Dynamic Status Quo Doctrine Overturned by the Public Employment Relations Commission

Payments of Increments on an Expired Collective Negotiations Agreement May No Longer Be Required

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A recent decision issued by the Public Employment Relations Commission is likely to impact the "dynamic status quo doctrine" which has historically required payment of increments at the expiration of a collective negotiations agreement.

Municipalities and public employers should be aware of In the Matter of County of Atlantic and PBA Local 243, et. al., PERC No. 2014-40, where the Commission overturned this long-standing policy which previously required public employers to pay employee increments for moving vertically along the salary guide once the collective negotiations agreement expires but an agreement on a successor contract has not been reached.

Historically, the dynamic status quo doctrine meant that a public employer must pay an employee's increment, i.e. vertical movement on a salary guide, after the expiration of the collective negotiations agreement. This was so even if the parties had not reached an agreement on a successor contract. The rationale behind this doctrine was to encourage the parties to reach an agreement. The thought process was paying increments benefitted neither parties in negotiations.

However, in County of Atlantic, the Commission acknowledged that paying automatic increments after the expiration of a collective negotiations agreement would actually serve to hinder the parties in seeking to reach a resolution of the contract. The tax levy cap and the 2% interest arbitration cap for police and fire coupled with a requirement to pay automatic increments were leaving parties with little room to maneuver to craft an agreement. As such, the Commission determined that continuing this doctrine in light of the recent changes in public sector labor negotiations was neither practicable nor wise.

Public employers should mindful of this decision and act accordingly when their contracts expire to give themselves the greatest amount of flexibility in negotiations. Please continue to monitor this issue with counsel.

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