

P.E.R.C. NO. 95-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-H-93-429

JERSEY CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Jersey City violated the New Jersey Employer-Employee Relations Act by unilaterally implementing a payroll lag procedure for employees represented by the Jersey City Police Superior Officers Association without first negotiating the procedure as required by Article 36 Section 1 of the parties' collective negotiations agreement.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Sean M. Connelly, Corporation Counsel
(Paul W. Mackey, First Assistant Corporation Counsel)

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

DECISION AND ORDER

On June 4, 1993, the Jersey City Police Superior Officers Association filed an unfair practice charge against the City of Jersey City. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} by unilaterally implementing a payroll lag procedure.

^{1/} 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. (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...."

On June 18, 1993, interim relief was denied. I.R. No. 93-20, 20 NJPER 457 (¶25236 1993). On July 22, a Complaint and Notice of Hearing issued. The City relied on a previous brief and appendix as its Answer.

On October 21, 1993 and June 9, 1994, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On October 7, 1994, the Hearing Examiner issued his report and recommendations. H.E. No. 95-10, 20 NJPER 437 (¶25225 1994). He found that the City violated the Act when it unilaterally changed the day on which paychecks are received without first negotiating an agreement with the charging party as required by the parties' collective negotiations agreement. See 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).

The Hearing Examiner served his decision on the parties and informed them that exceptions were due October 20, 1994. Neither party filed exceptions.

We have reviewed the record. We incorporate the Hearing Examiner's undisputed findings of fact (H.E. at 2-19). We also adopt his conclusion that the City violated subsections 5.4(a)(1) and (5) by unilaterally implementing its payroll lag procedures. We order the City to restore the status quo and negotiate in good faith before implementing a payroll lag procedure.

ORDER

The City of Jersey City is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally implementing a payroll lag procedure for employees represented by the Jersey City Police Superior Officers Association without first negotiating the procedure as required by Article 36, Section 1 of the parties' collective negotiations agreement.

2. Refusing to negotiate in good faith with the PSOA concerning terms and conditions of employment, particularly by unilaterally implementing a payroll lag procedure for employees represented by the PSOA without first negotiating the procedure as required by Article 36, Section 1 of the parties' collective negotiations agreement.

B. Take this action:

1. Restore the status quo and negotiate in good faith with the PSOA pursuant to Article 36, Section 1 before implementing a payroll lag procedure.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the Act, particularly by unilaterally implementing a payroll lag procedure for employees represented by the Jersey City Police Superior Officers Association without first negotiating the procedure as required by Article 36, Section 1 of the parties' collective negotiations agreement.

WE WILL cease and desist from refusing to negotiate in good faith with the PSOA concerning terms and conditions of employment, particularly by unilaterally implementing a payroll lag procedure for employees represented by the PSOA without first negotiating the procedure as required by Article 36, Section 1 of the parties' collective negotiations agreement.

WE WILL, upon demand, negotiate in good faith with the PSOA regarding the future implementation of the paycheck provisions of Article 21, Section 5 of the parties' collective negotiations agreement.

Docket No. CO-H-93-429

CITY OF JERSEY CITY
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

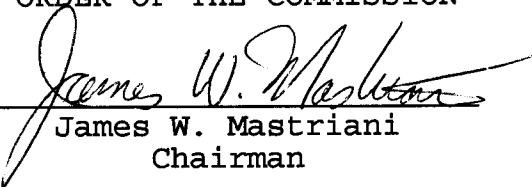
If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 24, 1995
Trenton, New Jersey
ISSUED: March 27, 1995

H.E. NO. 95-10

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-H-93-429

JERSEY CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent City violated Sections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act. The City unilaterally implemented a change in the parties' contract regarding the day on which paychecks were to be received, a mandatorily negotiable subject, without negotiating the change with the PSOA before implementation.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, and any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 95-10

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-H-93-429

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Appearances:

For the Respondent, Sean M. Connelly, Corporation Counsel
(Paul W. Mackey, First Assistant)

