

I.R. NO. 98-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAHWAH,

Respondent,

-and-

Docket No. CO-98-295

MAHWAH MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

In an action brought by the Mahwah Municipal Employees Association, a Commission Designee enters an interim order requiring the Township of Mahwah to restore its prior practice of paying its employees on a bi-weekly basis, rather than twice a month, a practice which was unilaterally imposed by the Township. The Township and the Association had entered into a tentative agreement on several issues including the timing of paychecks. When the Township Council rejected the agreement, the Township unilaterally altered the timing of paychecks.

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Appearances:

For the Respondent,
Herten, Burstein, Sheridan, Cevasco, Bottinelli & Litt,
attorneys
(Brian T. Campion, of counsel)

For the Charging Party,
Weissman & Mintz, attorneys
(Mark Rosenbaum, of counsel)

INTERLOCUTORY DECISION

On February 5, 1998, the Mahwah Municipal Employees Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Mahwah committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The MMEA and the Township are parties

^{1/} 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. (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."

to a collective negotiations agreement which expires on December 31, 1998. Employees represented by the MMEA were paid every other Friday. In December 1997, the Township notified the charging party that it intended to change the method and timing of wage payments to a twice a month pay system. The MMEA alleges it indicated to the Township that the issues of timing and method of payment were negotiable subjects of bargaining and a unilateral change in these terms and conditions of employment would constitute an unfair practice. Nonetheless, the charging party indicated a willingness to discuss and consider the issue if agreement could be reached on unrelated issues which also arose mid-contract. The parties met and negotiated an overall tentative agreement, including a change in the timing of paychecks. However, the Township Council rejected this tentative agreement. Nevertheless, it implemented a change in the method and timing of pay checks.

The unfair practice charge was accompanied by an application for interim relief which was executed and made returnable for February 27, 1998. Both parties had the opportunity to present evidence and argue orally.^{2/}

^{2/} The Township contests the sufficiency of the submission of the charging party, asserting that it failed to provide an affidavit as required by N.J.A.C. 19:14-9.1b. However, that rule also provides that an application for interim relief may be supported by a verified charge. Counsel for the MMEA filed a certification as to the validity of the unfair practice charge. It is not disputed that counsel has actual

The facts, as developed at the hearing in this matter, are that Robert Anderson, the Township Administrator determined that it would be more economical and efficient for the Township to issue pay checks twice a month rather than issue them on a bi-weekly basis. He believed that the Township had the managerial right to determine a time and method of paying salary checks. However, for the purpose of good relations with the MMEA, Anderson contacted Terry O'Donohue of the MMEA to discuss this issue. The parties met in November 1996. At that time, the union expressed its willingness to discuss the issue of altering the timing of paychecks if the Township would discuss two unrelated issues: the demotion of individuals who had lost their commercial drivers licenses and an adjustment of the salary guide. The parties reached a tentative agreement on these issues subject to ratification. The Township Council rejected this agreement.

Anderson contacted O'Donohue and said it was his belief that he had the right to implement the new salary check schedule even though the balance of the agreement was rejected. O'Donohue however stated that it was his understanding that the Township could not unilaterally change the timing of all paychecks. Nevertheless, in January 1998, the Township began to issue checks twice a month.

2/ Footnote Continued From Previous Page

knowledge of the acts alleged in the charge. Accordingly, although verification is commonly means to swear under oath, I believe counsel's certification in light of his actual knowledge of the events alleged in the charge satisfies the intent of the rule.

The timing of paychecks is mandatorily negotiable. Borough of Ridgefield, I.R. No. 98-19, 23 NJPER ____ (¶ 1998); Borough of South Hackensack, I.R. No. 97-21, 23 NJPER 357 (¶28168 1997) and Borough of Fairview, I.R. No. 97-13, 23 NJPER 155 (¶28076 1997). 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); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). A unilateral, contractually unauthorized change in the timing of paycheck issuance violates subsections 5.4(a)(1) and (5) of the Act.

The obligation to negotiate is derived from §5.3 of the Act, "...modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Rules governing working conditions may derive from conduct in the work place as well as through contract. Township of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997).

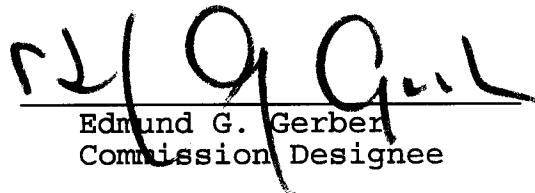
The desire of the Township to economize is a worthy goal and the Act does not bar such a goal. Rather, the Act simply requires an employer to negotiate before altering a term or condition of employment.

Here, after the Township rejected the tentative agreement, there was no attempt on the part of the Township to resume negotiations. Rather, it simply unilaterally altered an existing term and condition of employment without further negotiations.

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).

If an order to restore the bi-weekly paychecks is entered into the number of extra checks which must be generated by the Township would not be substantial and the public interest would not be significantly harmed in granting interim relief. However, if interim relief is not entered, there can not be an effective remedy since a final Commission decision is many months away.

Accordingly, it is hereby **ORDERED** that within 30 days of the date of this order that the Township of Mahwah restore bi-weekly paychecks to employees in the unit represented by the MMEA. This is an interim order only and this matter will go forward to a full plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: March 11, 1998
Trenton, New Jersey