

P.E.R.C. NO. 2003-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRICK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-21

TRANSPORT WORKERS UNION LOCAL 225,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Brick Board of Education violated the New Jersey Employer-Employee Relations Act when it changed the pay dates for employees represented by Transport Workers Union, Local 225, Branch 4. The Commission concludes that timing of paychecks is negotiable and that the Board had an obligation to negotiate with the union prior to changing a 15-year practice.

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, Wilbert, Montenegro & Thompson,
attorneys (Ben A. Montenegro, on the brief)

For the Charging Party, Tomar, O'Brien, Kaplan, Jacoby &
Graziano, attorneys (Mark E. Belland and Nancy S. Sokol, on
the briefs)

DECISION

On July 17, 2002, Transport Workers Union Local 225 filed an unfair practice charge against the Brick Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),^{1/} when it unilaterally changed the timing of paychecks for unit employees.

^{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. (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

On August 9, 2002, a Commission designee denied the Union's application for interim relief. I.R. No. 2003-2, 28 NJPER 357 (¶33129 2002). She found that the possible harm to unit members was the loss of money and, therefore, the harm was not irreparable.

On August 16, 2002, a Complaint and Notice of Hearing issued on the unfair practice charge.

On August 23, 2002, the Union moved for reconsideration of the interim relief decision. However, it has since withdrawn its motion and, in agreement with the Board, requested that the case be decided based on cross-motions for summary judgment. On October 9, the Chair referred the cross-motions to the full Commission.

N.J.A.C. 19:14-4.8(a).2/

The facts are undisputed. The Union represents cafeteria, clerical, custodial, and transportation employees. A memorandum from the Board indicates that there are 143 10-month transportation employees with total annual salaries of approximately \$3,277,375 (approximately \$23,000 per employee) and 59 10-month cafeteria employees with total annual salaries of approximately \$986,809 (approximately \$17,000 per employee).

1/ Footnote Continued From Previous Page

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."

2/ We deny the Board's request for oral argument. The issues have been fully briefed.

For at least the past 15 years, it was a practice that 10-month employees would get a paycheck the first day back to work in September, a paycheck two days later, and another paycheck two weeks later. Thus, 10-month employees would receive three paychecks in September. For at least the past 15 years, 12-month employees would be paid on the first day of July.

On May 31, 2002, the Business Administrator/Board Secretary announced that 10-month employees would not receive a paycheck on their first day back and would instead receive only two paychecks in September and that 12-month employees would be paid on July 3 instead of July 1. Shortly thereafter, the Board revised the pay dates again -- 10-month employees would receive a paycheck on their first day back in September and one other. Thus, the 10-month employees would still receive only two paychecks in September. The Board did not negotiate before making the change.

The Union argues that the employer has violated the Act by unilaterally changing pay dates, a mandatorily negotiable term and condition of employment.

The Board argues that this issue was never negotiated, the change is consistent with generally accepted accounting principles, the prior practice was inconsistent with guidance provided by the Legislature as to the reasonable timing of payment for salaries, the prior practice exposed the district to paying for services not yet provided, there is no hardship to unit members as their annual salaries remain the same, and an employer should not be required to maintain an unreasonable practice.

N.J.A.C. 19:14-4.8(d) provides that summary judgment will be granted:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered that:

This is an appropriate case for summary judgment because there are no material facts in dispute. The employer unilaterally changed the pay dates for 10 and 12-month employees.

Applying the negotiability balancing test found in Local 195, IFPTE v. State, 88 N.J. 393 (1982), we have long held that the timing of paychecks is mandatorily negotiable. Borough of Fairview, P.E.R.C. No. 97-152, 23 NJPER 398 (¶28183 1997); 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). Timing of payment is negotiable, even where payment occurs before the compensation is "earned." Neptune Tp. Bd. of Ed., P.E.R.C. No. 90-55, 16 NJPER 30 (¶21015 1989), recon. granted P.E.R.C. No. 90-64, 16 NJPER 125 (¶21048 1990), aff'd NJPER Supp.2d 248 (¶207 App. Div. 1991), certif. den. 126 N.J. 333 (1991).

