I.R. NO. 2000-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE & RESCUE,

Respondent,

-and- Docket No. CO-2000-171

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Charging Party.

SYNOPSIS

On December 27, 1999, the North Hudson Regional Fire and Rescue (Regional) advised the North Hudson Firefighers Association that it intended to change paydays from bi-weekly Wednesdays, beginning in calendar year 2000 on January 5, to bi-weekly Fridays, beginning January 14. Regional told the Association that it would notify its payroll processor of the change on Wednesday, December 29, 1999 and that it would not be possible to modify that schedule after that day. On December 29, 1999, the Association filed an unfair practice charge accompanied by an application for interim relief with temporary restraints. The Commission Designee entered a temporary restraining order directing that Regional refrain from changing unit employees' paydays (I.R. No. 2000-7). The Commission Designee now dissolves the temporary restraining order and grants the charging party's application for interim relief. The Commission Designee found that the charging party met the requisite elements for interim relief and ordered that the respondent refrain from changing pay days for unit employees.

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Appearances:

For the Respondent,
Murray, Murray and Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party,
Schneider, Goldberger, Finn, Cohen, Solomon
Leder, Montalbano, attorneys
(Kevin P. McGovern, of counsel)

INTERLOCUTORY DECISION

On December 29, 1999, the North Hudson Firefighters Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the North Hudson Regional Fire and Rescue (Regional) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by

violating N.J.S.A. 34:13A-5.4a(1) and (5).[1/] The unfair practice charge was accompanied by an application for interim relief with temporary restraints.

On December 29, 1999, an order to show cause with temporary restraints was executed and a return date on the application for interim relief was scheduled for January 19, 2000. Additionally, Regional was temporarily restrained from implementing any modification to the pay dates of any of the members of the Association; directing any third party to implement the modification to the pay dates of any of the members of the Association; and failing to pay Association members their regular wages on Wednesday, January 5, 2000. The order contained a provision allowing Respondent to move for dissolution or modification of the temporary restraints on two days' notice or such other notice as may be ordered.

On January 3, 2000, via telephone, Regional indicated that it wished to move for dissolution or modification of the restraints. On January 5, 2000, oral argument on the dissolution or modification of the temporary restraining order was conducted. On

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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. (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."

the basis of the parties' written submissions and oral argument, on January 10, 2000, I denied Regional's request to dissolve the temporary restraining order and set a return date on the order to show cause for January 19, 2000 (I.R. no. 2000-7).

On January 17, 2000, Regional requested the postponement of the return date because its attorney was unavailable. Charging Party did not object to the postponement request and the return date was rescheduled to February 16, 2000. On February 15, 2000, Regional advised that it was waiving oral argument on the order to show cause and would rely on the papers previously submitted in this matter including the Appellate Division brief and appendix submitted in support of its application for leave to appeal and stay the Commission's temporary restraining order. Also on February 15, 2000, the Charging Party advised that it had no objection to Regional's request to waive oral argument and joined in the request to cancel oral argument. The Association advised that it too would rely on the submissions previously filed in this matter along with its reply brief filed in opposition to Regional's Appellate Division application.

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).

For the most part, I have addressed Regional's arguments in my January 10, 2000 decision (I.R. No. 2000-7). However, Regional raises certain additional arguments in its brief filed with the Appellate Division. Regarding the arguments which Regional previously raised when it sought to dissolve the temporary restraining order and reiterates now in its effort to defeat the Association's application for interim relief, I rely upon my findings and analysis stated in I.R. No. 2000-7 and do not repeat them here. I address Regional's new arguments below.

Regional contends that it has a managerial right to achieve thoroughness and efficiency in its operations. It argues that for it to be required to operate four separate payroll schemes for employees included in a single collective negotiations unit would place "...continuing and substantial challenges on [its] right to operate as a single entity and would thus limit [its] policy making powers." Regional brief at p.17. However, Regional's own affidavits and submissions indicate that as of April 1, 1999, the time when Regional took over payroll administration from the respective predecessor towns, employees were paid on a single, uniform basis with bi-weekly Wednesday pay dates. Regional's

argument that it was unifying its payroll system in January 2000 appears inconsistent with its prior submissions. Nevertheless, even assuming that the payroll program Regional sought to effectuate in January 2000 was designed to unify its payroll administration program, Regional fails to show how a limitation on such action would interfere with its core governmental responsibility to provide firefighting services to the public and thus constitute an exercise of managerial prerogative. The Commission has found the timing of paychecks to be mandatorily negotiable. See Borough of Fairview, I.R. No. 97-13, 23 NJPER 155 (¶28076 1997), recon. den. P.E.R.C. No. 97-96, 23 NJPER 163 (¶28081 1997); Borough of Fairview, P.E.R.C. No. 97-152, 23 NJPER 398 (¶28183 1997); Fairfield Tp. P.E.R.C. No. 97-60, 23 NJPER 13 (¶28013 1996); City of Burlington, P.E.R.C. No. 89-132, 15 NJPER 415 (¶20170 1989), aff'd NJPER Supp.2d 244 (¶203 App. Div. 1990); Borough of River Edge, P.E.R.C. No. 89-44, 14 NJPER 684 (¶19289 1988); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). I find Regional's argument that its actions were an exercise of its inherent managerial prerogative to be unpersuasive and its intention to change pay dates to appear to require negotiations prior to implementation. N.J.S.A. 34:13A-5.3. I find that Regional's argument does not cause me to modify my finding that the Association has established a substantial likelihood of success on its legal and factual allegations.

Regional continues to argue that there is no irreparable harm. I rely on my finding and discussion of irreparable harm in I.R. No. 2000-7. I continue to find irreparable harm now.

Regional asserts that the relative hardship to the parties was not adequately balanced. Regional contends that its interest in providing a consistent pay date schedule outweighs any harm alleged by the Association. Specifically, Regional points out that I.R. No. 2000-7 did not address the harm suffered by Regional as the result of having to continue to operate four separate pay date programs.

In addressing this new issue I again note that it is unclear that Regional is, in fact, operating under four separate pay date programs. I also note that while Regional argues that this issue had not been addressed, it asserts no arguments now as to the nature of the harm it would suffer if it is required to maintain that program until the completion of collective negotiations on that issue. With respect to other aspects of weighing the relative hardship to the parties, I rely on I.R. No. 2000-7 and do not reiterate that discussion here.

Consequently, for the reasons set forth in I.R. No. 2000-7 and expressed above, I find that the Association has established the requisite elements for a grant of interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The temporary restraining order issued on December 29, 1999 is dissolved. The North Hudson Regional Fire & Rescue is restrained from implementing any modification to the pay dates of any of the members of the Association; directing any third party to implement

the modification to the pay dates of any of the members of the Association; and failing to continue to pay Association members their regular wages on bi-weekly Wednesdays from January 5, 2000, forward. This interim order will remain in effect pending a final Commission order in this matter.

Stuart Reichman
Commission Designee

DATED: February 28, 2000
Trenton, New Jersey