I.R. NO. 99-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CO-99-183

HOBOKEN MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Hoboken Municipal Employees Association applied for interim relief seeking to restrain the City of Hoboken from refusing to agree to non-economic proposals or directing the City to resolve open issues within 30 days. The Commission Designee found that the Commission would be able to fashion an effective remedy at the conclusion of a plenary hearing, consequently, no irreparable harm was established. The application for interim relief was denied.

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Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(Linda Sabat, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On December 7, 1998, the Hoboken Municipal Employees Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Hoboken (City) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Association alleges that the City

violated N.J.S.A. 34:13A-5.4a(1), (3), (5), (6) and (7).[1/] The unfair practice charge was accompanied by an application for interim relief. The Association seeks an order directing the City to agree to the non-economic proposals submitted by the Association or directing the City to resolve the open issues within 30 days. On December 9, 1998, an order to show cause was executed and a return date was initially scheduled for December 30, 1998, and subsequently, rescheduled to January 15 and then to January 26, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally.

Apparently, during the summer of 1998, the Association and the City engaged in several months of collective negotiations in an effort to reach a collective agreement. It appears that on or about August 14, 1998, the Association and the City reduced their agreement to writing in the form of a signed memorandum of understanding pertaining to a collective agreement with a term of

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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. (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 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."

July 1, 1997 through July 1, 1999. The memorandum of understanding contained language which states: "Both parties agree to mutually develop language changes leading to an employment contract to be ratified by the MEA and City of Hoboken." Apparently, on or about August 6, 1998, counsel for the Association sent an initial draft collective agreement to the City for review. On September 24, 1998, it appears that the Association sent a revised collective agreement to the City for review. The Association asserts that the only change made in the revised agreement reflected an up-to-date uniform allowance provision. The Association further asserts that on November 11, 1998, it sent the City correspondence again requesting that it review and sign the draft collective agreement and also indicating that its several previous efforts to illicit response from the City had been unanswered. The Association asked the City to respond by November 23, 1998. The Association alleges that the City has not responded to the draft collective agreement nor any of its prior inquiries.

The City asserts that it is and has been reviewing the Association's draft agreement. The City contends that the Association's draft was based upon a collective agreement which the Association proports was in place and expired in 1989. The City argues that while the mayor may have signed that agreement, there is no indication that the agreement was ever adopted by City Council and, therefore, was never duly executed. Consequently, the City contends that it was necessary to engage in lengthy research to

ascertain the negotiations history, which is necessary to formulate responses to the Association's non-economic proposals.2/ During oral argument, the City indicated that it was now prepared to meet with the Association to engage in further discussions regarding the open non-economic issues. The City proposed three meeting dates at which time it would be prepared to discuss language changes on the outstanding non-economic issues.

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).

I find that the Association has not established the requisite irreparable harm element of the standard to obtain interim relief. In a case concerning an alleged failure to sign a collective agreement, the Commission is able at the conclusion of a plenary hearing to effectively fashion a remedy curing such alleged

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2/ There is no dispute that the economic portions of the memorandum of agreement have already been put into effect.

violation. It is well established that a party does not suffer irreparable harm where an effective remedy is available to the Commission after the case has been fully litigated. See Borough of Sea Girt, I.R. No. 98-28, 24 NJPER 440 (¶29202 1998).

I am sensitive to the Association's claim that after multiple attempts since August 1998, the City, until oral argument, offered no response to the Association's draft agreement. Consequently, under separate cover, I will issue a complaint on the unfair practice charge and expeditiously move it to hearing. It is my expectation that the parties will take advantage of the dates offered by the City to meet for the purpose of developing language for the outstanding non-economic issues to be included in the collective agreement and, thereby, resolve this matter.

ORDER

The Association's application for interim relief is denied.

Stuart Reichman
Commission Designee

DATED: January 27, 1999
Trenton, New Jersey