

P.E.R.C. NO. 97-152

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FAIRVIEW,

Respondent,

-and-

Docket No. CO-H-97-206

FAIRVIEW PBA LOCAL 45 (FAIRVIEW UNIT),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants Fairview PBA Local 45's motion for summary judgment of an unfair practice charge filed by the PBA against the Borough of Fairview. The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act when it unilaterally changed the pay period from weekly to biweekly. The Commission orders the Borough to restore the status quo and to negotiate with the union before changing payroll periods again.

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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Appearances:

For the Respondent, Giblin & Giblin, attorneys  
(John L. Schettino, of counsel)

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

DECISION AND ORDER

On December 24, 1996, Fairview PBA Local 45 (Fairview Unit) filed an unfair practice charge against the Borough of Fairview. 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), (3), (5) and (7),<sup>1/</sup> when it unilaterally changed the pay period from weekly to biweekly.

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<sup>1/</sup> 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. (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."

On January 30, 1997, a Commission designee ordered the employer to restore weekly pay periods pending successor contract negotiations. I.R. No. 97-13, 23 NJPER 155 (¶28076 1997). On February 28, we denied the employer's motions for reconsideration and a stay. P.E.R.C. No. 97-96, 23 NJPER 163 (¶28081 1997). The parties then filed motions and cross-motions for summary judgment. The Chair has referred the motions to the full Commission. N.J.A.C. 19:14-4.8(a).

No material facts are in dispute. Accordingly, summary judgment will be granted if either the movant or cross-movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). We summarize the undisputed facts.

In an effort to reduce spending, the Borough eliminated several positions, including the payroll clerk, and decided to have an outside service process the payroll. The Borough encountered several problems in privatizing the payroll department, among them problems entering overtime and salary adjustments on a weekly basis. To have the payroll system operate more efficiently and to enable the Borough to reduce spending, the chief financial officer recommended a uniform payroll period and a change from a weekly to a biweekly payroll period.

The parties' contract has no provision setting the payroll period. On November 18, 1996, the Borough passed

Resolution No. R-96-214 changing from a weekly to a biweekly payroll system effective January 1, 1997. On November 27, the PBA's attorney sent a letter to the Borough objecting to the change. The mayor and council instructed the Borough attorney to notify the PBA that the change was permitted by statute and therefore non-negotiable. The Borough was, however, willing to discuss the PBA's concerns.

On December 24, 1996, the PBA filed this unfair practice charge together with the application for interim relief. At a January 3, 1997 successor contract negotiation session, the Borough indicated its willingness to discuss the change and the PBA insisted upon making the change part of the overall collective negotiations process. On January 30, the Commission designee ordered the Borough to restore the weekly payroll period. I.R. No. 97-13. We subsequently denied the Borough's request for reconsideration and a stay. P.E.R.C. No. 97-96. We stated that "[h]aving denied those motions, we expect the employer to comply with our designee's order." It appears that the employer has not yet done so, but it is in the process of hiring personnel so that it can return to a weekly pay period.

Section 5.3 of the Act requires that negotiations precede changes in mandatorily negotiable terms and conditions of employment. A refusal to negotiate in good faith concerning terms and conditions of employment violates subsection 5.4(a)(5).

Local 195, IFPTE v. State, 88 N.J. 393 (1982),

articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The union contends that the employer violated subsection 5.4(a)(5) by unilaterally changing a mandatorily negotiable term and condition of employment during successor contract negotiations. It seeks a final order restoring the status quo pending negotiations over any future change in payroll dates.

The employer contends that a change from a weekly to a biweekly payroll period does not intimately and directly affect the work and welfare of the Borough's employees. The employer also contends that N.J.S.A. 40A:5-19 specifically provides that a local unit may, by resolution, provide for a biweekly payroll

period.<sup>2/</sup> Finally, the employer contends that the change was within its prerogative to have its payroll system operate efficiently and generate additional savings.

Applying Local 195's balancing test, we have long held that the timing of paychecks is mandatorily negotiable. Fairfield Tp., P.E.R.C. No. 97-60, 23 NJPER 13 (¶28013 1996); 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); cf. City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979) aff'd NJPER Supp.2d 93 (¶76 App. Div. 1981). We have also held that the general authority to provide for the manner of payment of salaries under N.J.S.A. 40A:5-19 does not preempt negotiations. Paterson. An employer may pass an ordinance to effectuate a negotiated payment procedure, but it cannot preempt the matter simply by passing an ordinance setting that procedure. Id.

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<sup>2/</sup> N.J.S.A. 40A:5-19 provides:

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.

Given the mandatory negotiability of payroll periods and given the employer's undisputed unilateral action, we grant summary judgment for the union on its subsection 5.4(a)(1) and (5) allegations. We order the employer to restore the status quo and to negotiate with the union before changing payroll periods again.

ORDER

The Borough of Fairview 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 changing the pay period from weekly to biweekly.

2. Refusing to negotiate in good faith with Fairview PBA Local No. 45, particularly by unilaterally changing the pay period from weekly to biweekly.

B. Take this action:

1. Restore a weekly payroll period for employees represented by Fairview PBA Local No. 45.


2. Negotiate in good faith with Fairview PBA Local No. 45 before changing payroll periods.

3. 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.

4. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997  
Trenton, New Jersey  
ISSUED: June 20, 1997





# 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 to them by the Act, particularly by unilaterally changing the pay period from weekly to biweekly.

**WE WILL** cease and desist from refusing to negotiate with the Fairview PBA Local No. 45, particularly by unilaterally changing the pay period from weekly to biweekly.

**WE WILL** restore a weekly payroll period for employees represented by Fairview PBA Local No. 45.

**WE WILL** negotiate in good faith with Fairview PBA Local No. 45 before changing payroll periods.

Docket No. CO-H-97-206

BOROUGH OF FAIRVIEW  
(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"