

I.R. NO. 97-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SOUTH HACKENSACK,

Respondent,

-and-

Docket No. CO-97-341

PBA LOCAL 102,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Township of South Hackensack from unilaterally altering its established practice of issuing weekly paychecks to issuing biweekly paychecks without negotiating this change with PBA Local 102. The parties are in interest arbitration for a successor agreement.

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Charging Party.

Appearances:

For the Respondent,  
Oury & Mizdol, attorneys  
(Robert E. Laux, of counsel)

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

INTERLOCUTORY DECISION

On April 8, 1997, PBA Local 102 filed an unfair practice charge with the Public Employment Relations Commission alleging that South Hackensack 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 February 7,

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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 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."

1997 it notified all Township employees, including police officers represented by Local 102, "In an effort to reduce administrative cost, please be advised that paychecks will be issued bi-monthly beginning April 1, 1997."

Although the parties entered into discussions concerning this announcement, there was no resolution and on April 3, 1997, a regularly scheduled pay day, no paychecks were issued. The PBA was informed that the employer had changed the pay period from weekly to bi-monthly.

The parties are currently in interest arbitration for a successor agreement. The most recent contract between the parties expired on December 31, 1995. The Township has included in its proposals to the arbitrator, the establishment of a bi-monthly pay period.

An order to show cause was filed with the unfair practice charge which was executed and made returnable for May 5, 1996. A hearing was conducted on that date. Both parties presented documentation and argued orally.

The Township does not dispute that patrolmen were paid on a weekly basis. It argues, however, that the most recently expired contract does not require weekly pay checks. The Township's actions were motivated for reasons of economy and efficiency. The Township felt compelled to reduce costs for there has been a recent substantial tax increase within the Township. It also argues that the subject matter has been preempted from negotiability by N.J.S.A.

40A:5-19, which provides that a local unit may adopt a bi-weekly salary schedule.

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).

This matter is factually similar to Borough of Fairview, I.R. No. 97-13, 23 NJPER 155 (¶28076 1997) where interim relief was granted in similar circumstances. As was held there:

The Township'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.... (pg. 4)

...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)(1) and (5) of the Act.

N.J.S.A. 34:13A-21 provides that during the pendency of proceedings before an interest arbitrator "...existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other...." The Commission has found that the harm which flows from the violation of this statutory language is irreparable. Borough of Bogota, I.R. No. 97-18, 23 NJPER \_\_\_ (¶\_\_\_\_\_ 1997); State of New Jersey, I.R. No. 96-31, 22 NJPER 92 (¶27043 1991).

Accordingly, irreparable harm having been shown, it is hereby ORDERED that the Township restore weekly pay checks to employees represented by Fairview Local 45. This is an interim order only and will go forward to a full plenary hearing.

  
Edmund G. Gerber  
Commission Designee

DATED: May 8, 1997  
Trenton, New Jersey