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Subject : Essex County Arbitrarily Freezes Pay Scale With No Notice Or Justification

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PBA Local 382

Memorandum

March 14, 2014

Dear Members:

I apologize that rumors hit the jail before the PBA was given official notice regarding a plan by the administration to freeze our pay steps, but I personally found out at approximately 1PM on Thursday that the rumors are true.

That in and of itself is troubling to know that the county was withholding this plan from us given the fact that we met with the county as recently as Tuesday morning and **it was never mentioned in that contract meeting.**

As a matter of fact, we have had 5 contract meetings since January, which admittedly have been **completely unproductive with nothing to report** because everyone is waiting to see what's going to happen with the **2% cap law which is set to expire on April 1st,** but obviously the county had ample opportunity to put their intentions on the table.

Nonetheless, we did use these meetings to bounce all the "what ifs" and ideas off of one another and I'm sure that the county had this bomb in regard to pay steps in the back of their

heads, but for some reason not only failed to mention it as **a sign of good faith and transparency in the negotiation process**, but opted to let us hear it through the "county/jail grapevine", **which is obviously bad faith on their part**, but not really too shocking considering the way in which politics seems to be in this county and state. Bad Faith is actually an understatement, but I don't blame those at the negotiation table with us who are most likely following slanted orders from above.

If you are an avid reader of our bulletins and have attended our meetings, the new arbitration laws have been discussed at length and especially in the two meetings that took place in October where our attorney and financial expert methodically explained all the drawbacks and damage that can occur under these new and limiting arbitration laws designed to keep contracts under a 2% cost cap.

It's been reported in many parts of the state, that arbitrators who are now being **lawfully forced** to remain within that 2% cap, have used the **pay step system** as their **favorite target** to reduce contract costs and we've seen other locals **lose steps completely, had their steps raised to ridiculous numbers, temporarily freeze steps and/or lower starting pay to ridiculous numbers** all in the name of keeping the cost of a contract under 2% per year for the life of the contract.

All this shouldn't have been a concern for us right now because arbitration is not an issue and our intent is to try to work out a fair agreement, so the question you are asking and rightfully so, is.... why freeze the steps if arbitration is not an issue and **why in the middle of what "we thought" was good faith and fair negotiations until Thursday afternoon when I was able to verify the county's "secret plan" to freeze our pay steps?**

Again, to fully understand how these things are occurring, you would need to be in tuned with the horrific information pouring in from several parts of the state and please allow me to give you one important example that led to the issue at hand.

The case that our county is using as their **excuse** to freeze our steps, is a case out of Atlantic County that began in December of 2010, where their administration took a legal position that being their contracts with public safety unions **expired**, they felt that they **weren't obligated** to pay the steps under an **expired contract**. A legal battle ensued and was won by the unions through a hearing officers decision that all contract terms should remain in full effect after a contract expires and while a new contract is being negotiated.

That had always been the statewide standard under PERC that contract issues were binding even after a contract expires unless they are negotiated away in a successor contract.

The Atlantic County administration kept at it by using the 2% cap argument and appealed the hearing officers decision and two years later in December of 2013, PERC heard the case, over ruled the original decision and **awarded Atlantic County their right to not pay step increments under an expired contract**. Short of any further appeals this PERC ruling became **"Case Law"**.

Having this Case Law on the books, now opens the door for other employers to refer to that decision as an option for them to explore and again as I mentioned many times in the past...Case Law guides us many times on both sides of the table in regard to what's arguable/negotiable, what's not arguable/negotiable, what's winnable and what's not winnable etc.

The next question you're asking is why would PERC suddenly change up from their decades of favorable rulings on the side of the unions and now rule against us on this pay step issue?

Again if you've been in attendance at our meetings, it was explained and discussed several times that under the Christie Administration, the fair and unbiased history and spirit of PERC has been destroyed and is now under the control of what I can only describe as the **governors political cronies** who have **zero experience in labor law** and **are following political orders** to abandon these decades of protective decisions and to assist the employers to keep costs down and inevitably **keep public unions down**.

There's no other way to explain how **case law** that's been favorable to us for decades is now being ignored in an attempt to create **new case law** which is politically motivated.

It was simply known in PERC circles as the **"status quo doctrine"** to not allow unions to lose negotiated items arbitrarily and without first being negotiated.

Its a very dangerous trend that can possible mean much greater loss if these issues continue on this **politically driven path** and in order to fully explain PERC's new agenda of **following political orders** as opposed to **following protective & historical standards**, I quote from PERC's ruling in the Atlantic County case below...

