly designated period of service.

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Appearances:

For the Respondent
Berry, Kagan, Privetera & Sahradnik
(John C. Sahradnick, Esq.)

For the Charging Party
Rothbard, Harris & Oxfeld
(Mark J. Blunda, Esq.)

DECISION ON MOTION FOR INTERIM RELIEF

On May 31, 1984, the Ocean County Sheriff's Department, P.B.A. No. 258, filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Ocean County Board of Chosen Freeholders ("Freeholders") and Ocean County Sheriff ("Sheriff") had violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) ^{1/} when neither the Freeholders or Sheriff would pay increments due in

^{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; (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 employees in that unit, or refusing to process grievances presented by the majority representative."

its recently expired contract even though the parties were engaged in negotiations for a successor agreement.

The charge was accompanied by an Order to Show Cause which was signed by the undersigned and made returnable on June 11, 1984. On that date a hearing was held with Counsel for the County arguing via telephone. The Sheriff did not appear, although he was served by the charging party.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are quite similar to those applied by the courts when confronted with similar application. The test is twofold: The moving party must demonstrate it has a substantial likelihood of success on the legal and factual allegation in the final Commission decision and the harm that will occur if the requested relief is not granted will be irreparable. ^{2/}

The Commission has consistently held that salary increments contained in an expired contract must be paid while the parties are negotiating for a new contract. ^{3/}

As stated in In re State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶ 12235 1981), where the employer was ordered to pay salary

^{2/} See, In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

^{3/} Galloway Twp. Bd/Ed v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978); In re Union County Reg. H.S. Bd/Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶ 4007 1977); Hudson County Bd/Chosen Freeholders v. Hudson County PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶ 14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81 aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶ 10278 1979); In re City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶ 12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81).

increments which were due to employees pursuant to the terms of the parties' expired contract:

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 must remain in effect requires that they move up one step and receive the appropriate salary increment. In re State of New Jersey, supra, at NJPER 536.

In the instant case the parties' contract for April 1, 1982 through March 31, 1984 created, for the first time, a salary schedule as follows:

<u>Step</u>	<u>4/1/82</u>	<u>Step</u>	<u>4/1/83</u>
1	\$10,000.00	1	\$10,000.00
2	11,600.00	2	11,600.00
3	14,900.00	3	14,900.00
4	16,200.00	4	16,200.00
5	18,000.00	5	18,000.00
6	19,300.00	6	19,300.00
7	20,900.00	7	20,900.00
8	22,900.00	8	22,900.00
		9	24,700.00

There is no language defining this schedule except that attached to the back of the contract was Appendix "A" in which every employee in the unit was listed along with a salary for 4/1/82. Said salary corresponded to a salary listed on the scale above. A second salary was listed for each employee for 4/1/83 and these salaries corresponded to a one-step increase on the schedule.

The undersigned cannot say that the charging party has demonstrated it has a substantial likelihood of success before the

Commission in this matter.

The contract is sketchy at best. Nothing submitted has established that the 1982 salaries constitute a raise or change in salary for all of the employees or only for some of the employees (or perhaps none). Unquestionably, there was an increase for all unit employees for April 1, 1983 but it is not clear whether this raise corresponded to an annual increase, a bi-annual increase or any other clearly defined period of service. There was no history of an increment structure prior to the contract in question.

Moreover, unlike State of N.J., supra, the contract makes no other provision for a salary increase, except for a cost of living clause. The increases within the guide have no readily apparent internal consistency. They range from almost 20% step, i.e. from step 2 to step 3 to 7.5% from step 5 to step 6. While such inconsistencies do not necessarily imply that the guide does not create an annual increment they do lend credence to the position of the county that the intent of the creation of the guide was to create a uniform salary structure where none existed before and not to create an annual wage increment.

Accordingly, the application for interim relief is hereby denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: June 15, 1984
Trenton, New Jersey