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

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on June 4, 1993, by the Jersey City Police Superior Officers Association ("Charging Party" or "PSOA") alleging that the City of Jersey City ("Respondent" or "City") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), in that, notwithstanding that Article 21, §5 provides that employees shall receive their paychecks by 3:00 p.m. every other Thursday, the City unilaterally proposed, and then implemented in April and May 1993, a one-day

payroll lag; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (7) of the Act.^{1/}

A Complaint and Notice of Hearing was issued on July 22, 1993. Pursuant to the Complaint and Notice of Hearing, hearings commenced on October 21, 1993, and resumed, by agreement, on June 9, 1994, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.^{2/} Oral argument was waived and the parties filed post-hearing briefs by August 15, 1994.

* * * * *

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The City of Jersey City is a public employer within the meaning of the Act, as amended, and the PSOA is a public employee representative within the meaning of the same Act.

^{1/} 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 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/} The hiatus between the first and second hearing dates was due to efforts by the parties to reach an amicable settlement.

2. At all times material hereto, the parties were bound by a collective negotiations agreement, which was executed on April 2, 1993, and was effective from January 1, 1991 through December 31, 1993 (J-1).^{3/} The two provisions of J-1, which are material hereto provide, as follows:

Article 21, Sec. 5: All Superior Officers of the bargaining unit will receive their paychecks by 3:00 p.m. every other Thursday. [J-1 p.29].

Article 36, Sec. 1: Any provision of this Agreement may be changed, deleted, supplemented or altered, provided both parties mutually agree to do so in writing. (Emphasis supplied). [J-1, p. 38].

3. Charles A. Happel, a Captain in the City's Police Department, was the President of the PSOA until April 6, 1993, having held this office for approximately four years (1Tr17, 18, 34). As President, Happel was vested with the authority to negotiate collective negotiations agreements between the PSOA and the City and was a signatory to J-1, supra (1Tr18, 19).

4. On December 29, 1992, Happel was approached by representatives of the City with respect to a change in the payroll procedure/schedule in Article 21, §5 of J-1 (1Tr21, 22). On that date, he attended a meeting with Mayor Bret Schundler and Louis

^{3/} The status of the successor agreement to J-1 is not material to the issues involved herein.

Ippolito, the Director of Labor Relations. Others, including Robert Lombard, the Business Administrator, may have been present.

[1Tr21-23]. Both the Mayor and Ippolito were signatories to J-1 (see inside back cover of J-1). The Mayor indicated that the City, inter alia, could lose certain block grant funding and possibly HUD monies if the payroll lag sought by the City was not implemented (1Tr23, 24).

5. Thereafter, Happel met with his Executive Board and, on January 5, 1993, he presented the Mayor's payroll lag proposal to a PSOA membership meeting where the format was that of an information session (1Tr24-26). The membership agreed to consider the City's proposal (1Tr26, 27).

6. Within a week of January 5th, Happel again met with the Mayor and explained that he had had an information session with the membership and that there had been a number of questions. He then suggested that the Mayor address the PSOA membership directly. The Mayor agreed. [1Tr27, 28].^{4/}

7. On January 28, 1993, a special PSOA meeting was held with approximately 60 out of 173 members in attendance. This meeting was addressed by the Mayor who spoke on the issue of his proposed payroll lag and the reasons therefor (1Tr30). The meeting lasted approximately 45 minutes (1Tr31).

^{4/} Happel had also reiterated to the Mayor that all twelve of the City's bargaining units had to agree to the Mayor's proposal for a payroll lag or any positive PSOA action would become a nullity (1Tr44, 45; also 1Tr35). Happel had first given this condition for approval of the pay lag proposal at the December 29th meeting with the Mayor, supra (1Tr44).

8. On February 2nd, the membership cast its ballot on the question of whether "...I oppose" or "I accept the proposed payroll lag" (1Tr32; R-1). The membership, in being asked to vote "yes" or "no" on the proposed payroll lag, also had the option of voting on a condition contained on the ballot, that if a majority accepted the proposed payroll lag then all PSOA members would receive their retroactive salary increases or payments by February 12, 1993 (1Tr40, 41; R-1). I find that there was nothing on the ballot relevant to contract language pertaining to the payroll lag if the question was adopted (1Tr33).

