

I.R. No. 2010-23

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF OCEAN AND
OCEAN COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-2010-411

OCEAN COUNTY SHERIFF'S PBA LOCAL 379,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief requiring Ocean County and the Ocean County Sheriff to pay eligible sheriff's officers represented by PBA Local 379, the salary increments they were due retroactive to April 1, 2010.

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Appearances:

For the Respondent, John C. Sahradnik, County Counsel

For the Charging Party, Klatsky, Sciarrabone &
DeFillippo, attorneys (David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On April 30, 2010, Ocean County Sheriff's PBA Local 379
(PBA) filed an unfair practice charge with the Public Employment
Relations Commission (Commission) alleging that the County of
Ocean and the Ocean County Sheriff (Sheriff) violated
5.4a(1)through (7)^{1/} of the New Jersey Employer-Employee

^{1/} These provisions 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. (4)
Discharging or otherwise discriminating against any employee
(continued...)

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleged that the Sheriff failed to provide eligible employees with their automatic salary increment as required by the parties' most recently expired collective negotiations agreement.

The charge was accompanied by an application for interim relief seeking an order requiring the Sheriff to pay the increments retroactive to April 1, 2010. An Order to Show Cause was executed on May 4, 2010 scheduling a telephone conference call return date for May 27, 2010. The PBA submitted a brief, certification and exhibits in support of its application. The Sheriff responded by letter of May 14, 2010 opposing the application. Both parties provided oral argument on the return date.

The PBA relied upon its contract language and well established case law to support its position. The Sheriff did not dispute the relevant facts but asked that the Commission reconsider the applicable law based upon its significant economic

1/ (...continued)
because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

condition and pending legislation that may impact the percentage of increase that can be paid.

The following facts appear.

The Sheriff/County and PBA were parties to a collective negotiations agreement covering sheriff's officers effective from April 1, 2006 through March 31, 2010. That agreement contained the following increment clause in Article 4 Section C:

If no new Collective Negotiations Agreement has been negotiated and implemented as of the expiration date of this Agreement, all Officers not at maximum shall automatically move to the next higher step of the salary guide, consistent with the practices set forth above which shall remain in effect until a successor Agreement is signed and implemented.

The parties have had a history of eligible employees automatically receiving increments even upon the expiration of the collective agreement.

By letter of April 6, 2010, the County Administrator notified the PBA that due to economic conditions and proposed state legislation, it would not give increments to eligible employees based upon the expired salary guide. The County Administrator also noted that to maintain the workforce and not implement furloughs or layoffs, it would not give increments in the absence of a new collective agreement.

The Sheriff estimated the cost of increments for this unit to be \$405,677. The Sheriff/County noted that its revenues had

declined, its pension and health costs had increased causing it to reduce operating expenses and its capital improvement budget.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The PBA argues that the facts of this case are similar to those cases in which interim relief has been granted requiring the payment of automatic increments. It cited Galloway Twp Bd. Ed. v. Galloway Twp E.A., 78 N.J. 25 (1978), wherein the Supreme Court established the principle in education cases that the failure to pay automatic increments during negotiations establishes irreparable harm because of its "chilling effect" on the negotiations process. The Commission has granted interim relief and ordered the payment of increments in police cases as well. Township of Winslow, I.R. No. 2007-6, 33 NJPER 35 (¶15

2007); Somerset County, I.R. No. 93-15, 19 NJPER 259 (¶24129 1993); and Bergen County, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991).

The facts in Bergen County are similar to this case. There, the County did not dispute the contractual and practice obligation to provide increments, but asserted its economic condition justified its refusal to provide increments. The Commission Designee rejected that argument relying upon both court and Commission precedent including two Supreme Court decisions, New Jersey State PBA, Local 29 v. Town of Irvington, 80 N.J. 271 (1979) and City of Atlantic City v. Luezza, 80 N.J. 255 (1979), wherein the Court upheld interest arbitration awards despite the respective public employers' concern about the financial impact of the awards. In Irvington, the Court said:

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 296.

In a recent case involving Ocean County and its corrections officers represented by a different PBA, County of Ocean, I.R. No. 2010-20, ___ NJPER ___ (¶___ 2010), I granted a similar application for interim relief. In Ocean County, the corrections officers contract contained automatic increment language similar to the language cited above.

The same legal principal cited in Ocean County applies here. The Sheriff must be restrained from refusing to pay the increments. It has within its discretion the ability to reduce its workforce and/or services to meet its contractual obligations during negotiations.

Although the Sheriff/County argues that the Commission's legal precedent on increments be reconsidered given the prospect that pending legislation may limit the amount of income it could be required to give to employees through negotiations/arbitration, as Designee, I am bound to apply the Commission's policies as established. The Sheriff/County also argues, as it did in Ocean County, that a refusal to pay increments is not irreparable because it only involves the payment of money which can be remedied later. But the Court in Galloway, and the Commission in the above cited and other cases, have held that the failure to pay increments after the expiration of a contract and during negotiations for a new agreement is irreparable because it affects the balance required for good faith negotiations. A Designee should not set new policy before the Commission has had the opportunity to consider alternative arguments. The Sheriff/County may ask the full Commission to consider this decision or it may appeal to the Appellate Division.

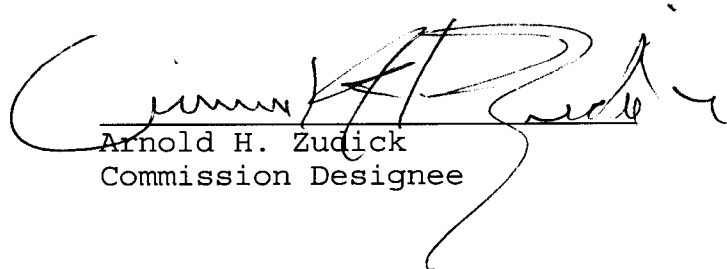
Consequently, I find that the PBA has demonstrated both a substantial likelihood of success on the merits of its application and irreparable harm if the increments are not paid. The Sheriff/County has not demonstrated an inability to pay, therefore, the harm to the PBA and the negotiations process if the increments are not paid is greater than the harm to the Sheriff by requiring the payments.

Having granted the PBA's application, I nevertheless, encourage the parties to consider a negotiated resolution to this matter to avoid negative employment actions.

Based upon the above findings and analysis, I issue the following:

ORDER

The Sheriff/County shall immediately pay eligible employees represented by the PBA the salary increments they were due retroactive to April 1, 2010.^{2/}



Arnold H. Zudick
Commission Designee

DATED: May 28, 2010
Trenton, New Jersey

^{2/} This case will be returned to the Director of Unfair Practices for further processing.