

I.R. NO. 99-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-99-298

NJCSA COUNCIL NO. 8, NJCSA,
IFPTE, AFL-CIO,

Charging Party.

SYNOPSIS

A dispute has arisen between the parties concerning whether the negotiated increase in shift differential should apply to certain unit employees on a per hour or per shift basis. The County advised Council No. 8 that it would begin paying affected employees on a per shift basis thus reducing the amount of money they received from shift differential payments. Council No. 8 sought to restrain the County from reducing such payments. The Commission designee found that the Commission could issue a monetary remedy at the conclusion of the case which could make employees whole for such monetary loss. Consequently, the Commission designee found that Council No. 8 had not established the requisite irreparable harm element necessary to obtain interim relief. The request for interim relief was denied.

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Appearances:

For the Respondent,
DeMaria, Ellis & Bauch, attorneys
(Kathryn V. Hatfield, of counsel)

For the Charging Party,
Fox and Fox, attorneys
(David I. Fox, of counsel)

INTERLOCUTORY DECISION

On March 15, 1999, Union Council No. 8, NJCSA, IFPTE, AFL-CIO (Council No. 8) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Union (County) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Council No. 8 alleges that the County

violated N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The unfair practice charge was accompanied by an application for interim relief. On March 16, 1999, an order to show cause was executed and a return date was set for March 25, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

Council No. 8 alleges that it is the exclusive negotiations representative for certain blue and white collar employees of the County. Council No. 8 claims that it and the County negotiated a memorandum of agreement on July 8, 1998 which established the salary, benefits and other terms and conditions of employment for a three-year collective agreement, effective January 1, 1998 through December 31, 2000. Council No. 8 asserts that the memorandum of agreement provides for an increase in the shift differential "where applicable" as follows:

1/1/98-.15 per hour;
1/1/99-.15 per hour;
1/1/00-.20 per hour.

Council No. 8 contends that the memorandum of agreement unequivocally and unambiguously provides that shift differential pay

^{1/} These provisions 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.."

would be increased and paid, on an hourly basis, to all County employees who work shift schedules. Council No. 8 asserts that in correspondence dated March 12, 1999, it was advised that effective March 20, 1999,^{2/} payment of the shift differential for certain Runnells Specialized Hospital (Runnells) employees would be modified. Council No. 8 claims that the County's action constitutes a unilateral change in the manner by which these employees receive the negotiated increase in shift differential pay from a per hour to a per shift basis.

The County does not dispute that the memorandum of agreement reflected the shift differential increases on a per hour basis. However, the County contends that the language in the memorandum focused primarily on LPNs and senior LPNs who have historically received shift differential increases on a per hour rather than a per shift basis. The County asserts that the "where applicable" language refers to all other eligible shift employees. Thus, the County asserts that the agreement was to provide all shift employees other than LPNs and senior LPNs with an increase in the shift differential on a per shift basis.

The County asserts that on or about February 17, 1998, it learned that all shift employees at Runnells and not just LPNs and senior LPNs were being paid the shift differential on an hourly

^{2/} The County asserts that on March 15, 1999, it advised Council No. 8 that the effective date of the change would be March 26, 1999 with implementation to commence on or about April 1, 1999.

rather than a per shift basis. The County contends that it immediately notified Council No. 8 concerning the shift differential payment problem. The County asserts that approximately 80 employees at Runnells were affected.

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).

In order to satisfy the irreparable harm standard, Council No. 8 must demonstrate that the harm which the affected employees will suffer could not be rectified at the conclusion of a final Commission determination. Council No. 8 seeks to restrain the County from reducing the payments made to certain Runnells employees who receive shift differentials. The Commission has the authority to issue a remedial order at the conclusion of this case which could make employees whole for any monetary loss suffered. The case law is clear in expressing the "...proposition that irreparable harm is not suffered where a monetary remedy can be provided at the end of

the case and [this proposition] has been basic to the disposal of applications for interim relief by commission designees...." Newark Bd. of Ed., I.R. No. 83-15, 9 NJPER 253, 255 (¶14116 1983). See also City of Newark, I.R. No. 99-7, 25 NJPER 81 (¶30033 1998); Bor. of Sea Girt, I.R. No. 98-28, 24 NJPER 440 (¶29202 1998); Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (¶28225 1997); City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976).

Consequently, I find that Council No. 8 has not established that it will be irreparably harmed since the Commission would be able to fashion a remedial monetary order making affected employees whole for any losses wrongfully suffered.

ORDER

Council No. 8's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.


Stuart Reichman
Commission Designee

DATED: March 30, 1999
Trenton, New Jersey