9. After the membership voted 78-17 in favor of the pay lag proposal, Happel telephoned the Mayor and told him "...that his proposal went through overwhelmingly..." He added that "...And now all you have to do is sell all the other unions." [1Tr35, 55, 56]. Happel testified credibly that there had been no amendments to J-1 executed by him subsequent to the PSOA membership vote on February 2, 1993 (1Tr67-70).

10. Robert Dalton, a Sergeant since 1988, has been a PSOA officer for 18 years and is currently its President, having assumed that position on April 6, 1993, when Happel elected not to continue as President (1Tr73, 74).

11. Like Happel, Dalton testified regarding the membership meeting of January 28th where the Mayor addressed the PSOA members. The Mayor discussed in some detail his proposed payroll lag, by which paychecks could be deferred in several ways "or in a one shot

deal." [1Tr74-76]. Dalton also testified that the Mayor's position was that "...all the unions (had) to be on board..." (1Tr78; 76).

12. On April 22, 1993, Dalton received from Ippolito a fax of a proposed "Agreement" between the City and the PSOA, which provided for a pay lag to be staggered over five consecutive pay days, beginning with the pay period April 17 to April 30 and ending with the pay period June 12 to June 25, 1993 (1Tr79, 81, 82; CP-1). Dalton then transmitted Ippolito's faxed form of Agreement to counsel, Manuel A. Correia, on April 23rd (1Tr83-85). Correia revised the document that he received from Dalton by adding a paragraph which stated: "Implementation of the pay lag procedure as indicated herein shall only be upon adoption of such procedure for all employees of the City" (1Tr84-86, 96, 97; CP-2, p. 2). On April 23rd, Correia returned his proposed "Agreement" to Roger Grego, the City's Assistant Business Administrator (CP-2, p. 1).

13. On April 27, 1993, Ippolito sent a "Speed Message" to Dalton, who was on vacation, in which he stated "Here are your agreements (sic). Please sign and returned (sic) to me as soon as possible..." (1Tr87-89; CP-3). Dalton contacted Ippolito on April 30th and advised him of "discrepancies" with the document (1Tr88, 89).

14 Dalton's final action was a letter addressed to Robert Lombard, the City's Business Administrator, and dated May 26, 1993 (CP-4; 1Tr91, 92). Dalton stated that the PSOA membership expected their paychecks on Thursday, May 27th, under Article 21, Sec. 5 of

the Agreement, adding that the PSOA has attempted to resolve the issue to no avail. Finally, Dalton stated that the PSOA's attorney has been instructed to commence legal proceedings.

* * * *

15. Ippolito testified that he had met with Happel on several occasions to discuss the pay lag question (1Tr114). Based upon the testimony and demeanor of Happel and Dalton, I cannot credit Ippolito's testimony that on the occasions that he met with Happel, who was still President, Happel had agreed that since the PSOA membership had voted for the pay lag, it could be implemented. (1Tr115). Happel never stated to Ippolito that a second membership ratification was needed nor that a written agreement was necessary (1Tr115, 117, 118).^{5/}

16. Ippolito first learned that the PSOA sought as a condition that the pay lag had to be implemented against all twelve bargaining units when he received a copy of the agreement, as revised by Correia, on April 23rd (1Tr113, 114; CP-2). The need for a written agreement on the pay lag had arisen when the President of the IAFF stated that he needed "...some kind of a piece of paper for

^{5/} The Fire Fighters (IAFF) had been the first to propose a written agreement on the pay lag. In response, Ippolito prepared R-2. [1Tr116, 117].

my membership or for my records to verify that we did this..." (1Tr116).^{6/}

17. Ippolito testified that CP-1 was "...just a draft..." that was sent to Dalton for his review and approval; not for execution (1Tr122). Ippolito acknowledged that CP-3 was submitted by him to Dalton as a "final", notwithstanding that he had previously received Correia's objection in the form of a revision (CP-2) to Ippolito's initial draft agreement (CP-1) to Dalton under date of April 22nd (1Tr122, 123). Ippolito had been advised by Grego, the Assistant Business Administrator, not to "...pay attention..." to Correia's proposed revision, supra (1Tr123).

