

I.R. NO. 2003-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRICK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-21

TRANSPORT WORKERS UNION LOCAL 225,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief where the union sought to restrain the employer from implementing a mid-contract change in paydays. The Designee finds that the possible harm to charging party's members was the loss of money and, therefore, the harm was not irreparable.

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Appearances:

For the Respondent,  
Wilbert, Montenegro & Thompson, attorneys  
(Ben A. Montenegro, of counsel)

For the Charging Party,  
Tomar, O'Brien, Kaplan, Jacoby & Graziano, attorneys  
(Nancy S. Sokol, of counsel)

INTERLOCUTORY DECISION

On July 17, 2002, the Transport Workers Union Local 225 (TWU) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Brick Board of Education (Board) violated 5.4a(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> when it unilaterally changed paydays for unit employees.

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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

The Board denies that it committed an unfair practice and maintains that "good accounting practice" dictated the change.

The unfair practice charge was accompanied by an application for interim relief pursuant to N.J.A.C. 19:14-9. On July 18, 2002, I issued an order to show cause scheduling the return date on the interim relief application for August 6, 2002. The parties submitted briefs, affidavits and certifications in accordance with Commission rules and argued orally on the rescheduled return date.

The facts in this matter are not disputed. The TWU represents a collective negotiations unit of the Board's support staff, including custodians, maintenance, transportation, cafeteria and clerical employees. The TWU has a current agreement with the Board in effect until June 30, 2003. The agreement contains no provisions concerning paydays. Negotiations for a successor contract will begin November 2002.

The support staff members are paid biweekly. For at least the past 15 years, ten-month unit employees have been paid 22 paychecks of equal amounts; the first check has been issued on their

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1/ Footnote Continued From Previous Page

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."

first workday in September, the second check issued on their third workday, and then a third check two weeks later. Thus, by the end of their third day at work, they had been paid for four weeks in advance. Paychecks were issued thereafter, every other Friday through their last workday in June. Also for the last 15 years, twelve-month employees received their first paycheck of the academic year on July 1.

On May 31, 2002, the Board Secretary announced to the TWU representatives that, effective July 1, 2002, it would change the pay scheme for unit employees<sup>2/</sup> by eliminating the first payday in September for ten-month employees. When the TWU objected, the Board Secretary announced that the Board would pay ten-month employees their first paycheck, skip what would have been their second check two days later, and pay them the next regular check three weeks later. Thus, for school year 2002-2003, the employees will be paid on September 6 and September 25. At the end of the school year, employees will be paid three times in June 2003 -- June 6, 18, and 20. Effectively, the Board has shortened the amount of time employees are paid in advance by moving one of the September paydays to June. In addition, twelve-month employees' first paycheck of the academic year was moved from July 1 to July 3.

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<sup>2/</sup> Apparently the Board simultaneously implemented a similar change for teaching staff members time. The representative of that negotiations unit agreed to the change.

**ANALYSIS**

The TWU asks that I restrain the Board from implementing the announced change in paydays pending a final decision before the Commission. 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).

TWU argues that unit employees will be irreparably harmed by having to forego two weeks pay in September because employees have come to rely on that extra pay to buy children's school clothes. It also maintains that the unilateral change will chill the upcoming negotiations process and that the TWU will be made to look ineffective to its members. The Board argues that there is no irreparable harm here, since the employees will eventually receive their salaries.

Irreparable harm occurs when the matter is not capable of adequate remedy at the conclusion of the case. While I understand TWU's concerns for employees doing without a portion of their pay at a time they have come to expect it, it is nevertheless well

established that money damages are not irreparable. 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). Should TWU prevail at the conclusion of these proceedings, a remedy of both restoration of the status quo and a monetary remedy, including interest, can be ordered.

With regard to the alleged harm to the TWU's effectiveness as the employee representative, Galloway Tp. Bd. of Ed. v. Galloway Tp. Teachers Ass'n, 78 N.J. 25 (1978) holds that a unilateral change in employees' terms and condition made during contract negotiations chills the negotiations process. Here, however, the parties have a current agreement still in effect and have not yet commenced negotiations for a successor. Therefore, I cannot restrain the unilateral change in paydays based upon the potential harm to the negotiations process.

Based upon the foregoing, I find that no irreparable harm has been demonstrated.<sup>3/</sup> Accordingly, I deny the TWU's application for interim relief. The charge will be submitted to the Director of Unfair Practices to evaluate for the issuance of a Complaint.<sup>4/</sup>

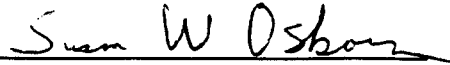
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<sup>3/</sup> Given my finding on the first part of the interim relief test, there is no need to consider the likelihood of success on the merits component.

<sup>4/</sup> As there is no apparent disagreement over the facts in this matter, the parties may stipulate facts directly to the Commission pursuant to N.J.A.C. 19:14-6.7 or either party may file a motion for summary judgment pursuant to N.J.A.C. 19:14-4.8.

ORDER

The TWU's application for interim relief is denied.



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Susan Wood Osborn  
Commission Designee

DATED: August 9, 2002  
Trenton, New Jersey

