

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON POLICE DEPARTMENT,
Respondent,

-and-

Docket No. CO-80-57-31

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 52, LOCAL
2272, AFL-CIO,

Charging Party.

FREE PUBLIC LIBRARY OF THE CITY OF PATERSON,
Respondent,

-and-

Docket No. CO-80-61-32

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 52, LOCAL
2903, AFL-CIO,

Charging Party.

CITY OF PATERSON DEPARTMENT OF PUBLIC WORKS,
Respondent,

-and-

Docket No. CO-80-71-33

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 52, LOCAL
2272, AFL-CIO,

Charging Party.

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-80-90-34

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION,
LOCAL NO. 2,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, which was decided on the basis of a stipulated record, the Commission concluded that the City's adoption of a salary holdback procedure was a violation

of the Act. Citing In re College of Medicine and Dentistry of New Jersey, P.E.R.C. No. 77-35, 3 NJPER 70 (1977), the Commission ordered the City to pay the employees in accordance with the previous system and negotiate upon demand of the Unions regarding any proposed changes in the scheduling of salary payments.

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Appearances:

For the Respondent, Henry Ramer, Corporation Counsel
(Mr. James A. Farber, of Counsel)

For AFSCME, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Barry A. Aisenstock, of Counsel)

For FMBA, Local No. 2, Joseph P. McManemin, Esq.

DECISION AND ORDER

On September 14 and September 24, 1979, three Unfair Practice Charges were filed with the Public Employment Relations Commission by the American Federation of State, County and Municipal Employees, Council 52, Locals 2272 and 2903, AFL-CIO ("AFSCME") alleging that the City of Paterson ("City") had violated the New Jersey Employer-Employee Relations Act (the "Act") by unilaterally instituting a change in payroll procedures. On October 14, 1979, the Firemen's Mutual Benevolent Association, Local #2 ("FMBA") filed a charge relating to the same action by the City which was to apply to all of its employees. The Director of Unfair Practices issued an Order Consolidating Cases on October 30, 1979, and all parties executed a Stipulation of Facts, waiving an evidentiary hearing in favor of submitting the matter directly to the Commission. Briefs have been submitted by all parties.^{1/}

For a number of years the members of the FMBA negotiations unit have received bi-weekly paychecks on either the Thursday evening or Friday afternoon preceding the Saturday on which a pay period closed. During that same period, the AFSCME-represented employees were paid at the same time - Thursday evening or Friday afternoon. By memorandum dated August 29, 1979 the City notified all employees of its intent to change its procedure so as to gradually implement a one week holdback of salary - i.e. the employees would be paid the amount earned in a pay period one week

^{1/} On November 21, 1979 the Commission received a letter memorandum dated November 21, 1979 from the attorney for the Paterson Police PBA Local 1 relating to the instant consolidated unfair practice proceeding. The PBA is a party in a scope of negotiations matter [Docket No. SN-80-23] that similarly related to a proposed change in the methods of salary payment affecting police officers. The scope matter is being held in abeyance during the pendency of this unfair practice proceeding. We are simply acknowledging the receipt of this letter memorandum at this time inasmuch as the PBA scope of negotiations proceeding is not yet before the Commission

after the close of that period.^{2/} The changeover is scheduled to be complete by December 7, 1979.

We have previously held that the issue of a salary holdback is a term and condition of employment and therefore mandatorily negotiable. In re College of Medicine and Dentistry, P.E.R.C. No. 77-35, 3 NJPER 70 (1977). See also our decision today in In re Garfield Public Schools Bd of Ed, P.E.R.C. No. 80- , 5 NJPER ____ (¶ ____ 1979). However, the City argues that N.J.S.A. 40A:5-16 requires a salary holdback by the governing body of a local unit and therefore makes this matter non-negotiable. That statute reads:

Payment of moneys of local unit

The governing body of any local unit shall not pay out any of its moneys

a. unless the person claiming or receiving the same shall first present a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct. The governing body may, by resolution, require an affidavit in lieu of the said certification, and the clerk or disbursing officer of the local unit may take such affidavit without cost, and

b. unless it carries a certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit.

We do not believe that this statute has any application to salaries in light of N.J.S.A. 40A:5-19 which provides for payment of salaries and wages:

^{2/} People hired within the two years prior to the change were already paid on a holdback basis and are not affected by the new procedure.

Payment of salaries and wages

The governing body of any local unit may provide by ordinance for the manner in which and the time at which salaries, wages or other compensation for services shall be paid, and prescribe the form and manner in which checks upon the treasury shall be drawn and signed for that purpose.

The local unit may, by resolution, provide for the bi-weekly payment of the salaries, wages and compensation of officers and employees, both elective and appointive.

Section 40A:5-16 most reasonably would seem to be intended for the purchase of goods or services from non-employees of the City.

Neither can the City rely on the general authority to provide for the manner of payment of salaries given by Section 40A:5-19. State v. State Supervisory Employees Assn, 78 N.J. 54 (1978) makes it abundantly clear that a general statutory grant of authority is not grounds for a subject matter being outside the scope of collective negotiations. While the City may pass an ordinance to effectuate a negotiated payment procedure, it cannot preempt the matter by simply passing an ordinance purporting to set that procedure.

The City's action herein constitutes a violation of N.J.S.A. 34:13A-5.4(a)(5) and derivatively (a)(1), and must be rescinded.

ORDER

The City of Paterson IS HEREBY ORDERED to:

1. Cease and desist from:

a. Refusing to negotiate in good faith with the FMBA and AFSCME concerning the scheduling of salary payments to

employees represented by the organizations for collective negotiations.

b. Making any unilateral changes in the scheduling of salary payments to employees represented by the FMBA and AFSCME,

2. Take the following affirmative action:

a. Pay the salary of employees represented by the FMBA and AFSCME to them on Thursday evenings or Friday afternoons before the close of pay periods.

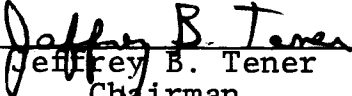
b. Negotiate upon demand with the FMBA and AFSCME any proposed changes in the scheduling of salary payments to employees represented by them.

c. Post at its central offices, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to insure that such notices are not altered, defaced or covered by any other material.

d. Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps said Respondent has

taken to comply herewith.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp, Newbaker
and Parcels voted for this decision. None opposed.

DATED: Trenton, New Jersey
December 4, 1979
ISSUED: December 5, 1979

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:

WE WILL NOT refuse to negotiate in good faith with the FMBA and AFSCME concerning the scheduling of salary payments to employees represented by the organizations for collective negotiations.

WE WILL NOT make any unilateral changes in the scheduling of salary payments to employees represented by the FMBA and AFSCME.

WE WILL pay the salary of employees represented by the FMBA and AFSCME to them on Thursday evenings or Friday afternoons before the close of pay periods.

WE WILL negotiate upon demand with the FMBA and AFSCME any proposed changes in the scheduling of salary payments to employees represented by them.

CITY OF PATERSON

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.