18. Ippolito acknowledged that the PSOA collective negotiations agreement with the City requires that it may be changed or altered provided that both parties mutually agree to do so in writing. He also admitted that the pay day procedure is a provision which requires such a writing by the parties (1Tr132, 133; J-1, Art. 36, §1). Ippolito further acknowledged that there was no outstanding side bar agreement that altered the provision found in Article 21, §5 of J-1 (1Tr133, 134).^{7/} Exhibit J-1 had been

^{6/} As of the hearing in this matter, the IAFF, the PSOA and the Police Officers Benevolent Association (POBA) had not signed an agreement to implement the City's pay lag proposal (1Tr116, 117).

^{7/} I do not credit the testimony of Ippolito that no written amendment to J-1, Article 21, §5 was required either (1) because the receipt of paychecks every other Thursday would continue once the pay lag change had been completed; or (2) that an oral agreement between the parties superseded the need for a written amendment (1Tr120, 130, 131, 134-136).

executed on April 2, 1993, prior to the City's unilateral implementation of the pay lag in April and May 1993 (1Tr120, 133, 134).

19. Wallace Rabner, the Payroll Supervisor, was an entirely credible witness for the City insofar as providing a defense for the City's unilateral action, which commenced on April 30, 1993 and continued through June 16, 1993. This defense included the threat of HUD to discontinue federal funds plus the fact that checks had in the past been distributed to persons who were not then entitled to payment. [2Tr9-11, 14, 15]. As such, the testimony of Rabner is essentially irrelevant since it has no bearing on the issue of the City's obligation or lack thereof to negotiate with the PSOA prior to effecting a change in Article 21, §5, supra.

DISCUSSION

The PSOA Not Having Waived Its
Right To Negotiate Any Proposed
Contractual Changes In Its Agreement,
The City Violated Sections 5.4(a)(1)
and (5) Of The Act When It Unilaterally
Changed The Schedule For The Receipt Of
Paychecks, Commencing April 30, 1993,
In Contravention Of Article 36,
Section 1

Salary Payment Schedules Are Mandatorily Negotiable

Since this case involves the City's unilateral change in the contractual provision for the date on which paychecks are to be distributed, I turn first to the Commission precedent on the subject. One of many cases on point is Ewing Township Board of

Education, PERC No. 81-85, 7 NJPER 89 (¶12035 1981), where the board had unilaterally converted the payroll system from payment to its employees on alternate Fridays to payment on a semi-monthly basis. Citing prior decisions, the Commission ruled that this change violated our Act. Subsequently, in Township of Mine Hill, PERC No. 87-93, 13 NJPER 125 (¶18056 1987) the Commission held that: "...A salary payment schedule is a mandatory subject of negotiations..." (13 NJPER at 128).

In a later case, City of Burlington, PERC No. 89-132, 15 NJPER 415 (¶20170 1989) the Commission stated that:

It is well established that the timing of paychecks is mandatorily negotiable...When the City changed the payday from Thursday to Friday it did so without prior negotiations. This action is violative of the Act unless there was a contractual right to do so. There is nothing in the contract which specifically authorizes the City to change the payday and we find no contractual waiver of the obligation to negotiate this term and conditions (sic) of employment. Red Bank Ed. Ass'n. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978); Ocean Tp., PERC No. 87-133, 7 NJPER 333 (¶12149 1981)...Accordingly, the employer violated subsection 5.4(a)(5) when it changed the payday...(Emphasis supplied).

See, also: Bor. of River Edge, P.E.R.C. No. 89-44, 14 NJPER 684 (¶19289 1988); Lawrence Tp. Bd. of Ed., P.E.R.C. No. 81-69, 7 NJPER 13 (¶12005 1980); City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979), aff'd App. Div. Dkt. No. A-1318-79 (2/10/81); Garfield Bd. of Ed., P.E.R.C. No. 80-67, 5 NJPER 542 (¶10279 1979); College of Medicine & Dentistry, P.E.R.C. No. 77-35, 3 NJPER 70 (1977).

