

I.R. No. 2006-16

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Respondent,

-and-

Docket No. CO-2006-173

NORTH ARLINGTON PBA LOCAL  
No. 95,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the Borough of North Arlington from changing from a weekly to a bi-weekly salary payment plan for employees represented by the North Arlington PBA, Local No. 95. The Borough asserted a negotiations defense, and the parties pleadings demonstrated a dispute over whether an agreement was reached over implementing the salary payment change and whether the change would have been permitted by the parties collective agreement. The Commission Designee, however, ordered the parties to engage in negotiations for at least sixty days in an effort to reach an agreement over the payment plan.

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Appearances:

For the Respondent, Genova, Burns & Vernioia, attorneys  
(Brian W. Kronick, of counsel)

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

INTERLOCUTORY DECISION

On January 6, 2006, the North Arlington PBA Local No. 95 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of North Arlington (Borough) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., N.J.S.A. 34:13A-5.4a(1), (2), (3), (4), (5) and (7) (Act)<sup>1/</sup>. The charge was accompanied by an

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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. (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 employment to encourage or discourage employees in the

(continued...)

application for interim relief. The PBA alleged that on or about January 1, 2006, the Borough unilaterally changed the timing of salary paychecks from weekly to bi-weekly. Through its application, the PBA seeks to restrain the bi-weekly paycheck implementation.

An Order to Show Cause was signed on January 10, 2006 scheduling a return date for February 7, 2006 which was, pursuant to the Borough's request, rescheduled for March 9, 2006. Prior to the return date, the PBA requested leave to file supplemental certifications and argument. Both parties submitted documentation and argued orally on the return date. The Borough on that date also sought to admit an additional certification. The parties additional certifications were admitted at hearing. The following facts appear:

The Borough and PBA are parties to a collective agreement which is effective from January 1, 2004 through December 31, 2006 and was signed on February 24, 2004. That agreement is silent on whether employees will be paid their salary on a weekly or bi-weekly basis, but the parties long practice was a weekly salary

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1/ (...continued)  
exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

payment. On or about January 1, 2006, the Borough Payroll Department issued a notice to all employees stating:

Please be advised that effective January 1, 2006, the Borough's Payroll will be a Bi-Weekly Pay. Your first check will be issued on January 12, 2006.

By letter of January 5, 2006, the PBA's attorney requested/demanded negotiations regarding the bi-weekly salary payment. The Borough did not respond to that demand.

Article XVIII of the parties collective agreement, the Retention of Benefits clause provides:

The Borough agrees that all benefits, terms and conditions of employment relating to the status of members in the North Arlington Police Dept. not covered by this Agreement shall be maintained at not less than the highest standards in effect at the time of commencement of collective negotiations, leading to the execution of this Agreement.

Article XXII, the Extra Contract Agreement clause provides:

The Borough agrees not to enter into any other Agreement or Contract with the Employees covered by this Agreement, individually or collectively, or with any other organization which in any way conflicts with the terms and provisions of this Agreement unless the PBA agrees to any change in writing.

In early 2004, the Borough considered employee layoffs, including police officers, to avert a financial crisis. The Borough also estimated a savings of \$40,000 by switching from weekly to bi-weekly salary payments. Discussions occurred with the PBA regarding these matters. At a meeting on March 8, 2004, discussions took place involving the retirement of five superior

officers to avoid layoffs. A proposal apparently included an increase in longevity pay for those officers. The Borough was willing to increase the longevity in exchange for the PBA's agreement to switch from a weekly to bi-weekly salary payment.

The Borough's attorney at the March 8th meeting (not the Borough's attorney of record here) claimed the PBA orally agreed to amend the contract to include the longevity increase and change to bi-weekly payments. The PBA's then President, and a delegate, both of whom claimed to be at the March 8th meeting, also claimed that no PBA representative agreed to a bi-weekly salary plan.

