I.R. No. 85-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Respondent,

- and -

FRATERNAL ORDER OF POLICE,
GARDEN STATE LODGE #3,

Docket No. CO-85-202

Charging Party,

- and -

SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission's Designee denies interim relief where the Charging Parties claimed that the Employer changed a health plan, failed to sign a contract and pay retroactive salaries, and issued false W-4 forms. The Charging Parties did not demonstrate either a substantial likelihood of success or irreparable harm. A factual hearing is necessary on the health plan issue to determine whether a contractual waiver existed that would permit the change.

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Appearances:

For the Respondent
Pachman & Glickman, Esqs.
(Steven S. Glickman of counsel)

For the Charging Parties
Ralph H. Colflesh, Esq.

DECISION ON MOTION FOR INTERIM RELIEF

On February 13, 1985 the Fraternal Order of Police, Garden State Lodge #3 ("FOP"), and the Superior Officers Association ("SOA") ("CP")[1/] filed a joint unfair practice charge, which was

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1/ The FOP and SOA are two different labor organizations representing two different units of employees employed by the Township of Pennsauken. However, this Charge was filed jointly because the primary issues raised by the Charge are the same for each unit.

amended on March 13, 1985, with the Public Employment Relations Commission ("Commission"), alleging that the Township of Pennsauken ("Township") had violated subsections 5.4(a)(1), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[2/] The Charging Parties alleged that the Township unilaterally changed certain provisions in the employee health benefits plan; that it refused to sign a new collective agreement; that it refused to make retroactive salary payments; and, that it falsely advised the IRS that retroactive money was paid to the employees in 1984.

Pursuant to N.J.A.C. 19:14-9.2, the PBA, on June 3, 1985, filed a motion for interim relief with a supporting brief and verified complaint together with an Order to Show Cause which was signed on June 6, 1985 and made returnable on June 24, 1985. The Township submitted a brief in opposition to the motion on June 17, 1985. A hearing was conducted on the return date as scheduled.

2/ These subsections 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; (7) Violating any of the rules and regulations established by the commission."

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are well settled. The test is twofold: the Charging Party must establish that it has a substantial likelihood of success in the final Commission decision on the legal and factual allegations, and, it must also establish that irreparable harm will occur if the requested relief is not granted.3/

The facts show that the Township and respective Charging Parties signed memorandums of agreement on November 9 and 30, 1984, for new collective agreements which would be effective from July 1, 1984 through June 30, 1986. After the memorandums were signed the Township prepared the collective agreement(s), and prepared to pay the employees the new salary increases retroactive to July 1, 1984. However, several disagreements arose regarding contract terminology and the contracts were never signed. The Township thus refused to pay the retroactive salaries until the contracts were signed, but it did implement the new salary on January 1, 1985. However, since the Township had already prepared retroactive checks for the employees

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3/ See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and, In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

in the SOA unit during 1984, the 1984 IRS W-4 forms for employees in that unit improperly reflected that retroactive money had been received by those employees.[4/]

In addition to the W-4 issue, the Township in early January 1985 unilaterally changed certain aspects of the employee health benefits plan. The Township asserted that it had a contractual right to make the changes, but the Charging Parties argued that the changes violated the Act.

The Charging Parties seek an order requiring the Township to sign the contracts, requiring the Township to pay the retroactive salaries, requiring the Township to reinstitute the previous health plan, and requiring the Township to issue new W-4 forms for SOA unit members and inform the IRS of its error.

At the hearing on June 24, 1985, I issued a bench decision and denied the motion for interim relief. I found that the Charging Party had not demonstrated a substantial likelihood of success and irreparable harm.

The facts of the primary issue, the change in the health plan, show that a clause in the recently expired agreements, and in the recently negotiated (but not signed) agreements gave the Township the right to change the health carrier and plan as long as the new plan provided the same or better benefits as the previous

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4/ The Township did not prepare retroactive checks for the FOP unit. Consequently, the FOP was not involved in the W-4 issue.

plan. The Township argued that the term "better" referred to the plan as a whole, and argued that the new plan was better than the previous plan. The Charging Parties argued that "better" referred to an item by item comparison, and that several items in the new plan were inferior to items in the previous plan. I am not convinced that the clause in question is clear enough on its face to prevent the presentation of parole evidence at a full hearing regarding the interpretation of the clause. Since a full hearing on that issue is warranted, no substantial likelihood of success exits.

The signing of the new collective agreements, and the payment of retroactive salary increases, are not irreparable. They can easily be reminded after a full hearing. In fact, both parties admitted that the health plan issue is not an impediment to the signing of the new agreements, and that since other minor issues have now been resolved, the signing of the new agreements was imminent. The Township intends to pay the retroactive salaries after the agreements are signed.

Finally, the Commission has no jurisdiction over the IRS matter. Procedures exist before the IRS and the Federal Courts to compell the Township to change the 1984 W-4 forms for SOA unit members.

Accordingly, based upon the foregoing discussion, the Charging Parties did not satisfy the standards for interim relief, and, therefore, their motion is denied.

Arnold H. Zudick
Commission Designee

DATED: June 27, 1985
Trenton, New Jersey