

I.R. NO. 2000-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CALDWELL,

Respondent,

-and-

Docket No. CO-2000-236

CALDWELL PBA LOCAL NO. 81,

Charging Party.

SYNOPSIS

The Township would not agree to schedule successor negotiations meetings with the PBA because the PBA had neither submitted its negotiations demands nor identified its negotiations team as requested by the Township. Additionally, the Township asserted that since the PBA had not strictly adhered to the time lines stated in N.J.S.A. 34:13A-16, the PBA waived its right to negotiate a successor agreement for the year in which the time lines were missed, thus resulting in the recently expired agreement carrying forward during that period. The Commission Designee rejected the Township's arguments finding that negotiations promotes the purposes of the Act and ordered the Township to schedule negotiations with the PBA.

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Appearances:

For the Respondent,
Stickel, Koenig & Sullivan, attorneys
(Stuart R. Koenig, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

INTERLOCUTORY DECISION

On February 15, 2000, the Caldwell PBA Local No. 81 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Caldwell (Township) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(5) and (7).^{1/} The unfair

^{1/} These provisions prohibit public employers, their representatives or agents from: "(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."

practice charge was accompanied by an application for interim relief. On February 16, 2000, an order to show cause was executed and a return date was set for March 15, 2000. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The Township and the PBA have been parties to a series of written collective agreements, the most recent of which expired on December 31, 1999. On September 7, 1999, the PBA advised the Township that it wished to initiate collective negotiations for a successor agreement. On September 20, 1999, the PBA again wrote to the Township requesting that dates be set to initiate negotiations. On September 28, 1999, the Township responded to the PBA requesting that the PBA provide it with a list of negotiations demands and indicate the identity of the members of the PBA's negotiating team. The Township indicated that subsequent to receiving the requested information it would schedule a negotiations session. On November 29, 1999, the Township wrote to the PBA reiterating its request for a list of the PBA's initial negotiations demands and the identity of the PBA's negotiating team. On December 3, 1999, the PBA responded indicating that it had written to the Township of October 19, 1999^{2/} and subsequently telephoned on October 21 and November 10, 1999 leaving messages which provided the Township with a series of available dates to meet in order to initiate negotiations.

^{2/} Apparently, the October 19, 1999 letter was lost in the mail and not received in the Township's counsel's office.

On December 8, 1999, the Township responded to the PBA acknowledging receipt of the PBA's proposed meeting dates, however reiterating that the PBA had not yet submitted its initial demands or the names of the persons who would serve on the PBA's negotiating team. While indicating that it was the Township's interest to begin negotiations and promptly resolve them, the Township stated that "...it serves no purpose to set up a meeting in order to have the PBA present an initial set of demands to which there can be no reaction before the governing body discusses the matter and frames a position (Township counsel's letter dated December 8, 1999).

In compliance with the Township's prior requests, on January 5, 2000, the PBA submitted written proposals and requested that a negotiations session be set. On January 19, 2000, the PBA again requested that negotiations be scheduled.

On January 24, 2000, the Township responded. The Township acknowledged receipt of the January 5 and 19 letters from the PBA and indicated that the governing body had not yet had an opportunity to discuss the correspondence. The Township pointed out that the PBA had not provided a wage proposal with the other demands submitted on January 5. The Township's letter concludes by indicating that the governing body will discuss the issue and will authorize its representative to contact the PBA to set a negotiations date at sometime in the future.

N.J.S.A. 34:13A-5.3 provides, in relevant part, the following:

The majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. [emphasis added.]

N.J.S.A. 34:13A-16a(1) states:

a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

The PBA argues that N.J.S.A. 34:13A-16 prescribes a time line within which the parties must adhere regarding the conduct of collective negotiations. The PBA asserts that its September 7, 1999 letter seeking to establish negotiations dates was well within the statutory mandate requiring that meetings take place prior to the 90th day before the expiration of the collective agreement. The PBA contends that it made its best efforts to comply with the statutory time frame and has repeatedly sought to schedule negotiations sessions with the Township.

