

I.R. NO. 98-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTCLAIR,

Respondent,

-and-

Docket No. CO-98-1

POLICE BENEVOLENT ASSOCIATION,  
LOCAL No. 53,

Charging Party.

**SYNOPSIS**

A Commission Designee declines to enter an interim order in a matter brought by PBA Local 53 against the Township of Montclair. The parties negotiated a new agreement which contains a salary schedule. The Township failed to apply the new salary schedule retroactively. Local 53 sought an interim order compelling the Township to make retroactive salary adjustments. This dispute concerns the level of compensation due under the contract or money damages. Money damages are not irreparable. (Since the matter is also the subject of a demand for arbitration, the controversy was deferred to arbitration.)

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Appearances:

For the Respondent,  
Genova, Burns & Vernoia, attorneys  
(James J. McGovern, III, of counsel)

For the Charging Party,  
Stein, Bliablias, McGuire, Pantages & Gigl, attorneys  
(Gary S. Young, of counsel)

INTERLOCUTORY DECISION

On July 2, 1997, PBA Local #53 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Montclair engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when it refused to implement a negotiated salary increase retroactively.

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<sup>1/</sup> 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. (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 unfair practice charge was accompanied by an order to show cause which was executed and made returnable for July 25, 1997. At that time, the parties were given an opportunity to submit appropriate documents and evidence and argue orally. The application for interim relief was denied on the record.

It is not disputed that the parties had negotiated a successor agreement containing salary schedule. That schedule contains the following language:

Officers hired on or after January 1, 1997, shall receive the academy rate set forth above for twenty-six weeks. Each further step movement on the salary schedule shall be after successive one-year periods. The Academy rate shall remain the same for the duration of this Agreement.

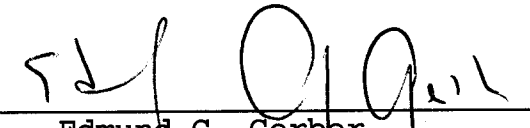
After the agreement was ratified by the parties, the Township did not apply the new schedule retroactively. It took the position that the 26 week schedule was prospective only. At the hearing, the Township argues that nothing in the agreement makes the implementation of the schedule retroactive. It also notes that the PBA is seeking to arbitrate this very issue.

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).

The PBA failed to meet its heavy burden. It failed to demonstrate that the alleged harm is irreparable. This dispute concerns salaries, and money damages are not irreparable.

Accordingly, the application of the PBA was denied. It is also noted that since this matter is the subject of a pending arbitration, arbitration is the Commission's preferred mechanism to resolve contract disputes. Accordingly, this matter will be deferred to arbitration.

  
Edmund G. Gerber  
Commission Designee

DATED: August 11, 1997  
Trenton, New Jersey .