

I.R. NO. 99-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF GARFIELD,

Respondent,

-and-

Docket No. CO-98-463

GARFIELD PBA LOCAL NO. 46,

Charging Party.

SYNOPSIS

PBA Local No. 46 applied for interim relief seeking an order directing the City of Garfield to implement the interest arbitrator's award. The Commission Designee found that Local No. 46 established the elements required for granting interim relief and restrained the City from failing to pay the salary increases and retroactive payments directed in the interest arbitration award.

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Appearances:

For the Respondent,
Giblin & Giblin, attorneys
(Brian T. Giblin, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles J. Sciarra, of counsel)

INTERLOCUTORY DECISION

On June 22, 1998, Garfield PBA Local No. 46 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Garfield ("City") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(6) & (7) and violated N.J.S.A. 34:13A-16f.(5)(b).^{1/}

^{1/} These provisions prohibit public employers, their representatives or agents from: "(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." N.J.S.A. 34:13A-16f.(5)(b).

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The PBA asserts that on or about March 25, 1998, an interest arbitration award was issued providing for salary increases for unit employees. On or about April 9, 1998, the City appealed the interest arbitrator's award to the Commission. On May 20, 1998, the City withdrew its appeal and on May 26, 1998 the Commission deemed the appeal closed. The PBA contends that the elements set forth in the award have never been implemented even though the City withdrew its appeal.

Consequently, the PBA filed the instant unfair practice charge accompanied by an application for interim relief. On June 30, 1998, an order to show cause was executed and, pursuant thereto, oral argument was conducted on July 17, 1998 at the Commission's offices in Newark, New Jersey. The PBA submitted briefs, affidavits and exhibits in accordance with Commission rules. The City made no written responsive filing, however, was given the opportunity to argue orally. During oral argument, counsel for the City indicated that he anticipated that City Council would address the issue of implementing the interest arbitrator's award during its July 21, 1998 meeting. In light of the timing of the next City Council meeting, the PBA agreed that further processing of its application

1/ Footnote Continued From Previous Page

states: "An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay."

for interim relief should be held in abeyance until after City Council met, thus providing it with an opportunity to vote on implementation of the interest arbitrator's award. On July 22, 1998, I was advised that the City Council failed to pass a resolution implementing the interest arbitrator's award during its July 21, 1998 meeting. On August 5, 1998, the PBA submitted supplemental arguments in the above-captioned matter. On August 7, 1998, the PBA advised me that City Council again failed to adopt a resolution implementing the interest arbitrator's award during its August 4, 1998 meeting.

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).

N.J.S.A. 34:13A-16f.(5) (b) states, in relevant part, the following:

An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the

receipt of the commission's decision absent a stay.

The decision of the interest arbitrator is final and binding upon the parties. N.J.S.A. 34:13A-16f.(5). By May 26, 1998, the City's appeal of the interest arbitration award was concluded.^{2/} Under the most generous application of the terms of the Act, the City had 14 days after the conclusion of its appeal on May 26, 1998 to take steps to implement the interest arbitrator's award. This did not occur nor has the City since acted to implement the award. Consequently, I find that the PBA has established a substantial likelihood of prevailing in a final Commission decision finding that the City has violated N.J.S.A. 34:13A-16f.(5)(b).

N.J.S.A. 34:13A-16f.(5)(b) clearly expresses a legislative intention to provide the parties with the right to promptly receive the respective benefits awarded through the interest arbitration procedure. In this case, the PBA is, on behalf of its membership, seeking to effectuate its right to promptly receive the salary increase awarded by the interest arbitrator along with retroactive payments. The City's failure, without any explanation, to implement the salary increases and make retroactive payments to unit employees reasonably promptly, clearly undermines the express language of the Act and results in labor instability. I find that the City's

^{2/} A dispute exists concerning whether the City's appeal of the interest arbitration award was timely filed. The resolution of that dispute is unnecessary for purposes of this decision.

failure to implement the terms of the interest arbitration award in blatant contradiction of the Act and without establishing any legitimate basis for its action, irreparably harms the collective negotiations process protected by the Act.

In considering the public interest and the relative hardship to the parties, I find that the balance tilts in favor of the PBA. As noted above, the Act states that the interest arbitrator's "...decision shall be final and binding upon the parties and shall be irreversible...." N.J.S.A. 34:13A-16f.(5). The PBA membership is being denied its clear right under the Act to receive the benefits awarded by the interest arbitrator within a reasonably prompt time frame. The City has the obligation to comply with the interest arbitration award and the Act. The City has filed no responsive papers during the course of this proceeding nor has it indicated any reason why it has failed to comply with the interest arbitrator's award. The City has not demonstrated it would suffer any hardship by adhering to the dictates of the Act by implementing the arbitrator's award. Conversely, PBA membership suffer greater hardship as the result of being denied salary improvements awarded by the interest arbitrator.

ORDER

The City is restrained from failing to implement the interest arbitration award issued on March 25, 1998; and from failing to pay salary improvements ordered by the interest

arbitrator after September 11, 1998. Also, the City is restrained from failing to make all retroactive payments due to unit employees in accordance with the terms of the interest arbitrator's award after September 11, 1998.^{3/} This interim order will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: August 12, 1998
Trenton, New Jersey

^{3/} The PBA has indicated in its August 5, 1998 supplemental submission that September 11, 1998 is a payday for unit employees. I choose that date in order to provide sufficient time for the City to take whatever steps are necessary to effectuate the interest arbitrator's award, including the passage of a salary ordinance, any requisite budget adjustments and to obtain requisite approvals from any other appropriate State or local body. Should September 11, 1998 not be a payday for unit employees, the City is directed to make payment on the payday immediately preceding September 11, 1998.