

I.R. NO. 98-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RIDGEFIELD,

Respondent,

-and-

Docket No. CO-98-180

RIDGEFIELD PBA LOCAL 300,

Charging Party.

SYNOPSIS

In an action brought by Ridgefield PBA Local 300, a Commission Designee ordered the Borough of Ridgefield to restore its practice of paying its employees on a weekly basis. The Borough instituted a bi-weekly pay system without negotiating this change with the PBA while the parties were in interest arbitration.

This is an interim order pending a final Commission decision.

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Appearances:

For the Respondent,  
Dorf & Dorf, attorneys  
Perry L. Lattibouders, on the brief)

For the Charging Party,  
Loccke & Correia, attorneys  
(Joseph Licata, on the brief)

INTERLOCUTORY DECISION

On November 24, 1997, the Ridgefield PBA Local 300 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Ridgefield committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (3), (5) and (6).<sup>1/</sup>

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<sup>1/</sup> 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. (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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Local 300 represents Police Officers employed by the Borough. Local 300 and the Borough were parties to a series of collective negotiations agreements; the most recent expired on December 31, 1996. The parties are engaged in interest arbitration before an interest arbitrator mutually selected by the parties.

On November 12, 1997, the Borough notified each of its employees including police officers that, in order to reduce expenses, without the loss of service to our resident or loss of income or jobs to our employees, the Borough intends to convert from a weekly to a bi-weekly payroll. Accordingly, effective January 1, 1998, all payroll checks will be issued on a bi-weekly basis so that one paycheck will be received on January 15, 1998 for the weeks ending January 3 and January 10. Thereafter, all subsequent checks will be issued every two weeks.

An Order to Show Cause was filed with the unfair practice charge which was executed and ultimately heard on December 24, 1997. Both parties submitted documentation and argued orally.

The factual allegations of the charge are not in dispute.

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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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

The Borough argues against the motion contending the Borough has experienced an enormous increase in property tax over the past 13 years. The Borough must generate cost cutting initiative. The decision to pay all Borough employees including police officers represented by the PBA on a bi-weekly basis is part of the Borough's effort to reduce municipal taxes.<sup>2/</sup>

The Borough contends its financial situation when weighed against the de-minimus harm to its employees makes interim relief inappropriate here.

The Borough further argues that the most recently expired contract does not require weekly paychecks and NJBA 40A:15-19, which provides that a local government unit may adopt a bi-weekly salary schedule, preempts negotiations.

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.,

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<sup>2/</sup> The Board made a number of the specific claims, e.g. it has an aging population with many residents living on fixed income, the town has no room for further development and the Borough claims will save \$25,000. However, these allegations were not supported by documentation or affidavit.

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 both Borough of South Hackensack, I.R. No. 97-21, 23 NJPER 357 (¶28168 1997) and 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.

The obligation to negotiate is derived from §5.3 of the Act, "...modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Contrary to the position of the Borough, rules governing working conditions may derive from conduct in the work place as well as through contract. Township of Middletown, P.E.R.C. No. 98-77, 23 NJPER \_\_\_\_ (¶\_\_\_\_\_ 1997).

The desire of the Borough to economize is a worthy goal but the Act does not bar such a goal. Rather, it simply requires an employee to negotiate before altering a term or condition of employment. There was not even an attempt by the Borough to resolve this dispute through negotiations.

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...." It is not disputed this provision of the Act was violated. 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 Borough of Ridgefield restore weekly pay checks to employees represented by Fairview Local 45. This is an interim order only. This matter will go forward to a full plenary hearing.



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Edmund G. Gerber  
Commission Designee

DATED: December 26, 1997  
Trenton, New Jersey