

I.R. No. 2011-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-2010-423

OCEAN COUNTY PROSECUTOR'S
PBA LOCAL 171,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief requiring the Ocean County Prosecutor to pay eligible detectives and investigators represented by PBA Local 171, the salary increments they were due retroactive to April 1, 2010.

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Appearances:

For the Respondent, John C. Sahradnik, County Counsel
(Lauren M. Dooley, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky (Marcia J. Tapia, of counsel)

INTERLOCUTORY DECISION

On May 6, 2010, Ocean County Prosecutor's PBA Local 171
(PBA) filed an unfair practice charge with the Public Employment
Relations Commission (Commission) which it amended on June 10,
2010, alleging that the Ocean County Prosecutor (Prosecutor)
violated 5.4a(1), (2), (3), (5) and (7)^{1/} of the New Jersey

^{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. (5)
Refusing to negotiate in good faith with a majority
(continued...)

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

The PBA alleged that the Prosecutor 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 Prosecutor to pay the increments retroactive to April 1, 2010. An Order to Show Cause was executed on June 18, 2010 scheduling a telephone conference call return date for July 1, 2010. The PBA submitted a brief, certification and exhibits to support its application. By letter of July 4, 2010, the Prosecutor argued it was not contractually obligated to give automatic increments and raised financial considerations as a hardship if increments were required. Both parties provided oral argument on the return date.

The following facts appear:

The Prosecutor and PBA were parties to a collective negotiations agreement covering detectives and investigators from April 1, 2006 through March 31, 2010. That agreement contained the following relevant clauses:

1/ (...continued)
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."

Article 39: Duration

This Agreement shall be in full force and effect from April 1, 2006 through March 31, 2010, or until execution of a successor agreement.

Article 6: Salary

Section 1: The annual salaries for employees covered by this contract shall be as set forth on Appendix A annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year.

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

By letter of April 6, 2010, the County Administrator, presumably on behalf of the Prosecutor, notified the PBA that due to economic conditions and proposed state legislation, it would not give increments in the absence of a new contract.

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).

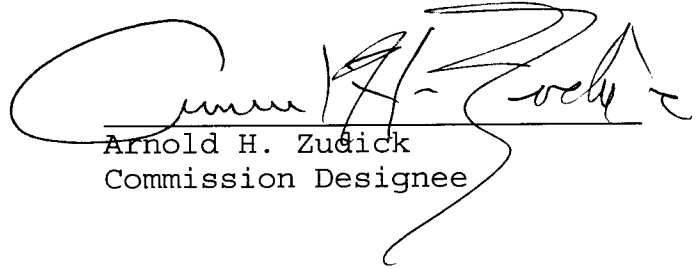
Recently in County of Ocean and Ocean County Sheriff, I.R. No. 2010-23, __ NJPER __ (¶ _____ 2010), and County of Ocean, I.R. No. 2010-20, __ NJPER __ (¶ _____ 2010), I granted similar applications for interim relief where the contracts provided for automatic increments effective April 1, 2010. Despite the Prosecutor's argument that the contract in this case does not require the payment of increments after its expiration, I found that the practice of the parties has been to pay increments even after contract expiration, and the contract language does not suggest otherwise. I find that increments were required to be paid to eligible employees on April 1, 2010.

While I can appreciate the economic argument raised by the Prosecutor, based upon the holdings and cases in the above cited Ocean County cases I must grant the PBA's application. Any argument suggesting a change or modification to the Commission's policy regarding the payment of automatic increments should be raised to the full Commission.

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

ORDER

The Ocean County Prosecutor 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: July 1, 2010
Trenton, New Jersey

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