Having found that the issue of timing of paychecks is negotiable, we conclude that the Board had an obligation to negotiate before unilaterally changing a 15-year practice. Where an existing working condition is changed and where neither party has a contractual right to prevent or impose that change, such a change triggers the duty to negotiate under section 5.3. Roselle Bd. of Ed., P.E.R.C. No. 98-145, 24 NJPER 307 (¶29147 1998). As stated in Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138, 140 (¶14066 1983):

[A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment ... even though that practice or rule is not specifically set forth in a contract.... Thus, even if the contract did not bar the instant changes, it does not provide a defense for the Board since it does not expressly and specifically authorize such changes.

Accordingly, we grant the Union's motion for summary judgment and deny the Board's cross-motion.

In finding a violation, we appreciate the Board's concern that generally accepted accounting principles do not favor advance payment of salaries. Advance payments, however, are not illegal and the Board may express its concerns about the wisdom of that practice through the collective negotiations process.

There is no evidence that the Board has suffered any financial harm under the old system. Nor has the Legislature prohibited that system. The Board argues that N.J.S.A. 18A:27-6 provides affirmative guidance as to the acceptable method of

salary disbursement. That statute is applicable to teachers, not to the employees represented by the Union. It provides, in pertinent part:

Each [teacher's] . . . contract shall specify . . . [t]he salary at which he is employed, which shall be payable in equal semimonthly or monthly installments, as the board shall determine, not later than five days after the first and the fifteenth day of each month in case of semimonthly installments and not later than five days after the close of the month in the case of monthly installments while the school is in session, a month being construed, unless otherwise specified in the contract, to be 20 school days or four weeks of five school days each. . . .

We have held that this statute does not preempt negotiations over pay dates and provides for, rather than removes, a board's discretion. The statute appears to establish certain minimal protections for teachers and does not prohibit more generous arrangements. Neptune; Ewing Bd. of Ed., P.E.R.C. No. 81-85, 7 NJPER 89 (¶12035 1981).

As for the hardship to unit members, it is clear that a two-week delay in receiving a paycheck for these relatively low-wage ten-month employees intimately and directly affects employee work and welfare. Local 195. The employer's obligation to negotiate over terms and conditions of employment does not condition negotiations on a finding of hardship as opposed to a finding of negotiability. Our Supreme Court has noted that "modest amounts of compensation, or even seemingly minor non-economic benefits, can sufficiently affect the work and

welfare of employees to trigger mandatory negotiability." In re Hunterdon Cty and CWA, 116 N.J. 322, 332 (1989).

Having found that the employer could not unilaterally change the timing of paychecks, we will order the employer to restore the status quo and make employees whole by paying affected employees an additional check by December 15, 2002. We dismiss the 5.4a(3) allegation. There is no evidence that the change was motivated by anti-union animus.

ORDER

The Brick Board of Education 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 pay dates for employees represented by Transport Workers Union, Local 225, Branch 4.

2. 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, particularly by unilaterally changing pay dates for employees represented by Transport Workers Union, Local 225, Branch 4.

B. Take this action:

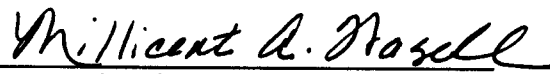
1. Restore the status quo of paycheck distribution and negotiate before changing payroll dates.

2. Pay an additional paycheck to affected employees by December 16, 2002 with interest pursuant to R. 4:42-11.

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. By December 16, 2002 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, Katz, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: October 31, 2002
Trenton, New Jersey
ISSUED: November 1, 2002



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 New Jersey Employer-Employee Relations Act, particularly by unilaterally changing pay dates for employees represented by Transport Workers Union, Local 225, Branch 4.

WE WILL cease and desist from 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, particularly by unilaterally changing pay dates for employees represented by Transport Workers Union, Local 225, Branch 4.

WE WILL restore the status quo of paycheck distribution and negotiate before changing payroll dates.

WE WILL pay an additional paycheck to affected employees by December 15, 2002 with interest pursuant to R. 4:42-11.

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BRICK BOARD OF EDUCATION

(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, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372