

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY BOARD OF CHOSEN  
FREEHOLDERS AND OCEAN COUNTY  
SHERIFF,

Respondent,

-and-

Docket No. CO-84-328-13

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment which the Ocean County Board of Chosen Freeholders filed concerning an unfair practice charge filed by the Ocean County Sheriff's Department, P.B.A. Local 258. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act when, during successor contract negotiations, it refused to pay increments to employees represented by Local 258. The Commission finds that there are material facts in dispute concerning whether or not employees are contractually entitled to such increments.

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Charging Party.

Appearances:

For the Respondent Ocean County Board of Chosen  
Freeholders, Berry, Kagan, Privetera & Sahradnik, P.C.  
(John C. Sahradnik, of Counsel)

For the Respondent, Ocean County Sheriff, Citta,  
Holzapfel & Citta, Esqs.  
(John W. Holzapfel, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.  
(Mark J. Blunda, of Counsel)

DECISION ON MOTION FOR SUMMARY JUDGMENT

On May 31, 1984, Ocean County Sheriff's Department,  
P.B.A. No. 258 ("PBA") filed an unfair practice charge against  
the Ocean County Board of Chosen Freeholders ("County") and the  
Ocean County Sheriff ("Sheriff") with the Public Employment  
Relations Commission. The charge alleged that the County violated  
subsections 5.4(a)(1), (3) and (5)<sup>1/</sup> of the New Jersey Employer-

<sup>1/</sup> These subsections prohibit public employers, their representa-  
tives 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; and (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."

Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when, following the March 31, 1984 expiration of its collective negotiations agreement with the PBA and during negotiations for a successor agreement, it refused to pay PBA unit members automatic incremental step increases allegedly provided for in the expired agreement.

After filing this charge, the PBA sought an interim relief order requiring the County to pay the contested step increases pending the final determination of this litigation. Commission designee Edmund G. Gerber conducted a hearing on that request. Following the hearing, he issued a decision denying the requested interim relief. I.R. No. 84-14, 10 NJPER \_\_\_\_ (¶ \_\_\_\_ 1984). He specifically found that the PBA had not established a substantial likelihood of proving that the prior collective negotiations agreement required annual automatic step increases.

On August 7, 1984, the Administrator of Unfair Practices Proceedings issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On August 20, 1984, the County filed an Answer. The Answer denies that the prior agreement's salary guide provided for automatic annual step increases. The Answer further avers, as a separate defense, that a factfinder's report and a binding arbitration award concerning the prior agreement's salary guide had already established that the guide did not require automatic annual step increases.<sup>2/</sup>

<sup>2/</sup> The Sheriff filed an Answer in which it asserted that the Complaint against it should be dismissed because the County was the public employer during the life of the previous agreement. We do not consider this contention now.

On August 27, 1984, the County filed a Motion for Summary Judgment with a supporting brief, documents, and certification. The County contends that it is entitled to summary judgment because: (1) the contract clearly establishes that unit members are not entitled to automatic annual step increases, and (2) the previous factfinder's report and binding arbitration award preclude a contrary claim.<sup>3/</sup>

On August 31, 1984, the PBA filed a brief, documents, and two affidavits opposing the County's request for summary judgment. The PBA asserts that the question involved in the prior factfinding and arbitration proceedings -- the proper placement of certain employees on the existing salary guide -- was different from the question involved in this proceeding -- the alleged entitlement of all employees to automatic annual step increases.

On September 12, 1984, the County filed a reply brief and two more affidavits.

Pursuant to N.J.A.C. 19:14-4.8, a motion for summary judgment may be granted if it appears from the pleadings, together with briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant is entitled to its requested relief as a matter of law. A motion for summary judgment, however is to be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion; all doubts are to be resolved against the movant; and the summary judgment procedure is not to be used as a substitute for a plenary trial.

<sup>3/</sup> The County requested a stay of hearings on the Complaint scheduled for August 30 and 31 and September 6 and 7, 1984 pending determination of its motion. The Chairman, acting pursuant to authority delegated to him by the full Commission, granted this request.

Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981);  
In re Essex County Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

The following facts are undisputed.

The PBA is the majority representative of all the County's sheriffs and corrections officers, excluding superior officers and all other County employees. The County and the PBA entered a collective negotiations agreement effective from April 1, 1982 through March 31, 1984. Article IV, entitled Salaries, provided:

All personnel covered by this agreement shall be placed upon their negotiated and agreed step for the April 1, 1982 and April 1, 1983 contract. See attached Appendix A.

<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

Appendix A, in turn, listed every unit employee along with a salary for 4/1/82 corresponding to one of these steps and a salary for 4/1/83 corresponding to the next higher step. Prior to the 1982-84 agreement, there had been no salary guide. The agreement also contained a fully-bargained clause and called for final and binding arbitration of contractual disputes.

During 1983, a dispute arose concerning the proper salary guide placement under Article IV of four sheriff's officers who, prior to September 14, 1982, had been working as court attendants or criminal identification officers.<sup>4/</sup> The County had slotted these officers into the Article IV salary guide at the next highest step above the salary they were then receiving without regard to years of service in that position. The PBA protested that arrangement and claimed instead that employees were entitled to placement on the salary guide step corresponding to their years of service.<sup>5/</sup> This dispute was submitted first to factfinding and then to binding arbitration.

On August 1, 1983, factfinder Herbert C. Haber issued a report rejecting the PBA's position.<sup>6/</sup> He made the following findings and conclusions relevant to the instant dispute.

The salary guide in the current sheriff's officer contract was established in the most recent negotiations between the parties and all the members of the bargaining unit were placed on step in the guide in those negotiations. It is undisputed that placement on the guide was done on the basis of then current salaries being received rather than on any consideration of past service and that the unequal adjustments that resulted were agreed upon so as to make possible the establishment of the guide, which otherwise would have been prohibitively expensive. The language of the contract reflects this understanding in Article IV, which provides that "(a) personnel covered by this Agreement shall be placed upon their negotiated and agreed upon step for the April 1, 1982 and April 1 1983 contract" (emphasis added).

<sup>4/</sup> Pursuant to N.J.S.A. 40A:9-117.6, effective on September 14, 1982, these employees became sheriff's officers.

<sup>5/</sup> For example, according to the PBA, placement on the third step reflected three years of service.

<sup>6/</sup> He did, however, recommend a transitional bonus of \$250 for each of the four employees.

\* \* \*

The record makes abundantly clear that the determination of salary levels set forth in the current contracts, or being paid under those contracts, was not related to seniority factors. The adjustment for sheriff's officers was that amount between current salary and the next higher step on the newly established guide, and for superior officers, an 8% increase of their current salaries. There seems little logical basis, given the negotiated nature of the salary scales of the current sheriff's officers, to use seniority as a basis for determining the proper placement of those newly designated in that title. The statute protects their seniority and guarantees that nothing in the act "shall permit the decrease of compensation paid to persons employed...who shall receive appointments as sheriff's officers pursuant to this act." (emphasis added) Beyond that, it leaves the establishment of compensation to recommendations by the Sheriff and approval of the governing body of the county. The County's action in placing the new officers on the guide in the same manner as was agreed upon by the parties for the current officers is reasonable and equitable.

The PBA did not accept the factfinder's recommendations and initiated binding arbitration proceedings. On October 21, 1983, arbitrator Jack D. Tillem conducted a hearing. On December 17, 1983, the arbitrator issued his written opinion and award. He denied the PBA's grievance and made the following findings and conclusions relevant to the instant dispute.

The County's defense is that the salaries paid to the grievants are in accordance with the collective bargaining agreement and are the result, not of seniority, but of the negotiations which gave rise to the present agreement. A review of the circumstances leading up to the dispute impels me to agree with this analysis. Before April 1982, when the present agreement took effect, the parties did not have a salary guide. As a matter of fact, they did not even have a contract; only some "side-bar agreements." Salaries

were paid under a minimum and maximum schedule with a merit pay arrangement. The result was that there was little uniformity or consistency in the salaries or raises given to members of the unit over the years.