The instant record supports a finding that this case is on "all fours" with the Commission's decision in City of Burlington, supra. First, as the Commission stated, it is established beyond doubt that the timing of paychecks is mandatorily negotiable. Thus, the City's unilateral change in that case, without prior negotiations, constituted a violation of Section 5.4(a)(5) of the Act. There remained however the question of whether or not the City had a contractual right to make the change unilaterally, i.e., had the charging party waived by contract the obligation of the City to negotiate the change in its pay day.

The PSOA Did Not Waive Its Right To Negotiate

The Commission in Burlington found that there had been no contractual waiver of the obligation to negotiate and so, too, do I find here.^{8/}

I have concluded on this record that the PSOA did not "clearly and unmistakably" waive its right to negotiate the subject

^{8/} For a complete summary of the law on contractual waiver, which must be "clear and unmistakable," see the following cases: Red Bank Reg. Ed. Ass'n v. Red Bank Bd. of Ed., 78 N.J. 122, 140 (1978); So. River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986); Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32 (¶17012 1985); State of N.J., P.E.R.C. No. 86-64, 11 NJPER 723, 725 (¶16254 1985); State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980); No. Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451, 452 (¶4205 1978); Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 112 LRRM 3265, 3271 (1983); and Chesapeake & Potomac Telephone Co. v. NLRB, 687 F.2d 633, 636, 111 LRRM 2165, 2168 (2nd Cir. 1982).

matter of its Unfair Practice Charge, namely, the City's unilateral implementation of a change in the schedule for the receipt of paychecks by the imposition of a one-day payroll lag.

In State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985), supra, the Commission set forth certain factors which the trier of fact may consider in determining whether or not a contractual waiver had occurred. These factors might include:

...the precise wording of the relevant contractual clauses...under consideration, the evidence of the negotiations...leading up to... the provisions that are being asserted as constituting a waiver, and the completeness of the clause(s)...that are being scrutinized...(11 NJPER at 725).

Having concluded that the PSOA did not contractually waive its right to negotiate any change in the paycheck schedule provision of Article 21, §5, I have considered and rejected as irrelevant to the waiver issue the facts as found in Findings of Fact Nos. 5-9 and 11, which pertain generally to Happel's having met with his Executive Board on January 5th, the meeting which the Mayor addressed on January 28th and the February 2nd vote by the membership on the issue of the Mayor's requested payroll lag. Contained in Findings of Fact Nos. 6, 9 & 11 is the clearly stated condition, made either by the Mayor, Happel or both, that "all unions" had to agree or be "on board" on the pay lag issue before the PSOA would be bound. Happel testified credibly that there had been no amendments to J-1 executed by him following the February 2, 1993 membership meeting (F/F No. 9).

Absolutely nothing changed from April 22, 1993 forward when Ippolito first faxed a proposed "Agreement" on the issue to Dalton since the PSOA's attorney promptly countered with a revised document on April 23rd, adding the implementation of the pay lag procedure would only occur upon the adoption of it for all City employees (see F/F No. 12). Plainly, there was no "meeting of the minds" nor was there any document executed by the PSOA agreeing to the City's proposed implementation of the pay lag procedure.^{9/}

Significantly, Ippolito acknowledged that the agreement between the parties required that it could be changed or altered only upon the mutual agreement of the parties. Further, he stated that there was no outstanding side bar agreement that altered the provisions of Article 21, §5, which mandates that Superior Officers are to receive their paychecks by 3:00 p.m. every other Thursday.

Recall that in the case at bar, the relevant collective negotiations agreement (J-1) was executed on April 2, 1993, long after the facts as found in Findings of Fact Nos. 5-9 and 11 occurred. It expired by its terms on December 31, 1993 (J-1, p. 42).^{10/} I have found no Commission precedent nor, for that matter, any relevant precedent from other jurisdictions, in support

^{9/} The record references in this regard appear in my Findings of Fact Nos. 13-18 and need no further reiteration here.

