

I.R. NO. 97-13

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FAIRVIEW,

Respondent,

-and-

Docket No. CO-97-206

FAIRVIEW LOCAL 45 (FAIRVIEW UNIT),

Charging Party.

SYNOPSIS

A Commission Designee enters an interim order requiring the Borough of Fairview to restore the payment of salaries on a weekly basis to patrolmen. The Borough had altered an existing term and condition of employment by unilaterally instituting a bi-weekly pay system while the parties were negotiating a new contract.

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Appearances:

For the Respondent,  
Giblin & Giblin, attorneys  
(John L. Schettino, of counsel)

For the Charging Party,  
Loccke & Correia, attorneys  
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On December 24, 1996, Fairview Local 45 filed an unfair practice charge with the Public Employment Relations Commission. It was alleged that the Borough of Fairview committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7)<sup>1/</sup> when on or about November 27, 1996 it unilaterally

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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. (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

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determined to go from a weekly payroll system to a bi-weekly payroll system, effective January 1, 1997.

The unfair practice charge was accompanied by an order to show cause which was executed and ultimately hearing on January 16, 1997.

The most recent collective negotiations agreement between the parties expired on December 31, 1996. Negotiations for a successor agreement are ongoing. The Borough does not dispute that it went from a weekly pay period to a bi-weekly pay period on January 1, 1997. Rather, it argues that it had the right to take this action pursuant to N.J.S.A. 40A:5-19 which provides that a "... local unit may, by resolution, provide for the bi-weekly payment of salary, wages and compensation of officers and employees, both elected and appointees."

The Borough asserts that the duties of the payroll clerk were subcontracted in calendar year 1996 and the position was eliminated. Accordingly, this matter is not negotiable. Further, without a Borough employee available to make daily corrections, it was difficult for the contractor to provide accurate checks on a weekly basis. It also claims that further savings could be achieved by going to a bi-weekly pay period.

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1/ Footnote Continued From Previous Page

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."

### ANALYSIS

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 Borough's reliance on 40A:5-19 is misplaced. As a rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the regulation fixes a term and condition of employment "expressly, specifically and comprehensively." Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." IFPTE Local 195, IFPTE v. State 88 N.J. 393, 403-04 (1982), quoting State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). The

statute does not require the Borough to pay its employees every other week; it only permits the Borough to do so. The statute is not preemptive.

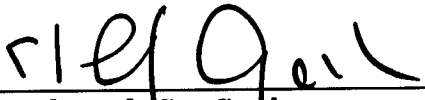
Similarly, the Borough's argument concerning subcontracting is unpersuasive. The unfair practice does not concern the elimination of the position of payroll clerk; nor does the charging party seek to make an issue of who generates the checks. Rather, it argues that the day the checks issue is a term and condition of employment and the change here from a weekly to a bi-weekly pay structure is a unilateral change in a term and condition of employment. See Tp. of Fairfield, P.E.R.C. No. 97-60, 23 NJPER 13 (¶28013 1997) which holds:

The timing of paychecks is mandatorily negotiable. 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). A unilateral, contractually unauthorized change in paycheck dates violates subsections 5.4(a)(a)(1) and (5) of the Act.

It is well settled that upon the expiration of a contract, the existing terms and conditions of employment will continue until the negotiations obligation is satisfied. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). The unilateral alteration of the status quo during negotiations so adversely affects the ability of a majority representative to represent a unit that a traditional award at the conclusion of a case will not effectively remedy a violation of the Act. Evesham Twp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

Accordingly, at the hearing, I stated that I would issue an order compelling the Borough to restore weekly pay checks.

It is ORDERED that the Borough restore weekly pay checks to employees represented by Fairview Local 45. This is an interim order only and this matter will go forward to a full plenary hearing.

  
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Edmund G. Gerber  
Commission Designee

DATED: January 30, 1997  
Trenton, New Jersey