The Public Employment Relations Commission rejects a Hearing Examiner's report and recommended findings in unfair practice cases filed by PBA Local 243, FOP Lodge 34, and PBA Local 77 against the County of Atlantic. The Hearing Examiner recommended that the Commission find that the County violated the New Jersey Employer-Employee Relations Act, when it ceased paying increments to unit members after the expiration of the parties' collective negotiations agreements. The Commission rejects the hearing examiner's finding of repudiation which he based on application of the dynamic status quo doctrine. The Commission finds that the dynamic status quo was a Commission policy which, in the evolution of public sector labor negotiations in New Jersey, no longer fulfills the needs originally intended, and disserves rather than promotes the prompt resolution of labor disputes. Accordingly, public employers will instead be bound by a "static" status quo. The Commission holds that, because the dynamic status quo doctrine is no longer effective, the underpinnings of repudiation no longer exist and the unfair practice charges are dismissed.

This is simply what occurred and simply what Essex County officials obviously hung their hat on when they came to the harmful and careless decision to follow the lead of a county that I'm sure in no way is an example of good employee/employer relations.

Let me be even more clear...it was slanted and thoughtless for Essex County to not at least have

the decency to make their intentions clear from the start of negotiations and at least Atlantic County Officials put their cards on table and stood behind those cards in a legal forum.

I don't know what the financial and economic condition of Atlantic County is and for all we know, they may in fact have economic hardships that may **justify** their actions so therefore... its makes our issue here in Essex even more slanted and thoughtless on the county's part to do this to us with **zero justification** just because they can based on a bad decision and slanted case law generated in a county 100 miles away.

Especially only a few weeks after our executive **publicly praised us** in his state of the county address for generating what's been called record numbers of revenue through our jail system. Nearly 50 million dollars so **what's the justification** for taking food from the mouths of our younger officers currently going through the step program and their families?

At this point I obviously have not had the time to consult with our attorney regarding legal recourse and when I do I will again hold meetings for all members to be updated with our attorney present, but for now I call your attention to the following...

Star Ledger Headline February 4, 2014

*"Essex executive seeking fourth term **praises county workers, touts jail and parks revenue**"*

Article Quotes

***DiVincenzo praised the work of county employees** as he highlighted the county's **fiscal health** as his proudest accomplishment.*

*"**Cutting expenses, finding efficiencies, generating revenue and minimally raising taxes all helped to stabilize the bottom line,**" DiVincenzo, who is seeking the Democratic party nomination in the June primary race, said.*

*As in years past, DiVincenzo lauded the **corrections** and parks departments for bringing money into the county's coffers. Last year the county parks, including Turtle Back Zoo, raked in **\$12 million in revenue**, he said. In 2007, the county parks collected **\$6.5 million**.*

The Essex County Correctional Facility, the state's largest county jail, brought in \$45.5 million through contracts with federal and state agencies as well as five other counties. In August, the 2,434-bed lockup in Newark received a three-year accreditation from the American Correctional Association after scoring high marks. In December, the county announced that it's juvenile detention center was awarded "Facility of the Year" by the Chicago-based nonprofit National Commission on Correctional Health Care.

So Mr. Executive...As a recipient of this communication, which I hope you've read as my explanation to our members of your latest attack on your workforce who you claim to be so

proud of, I pose the following questions...

What is your actual position?

Do we deserve praise or **do we deserve this financial harm that you've now personally and purposely brought upon us?**

Are we in fact the role model county and jail facility for the entire state that you boast about?

If so, do we at least deserve contractual status quo and a modest salary increase for employees **who actually did the work to achieve these accomplishments that YOU take credit for** and **whose hard work made these record revenue numbers possible** or will you continue to personally harm us even more than legislation has harmed us already and now do so no less, by carelessly and thoughtlessly patterning us after the County of Atlantic who's issues have nothing to do with us?

Are we in fact **industry leaders** or are you going to call us industry leaders in the media only for political campaign rhetoric just to wind up riding the coattails of another county's problems when it suits you?

Is it really too much to ask that if our county is a statewide industry leader, that our contract and our negotiation process should reflect a positive industry standards as well?

Are you in fact a **Role Model Political Leader** who deserves a 4th term in office based on the unprecedented leadership and accomplishments that you boast about in the media or are you now reduced to a **Follower** behind the Atlantic County Executive?

It was a cheap move for you to make by exploiting the problems of Atlantic County as an excuse to needlessly and unnecessarily cause conflict within your own workforce here at home, which now sent a message to these deserving officers that their hard work in Essex County means nothing.

As I stated in previous communications, I expect nothing less and by your own admission and description of our **county's positive fiscal health and revenue streams referenced above,** it calls for nothing less than the complete retention of our current contract clauses and a nominal and modest salary increase without the need for any further financial damage in any way

whatsoever.

Sincerely,

Joe Amato, President, PBA Local 382

CC. All County & Jail Officials, Media Outlets