The Township argues that N.J.S.A. 34:13A-16 mandates that negotiations begin at least 120 days prior to the day on which the

collective agreement is to expire, not 90 days. The 90 day statutory provision relates only to the parties' first meeting date. The Township points out that 120 days prior to the expiration date of the collective agreement falls prior to the PBA's initial demand on September 7, 1999 to commence negotiations. Moreover, the Township contends that N.J.A.C. 19:12-2.1(b) requires the party initiating negotiations to provide written notification to the other party no later than 15 days prior to the required commencement date. The Township contends that the rule requires the PBA to advise it on or about August 18, 1999 of its intentions to commence negotiations for a successor agreement. The Township concludes that since the PBA has not adhered to the time frames set forth in the statute and rules, it (PBA) has waived its right to negotiate for a successor agreement during the year 2000 and that the existing contract will carry forward during that time period.

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 underlying purpose of the Act is to promote labor management stability. Collective negotiations is the primary mechanism through which the Act's goals are achieved. Indeed, Section 5.3 of the Act requires employer's and majority representatives to engage in negotiations prior to implementing proposed new rules or modifications of existing rules governing working conditions. Also, as noted above, the Act mandates that the majority representative and designated representatives of the public employer meet at reasonable times and negotiate in good faith concerning terms and conditions of employment.

The PBA contends that the Township has violated N.J.S.A. 34:13A-16 by not meeting with it for the purposes of engaging in collective negotiations prior to the 90th day before the expiration of the collective agreement. The Township's argument that the Township is released from its obligation to engage in collective negotiations because the PBA had not filed its intent to commence negotiations 120 days before the agreements expiration date is without merit. The Township's obligation to participate in collective negotiations and to agree to a meeting no later than 90 days prior to the day on which the collective negotiations agreement is to expire is not obviated by any arguable breach of the 120 day requirement. Such a result is anathema to the underlying purposes of the Act. Consequently, I find that the PBA has established a substantial likelihood of prevailing in the final Commission decision on its legal and factual allegations.

The Township argues that the purpose of interim relief is to return the parties to the status quo ante. The Township contends that the status quo is preserved by not proceeding in the collective negotiations process. I disagree. The status quo ante constitutes a situation whereby the parties are engaging in good faith bilateral negotiations concerning terms and conditions of employment for a successor collective agreement. Irreparable harm is found where the Commission cannot fashion an adequate remedy at the conclusion of the unfair practice charge. Maintaining a situation until the conclusion of this charge which allows the Township to continue to refrain from scheduling negotiations sessions, in contradiction to the express language and purposes of the Act, undermines the PBA's ability to represent its membership and results in irreparable harm.

Considering the public interest and the relative hardship to the parties, I find that the public interest is furthered by adhering to the tenants expressed in the Act which require the parties to engage in collective negotiations in an effort to achieve a mutually acceptable successor agreement. Maintaining the collective negotiations process results in labor stability and promotes the public interest. In accessing the relative hardship to the parties, I find that the scale tips in favor of the PBA. The hardship experienced by the PBA as the result of not being able to engage in collective negotiations with the Township and, thereby, undermine its ability to represent its membership, outweighs that of the Township by being required to proceed through the collective negotiations process.

This case will continue to proceed through the normal unfair practice processing mechanism.

ORDER

The Township is restrained from continuing to refuse to set negotiations meeting dates and from refusing to engage in good faith negotiations for a successor collective agreement. The parties are **ORDERED** to establish dates and meet within two weeks from the issuance of this decision to initiate good faith negotiations and continue to meet thereafter as necessary. This interim order will remain in effect pending a final Commission order in this matter.


Stuart Reichman
Commission Designee

DATED: March 20, 2000
Trenton, New Jersey