

I.R. NO. 2007-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Respondent,

-and-

Docket No. CO-2007-279

UNITED WORKERS UNION,

Petitioner.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the Town of Hammonton from implementing the withholding of one week's pay from UWU unit employees by requiring the Town to return pay withheld in two successive paydays in April 2006. The Town sought the withholding in order to avoid paying employees in advance for time they have not yet worked. The charging party argued that no agreement had been reached on the method or schedule of the proposed withholding. The Town asserted that the parties had reached agreement on the issue, and filed counter-charges against the UWU alleging the Union's unlawful breach of its' agreement to the withholding. Because there is a dispute over whether there was an agreement authorizing the withholding, which the Designee found to be a material dispute, she could not conclude that the charging party had a substantial likelihood of success on the merits of the case.

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Appearances:

For the Respondent, Gruccio, Pepper, Desanto, Ruth,
P.A., attorneys (Stephen D. Barse, of counsel)

For the Petitioner, David Tucker, National President

INTERLOCUTORY DECISION

On March 29, 2007, United Workers Union (UWU) filed an unfair practice charge with the Public Employment Relations Commission against the Town of Hammonton (Town), alleging that the Town violated sections 5.4a(1), (2), (5) and (7)^{1/} of the New

^{1/} These sections 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, (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 or regulations established by the Commission."

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{2/} when on April 6 and April 20, 2007, the Town unilaterally held back two and one-half days' pay from the regular paychecks of all of the members of UWU's two negotiations units (telecommunications and public works), without having negotiated the withholding with the UWU.

The Town denies having violated the Act, and disputes that the parties had not reached agreement on the withholding method. On April 3, 2007, the Town filed an unfair practice charge (Docket No. CE-2007-008) alleging that the UWU failed to negotiate in good faith by rescinding its prior agreement to the withholding of one week's pay in two installments on successive paydays in April 2007.

The charge was accompanied by an application for interim relief seeking to require the Town to return the withheld pay to the unit members and negotiate in good faith over the proposed withholding of one week's pay. An order to show cause was executed on April 17, 2007, scheduling a return date for May 7, 2007. The parties submitted briefs, affidavits, certifications and exhibits, and argued orally on the return date. The following relevant facts appear:

^{2/} At the Hearing, the Charging Party indicated that the public works unit had dropped out of participation in the charge, thus, the remaining charging party is the UWU telecommunications unit.

UWU represents a public works department unit and a telecommunications unit. In March 2007, UWU and the Town were engaged in collective negotiations for agreements covering terms and conditions of employment for both units. Among the Town's objectives with all negotiations units, including Charging Party's units, was the establishment of a withholding week, in order to avoid paying employees in advance for days they had not yet worked. A meeting was held on or about March 15, 2007. In attendance were the Town's clerk, the assistant clerk, and representatives from all unions in the Town, including UWU. The issue of the withholding week, and the best method for achieving the withholding were discussed. The UWU's representative and the Town's attorney met at other times to discuss and finalize their collective negotiations agreements. On March 23, 2007, the Town issued a letter informing employees that it would commence withholding pay at the rate of two and one-half days per pay period for the payrolls of April 6 and 20, 2007, and on those dates, the Town withheld the pay as indicated.

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).

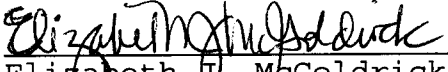
Both parties submitted affidavits. Three of the UWU's affidavits assert that its' representatives attended meetings with the Town's representatives on the withholding pay issue, but communicated that they needed the approval of the units' memberships, and after they knew that the telecommunications unit disagreed with the proposal, they conveyed to the Town that the membership had rejected the proposal. The Town's affidavits assert that the UWU representatives, by their statements and conduct at various meetings, agreed with the proposed withholding method, but later rescinded their agreement. I find that an issue of material fact exists.

Whether there was an agreement between the parties can only be resolved through the conduct of a plenary hearing. Consequently, I cannot conclude at this stage of the proceedings that the UWU has a substantial likelihood of success on the merits of its application for interim relief.

Accordingly, based upon the above information and arguments, I issue the following:

ORDER

The UWU's application for interim relief is denied.


Elizabeth J. McGoldrick
Commission Designee

DATED: May 24, 2007
Trenton, New Jersey