

I.R. NO. 93-20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-93-429

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

In an action brought by the Jersey City Police Superior Officers Association, a Commission Designee declines to restrain the City of Jersey City from unilaterally implementing a pay lag procedure which would hold back a weeks salary from its employees. The PSOA admitted that it reached an agreement with the City concerning such pay lag procedures. However, it maintains the agreement was contingent upon the uniform acceptance procedure of all other unions. The PSOA failed to demonstrate that it had a substantial likelihood of success in proving that this agreement was, in fact, contingent upon the uniform acceptance of this provision.

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Appearances:

For the Respondent  
Paul W. Mackey, attorney

For the Charging Party  
Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION

On June 4, 1993, the Jersey City Police Superior Officers Association (PSOA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the City engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (5) & (7)<sup>1/</sup> when the City implemented a salary pay lag

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

procedure which did not comply with the understanding negotiated between the City and the PSOA.

The PSOA also filed an Application for Interim Relief. An order was executed and made returnable on June 15, 1993. A hearing was conducted on that date at which time the parties were given an opportunity to present evidence and argue orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

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1/ Footnote Continued From Previous Page

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."

2/ Crowe v. DeGioia, 90 N.J. 126 (1982);  Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975);  Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

The PSOA is the exclusive representative of superior officers in the City's police department. There is a collective bargaining agreement in effect between the parties which provides that unit employees "will receive their paychecks by 3:00 p.m. every other Thursday.

The City advised the PSOA that it wished to institute a pay lag provision which would mandate the staggering of five consecutive pay days for one day each until a week's lag is accomplished. All employees will receive this pay for the five day lag at the end of an employee's employment with the City at the prevailing rate of pay. The PSOA agreed to this new procedure with the understanding that it was to apply city-wide, i.e., to all employees of the City. The parties failed to enter into a written memorandum of agreement on this issue. On May 26, 1993, the Mayor of Jersey City announced that the salary holdback would not apply to the patrolman in the police force. On April 29, and thereafter on May 13 and May 27 the City implemented its pay-lag procedure and delayed the payday for unit members by one day.

The City argues that there was an agreement between itself and the PSOA to institute the pay lag procedure, that agreement was never contingent upon the city-wide application of this policy and its actions were based upon that agreement.

The PSOA has not met its heavy burden here. It has not shown that it has a substantial likelihood of success on the facts; the terms of the verbal agreement are disputed by the parties and

are in doubt. Moreover, the harm alleged is not irreparable. The PSOA initially agreed to a salary lag program. It is now objecting because police patrolman are not in the program. If the PSOA prevails, it can be made whole by the reimbursement of those monies the City held back and a restoration of the contractual pay day.

The application for interim relief is denied. The matter will go forward to a full plenary hearing.

BY ORDER OF THE COMMISSION



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Edmund G. Gerber  
Commission Designee

DATED: June 18, 1993  
Trenton, New Jersey