^{10/} I have taken administrative notice that the parties have been in Interest Arbitration for a successor agreement. Thus, under Commission precedent, all terms and conditions remain intact, pending the negotiation of a successor agreement.

of the City's contention that it had a free hand to change the day on which paychecks were to be received. In point of fact, since Article 21, Section 5 remained in full force and effect on and after April 2, 1993, only a written agreement between the PSOA and the City could have altered the mandated paycheck day of "every other Thursday": Article 36, §1.

**The PSOA's Insistence That All Other Unions
Agree To The Pay Lag Proposal Before Its
Agreement To Do So Was Implemented Did Not
Constitute An Illegal Parity Arrangement**

The City argues at some length in its post-hearing brief (pp. 8-11) that the insistence of the POSA that all other unions agree to the Mayor's pay lag proposal before it would agree to do so was an illegal parity arrangement under the Commission's decision in City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978). Clearly, the above position of the PSOA vis-a-vis the positions adopted by the other twelve bargaining units, *i.e.*, that the twelve unions must agree to the pay lag proposal before the PSOA agreed to do so, is not an illegal parity arrangement under Plainfield.

Plainfield involved the legality of a written clause in a contract, which stated, in part, that the City of Plainfield "...agrees that if any other employee group is granted (a) salary increase in excess of..." that provided in the agreement, then such an increase would apply to all of that union's members. Thus, in Plainfield there was a written provision for "parity" in a collective negotiations agreement, which is no way involved in the

case at bar. Further, the Commission in Plainfield analyzed the existence of parity, or "me too" clauses, in the light of public policy and concluded that when the City of Plainfield agreed to such a clause it created a situation whereby its "mere existence" was:

...sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization, not a party to the negotiations, to have (an) impact on those negotiations. Parity clauses must be and shall henceforth be illegal subjects for negotiations for this reason (4 NJPER at 256).

I cannot accept the City's contention that the PSOA's insistence that the other twelve unions had to be "on board" constituted an illegal "parity" arrangement under Plainfield, supra. To so contend makes a mockery of a true parity or "me too" arrangement. This argument by the City must be dismissed.

* * * *

Upon the foregoing, and upon the entire record in this case, I make the following:

CONCLUSION OF LAW

The Respondent City violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 34:13A-5.4(a)(1), when its Mayor unilaterally undertook to implement a change in the day on which paychecks were to be received, as governed by Article 21, Section 5, without first negotiating and obtaining the agreement of the Charging Party as required by Article 36, Section 1, of the parties' collective negotiations agreement, executed on April 2, 1993 and effective during the term January 1, 1991 through December 31, 1993.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Respondent City cease and desist from:

1. Refusing to negotiate in good faith with representatives of the PSOA, particularly, by refraining forthwith from unilaterally implementing any change in the day on which paychecks are to be received under Article 21, Section 5 of the parties' Agreement without first negotiating the proposed change prior to implementation as required by Article 36, Section 1.

B. That the Respondent City take the following affirmative action:

1. Upon demand, negotiate in good faith with representatives of the PSOA regarding the future implementation of the paycheck provisions of Article 21, Section 5 and, further, refrain, in the future, from implementing any unilateral changes in negotiable terms and conditions of employment without first having negotiated such changes prior to implementation.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Alan R. Howe
Hearing Examiner

Dated: October 7, 1994
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT.

AS AMENDED

We hereby notify our employees that:

H.E. NO. 95-10

WE WILL NOT refuse to negotiate in good faith with representatives of the PSOA and, particularly, WE WILL refrain forthwith from unilaterally implementing any change in the day on which paycheck are to be received under Article 21, Section 5 of the parties' Agreement without first negotiating the proposed change prior to implementation as required by Article 36, Section 1.

WE WILL, upon demand, negotiate in good faith with representatives of the PSOA regarding the future implementation of the paycheck provisions of Article 21, Section 5 and, further, WE WILL refrain, in the future, from implementing any unilateral changes in negotiable terms and conditions of employment without first having negotiated such changes prior to implementation.

Docket No. CO-H-93-429

City of Jersey City

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.