By letter of March 10, 2004, the Borough's attorney at the March 8th meeting wrote to the PBA's then attorney referencing layoffs, the retirement of certain superior officers, and a bi-monthly payroll, and sought confirmation of the PBA's acceptance of an agreement. On March 11, 2004, the Borough approved a resolution amending the parties collective agreement to include a longevity increase, bi-weekly payment language, and language that the bi-weekly language would be effective upon the PBA's ratification. The longevity increases were implemented and the officers did retire.

The Borough did not implement the bi-weekly payment plan until January 2006, because it had to negotiate that language with labor organizations representing its other employees, the last of which was completed in December 2005.

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).

The PBA argued that the Borough has unilaterally changed the pay day, and that such a change is irreparable. The Borough argued that it negotiated with the PBA over a change from weekly to bi-weekly salary payments and was just implementing what the parties had agreed upon.

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). The Commission has often restrained employers from unilaterally changing paydays and pay weeks. Atlantic City Bd. of Ed., I.R. No. 2003-14, 29 NJPER 305 (¶94 2003); No. Hudson Reg. Fire and Rescue, I.R. No. 2000-9, 26 NJPER 165 (¶31064 2000); Borough of

Ridgefield, I.R. No. 98-19, 24 NJPER 87 (¶29047 1997); Borough of Fairview, I.R. No. 97-13, 23 NJPER 155 (¶28076 1997). Those restraints, however, were issued where the employers made unilateral changes and did not raise negotiations and/or an agreement as a defense.

Here, the Borough vigorously argues that it negotiated over and reached an agreement with the PBA to change from weekly to bi-weekly salary payments. The PBA just as vigorously disputes there was any agreement to change to bi-weekly payments, but it does not dispute that a longevity increase was implemented in March of 2004 and that certain superior officers subsequently retired.

Whether the parties collective agreement could have been amended by an oral agreement, or whether the PBA ever formally ratified the agreement is not for me to decide in interim relief. The Borough has made a colorable claim that it negotiated over the salary payment change and reached an agreement. The PBA disputes such an agreement. Consequently, I find a dispute over a material fact exists that makes it impossible for me to conclude that the PBA has a substantial likelihood of success on the merits of its case. Whether an agreement was reached and its impact, if any, on the parties collective agreement can only be resolved, barring a settlement, after the conduct of a full evidentiary hearing.

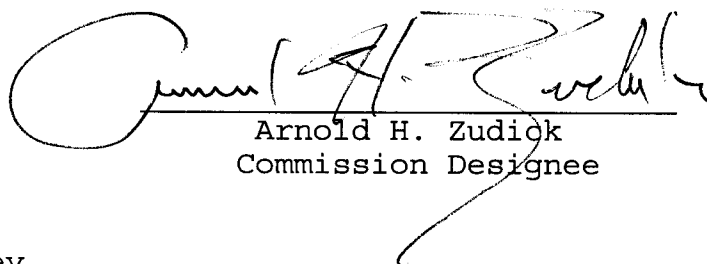
Accordingly, the PBA's application for interim relief is denied. Notwithstanding the above, however, and to encourage the Legislature's preference for labor peace, I order the parties to engage in negotiations during at least the next sixty (60) days in an attempt to reach an agreement regarding the salary payment. I will retain jurisdiction for the limited purpose of ensuring such negotiations.

Based upon the above findings and analysis, I issue the following:

ORDER

1. The Borough and PBA are **ORDERED** to engage in good faith negotiations for at least sixty (60) days in an attempt to reach an agreement over the timing of salary payments.

2. The application for interim relief is otherwise denied.<sup>2/</sup>

  
Arnold H. Zudick  
Commission Designee

Dated: March 15, 2006  
Trenton, New Jersey

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<sup>2/</sup> I will retain jurisdiction to ensure compliance with this order. The charge will, thereafter, be returned to the Director of Unfair Practices for further processing.