In an effort to reconcile two objectives - the creation of a step guide and generally staying within a range of raises of 8% - the parties, during their bargaining, jointly worked on the formulation of a step guide, the result of which appears as Article IV of the contract. Since the members of the unit were earning all sorts of different salaries, it was all but impossible to give each of them precisely the same percentage increase and also place them on a uniform step guide. But after much negotiations, the parties ultimately agreed on a two year contract with an 8 step guide for 1982 and a 9 step guide for 1983. The uncontroverted testimony at the hearing indicated that the yardstick in determining the raises was not seniority, but the "pot of money" available for distribution to construct a guide. No evidence was adduced which would contradict that finding or give rise to a conclusion that seniority was the determining factor in fixing the salaries to be paid during the term of the agreement. The first sentence of Article IV - the salary provision - comports with this conclusion. It says:

All personnel covered by this Agreement shall be placed upon their negotiated and agreed step for the April 1, 1982 and April 1, 1983 contract. (Underlining added).

\* \* \*

Nonetheless, it should be acknowledged that the salaries of the Sheriff's Officers do, of course, bear some relationship to their years of service. To deny that fact is to deny an obvious reality. But that is a reality not only for this bargaining unit, but for virtually all employees, probably throughout the entire world. It is perhaps an immutable law: The longer you are on a job, the more you make. But the relationship between years in service and salary is too remote in this case to constitute a basis for finding that the County breached the contract or the statute by not placing grievants on the step consistent with their years in service. Put another way, there is no causal relationship between the salaries of Sheriff's Officers and their years of service. The proximate cause of the salaries paid in this contract is not seniority, but,



rather, the bargaining of the PBA to achieve a step guide which would distribute a finite sum of money among its members that would induce them to ratify the contract. Not incidentally, it also bears noting that movement on the step guide occurs on the contract anniversary date and not on the employee's anniversary date.

The following material factual allegations are in dispute.

The PBA's chief negotiator for the 1982-84 contract has filed an affidavit. He asserts that the PBA's highest priority during those negotiations was to secure an incremental salary guide; that the memorandum of agreement guaranteed incremental step movement from one year to the next, even if negotiations were ongoing; and that it acceded to the County's give-back demands in order to obtain this guarantee. The County's chief negotiator disagrees.

We first consider the County's contention that Article IV and Appendix A so clearly and unambiguously preclude automatic annual increments that its motion for summary judgment must be granted. We disagree. It may be that, without producing extrinsic evidence, the PBA will not be entitled to the relief it seeks. Nevertheless, on the record before us, we cannot say that the wording of the contract either precludes or establishes the PBA's claim to an automatic annual increase. A plenary hearing is necessary to elucidate the meaning of the contract.

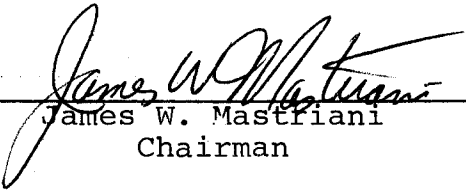
We next consider the County's contention that the factfinding report and binding arbitration award bar further litigation of the PBA's claim. We agree with the County that

the binding arbitration award and the factfinder's report diminish any argument that seniority determined salary guide placement under Article IV, but we are not convinced, at least at this juncture, that Article IV precludes automatic annual increments according to the negotiated salary guide steps, even though initial placements appear not to have been seniority-dependent. The PBA's chief negotiator has put that factual question in issue. Accordingly, we believe a plenary hearing is necessary and deny the motion for summary judgment.

ORDER

The County's Motion for Summary Judgment is denied.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Graves, Butch, Suskin, Wenzler, Hipp and Newbaker voted for this decision. None opposed.

DATED: Trenton, New Jersey  
September 19, 1984  
ISSUED: September 20, 1984