P.E.R.C. NO. 83-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS and PARK
COMMISSION OF MORRIS COUNTY,

Respondents,

-and- Docket No. CO-81-261-161

MORRIS COUNCIL #6, N.J.C.S.A.,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Public Employment Relations Commission finds that the County of Morris and the Morris County Park Commission did not violate the Act by unilaterally rescinding a practice permitting certain employees to use official vehicles for the purposes of commuting inasmuch as the size of an employer's fleet and the deployment of that fleet were found to involve governmental policy. However, under the facts of this case, the public employers were found to have violated the duty to negotiate in good faith when they failed to negotiate with Morris Council #6, N.J.C.S.A. over a compensation offset for employees whose vehicles were withdrawn. The Commission found that the parties had come to regard the use of official vehicles for commuting as an economic benefit and while the employer had the right to withdraw the use of the vehicles, it did have an obligation to negotiate over the issue of compensation.

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-and- Docket No. CO-81-261-161

MORRIS COUNCIL #6, N.J.C.S.A.,

Charging Party.

Appearances:
For the Respondents, Armand D'Agostino, Morris County Counsel (By: Daniel W. O'Mullan, Assistant County Counsel; John J. Harper, Assistant County Counsel, Labor, on the Brief)

For the Charging Party, Morris and Hantman, Esqs. (Allan Hantman, of Counsel)

DECISION AND ORDER

On March 3, 1981, Morris Council #6, N.J.C.S.A. ("Council #6") filed an unfair practice charge against the County of Morris ("County") with the Public Employment Relations Commission. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1),(3), and (5),[1/] when on January 22, 1981, it issued a directive limiting the use of County-owned

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; (3) Discriminating in regard to hire or tenure of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (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."

vehicles by department foremen for commuting to and from work. The charge further alleged that the directive altered an existing benefit, that it was issued during successor contract negotiations, and that the County refused to negotiate despite a request from Council #6.

On May 12, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The County filed an Answer in which it contended that the assignment of vehicles is an inherent managerial prerogative.

On June 22, 1981, Commission Hearing Examiner Edmund G. Gerber conducted a hearing. At the outset of the hearing, the parties entered certain stipulations of fact and Council #6 then moved to amend the Complaint to name the Morris County Park Commission ("Park Commission") as a separate defendant. The County's Director of Labor Relations, representing the Park Commission, did not object, and the Hearing Examiner consequently granted the motion. All parties then presented witnesses and introduced exhibits. No party argued orally. All briefs were filed on or before October 8, 1981.

On March 1, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 82-37, 8 NJPER 197 (¶13082 1982) (copy attached). He found that the directive violated subsections 5.4(a)(1) and (5) of the Act because it unilaterally changed an existing form of compensation primarily to reduce costs and thus did

not trench upon managerial prerogatives. He recommended an order requiring the County and the Park Commission to reinstate the previous system for determining which employees could use assigned County vehicles for commuting, to negotiate with Council #6 before making any changes in this system, and to post a notice concerning the steps it would take to remedy its violations. The Hearing Examiner found no evidence of a violation of subsection 5.4(a)(3) of the Act and recommended dismissal of that portion of the Complaint.

On March 26, 1982, the County and the Park Commission, after receiving an extension of time, filed Exceptions and a supporting brief. The Exceptions alleged that the Hearing Examiner erred in: (1) finding that the issuance of the directive was not a managerial prerogative; (2) finding that the issuance of the directive stemmed primarily from budgetary considerations rather than other management considerations such as efficient deployment of vehicles and maintenance of service levels; (3) finding that the right to commute in County vehicles was a "term and condition of employment" within the meaning of N.J.S.A. 34:13A-5.3; (4) finding an established past practice despite the parties' stipulations; and (5) recommending an order to reinstate the previous system for determining which employees could be assigned County vehicles for commuting.

We have reviewed the Hearing Examiner's findings of fact (Slip Opinion at pp. 2-4). With the exception of the date of the directive in question (January 22, not December 22, 1981), substantial evidence supports them. We adopt and incorporate them

here. We add, however, that the purpose of the survey and ensuing directive on County vehicles was not only to reduce costs, but ultimately to reduce the size of the County's vehicle fleet. This goal was to be attained through implementation of the following steps: (1) restricting the use of County vehicles beyond the regular County business, (2) encouraging employees to use private vehicles with a realistic cent per mile reimbursement, and (3) expanding the County vehicle pool concept. We also note that the employees used the cars assigned to them solely for commuting and not for personal reasons.

We believe, under the facts of this case, that both the employees and the employer had legitimate and substantial interests in the County's directive which should be accommodated to the extent possible. We hold that the County had a managerial prerogative to issue the directive as part of its effort to reduce the size of its vehicle fleet, but that it had an obligation, under all the circumstances of this case, to negotiate with the Association over an alternative form of compensation for the affected employees.

On one hand, the record demonstrates that the directive intimately, directly, and adversely affected the work and welfare of crew chiefs, foremen, and other employees. It stripped them of an economic benefit which they had received for a long period of time, which they were either told, or reasonably assumed based upon prior practice, had come with their jobs, and which was, as certain specific instances demonstrate, a recognized economic

substitute for direct cash payments. For example, James Rice testified that when he was promoted to crew chief in 1966, he was assigned a vehicle for commuting, but did not receive any other compensation adjustment for his new responsibilities. Larry Burke testified that the road department crew was told in 1961 or 1962 that the foreman received a car for commuting as an additional job benefit because the difference between the salary of the foreman and assistant foreman was so small; Burke himself would not have taken a job as foreman without the use of a County vehicle since he lived 20 miles from work. Vito Cifrese was told when he was hired into the Department of Weights and Measures in 1972 that he would be assigned a vehicle for commuting. As a final example, the County Superintendent of Weights and Measures testified that an assistant superintendent -- Tony Lori -- chose to use his own vehicle to commute, but had he asked for mileage reimbursement, he would have been paid. In short, the directive reduced a form of employee compensation.[2/] The Hearing Examiner's citation and discussion of In re Township of Bridgewater, P.E.R.C. No. 82-3, 7 NJPER 434 (¶12193 1981) is apt.

On the other hand, the vehicles in question form a substantial part of the public employer's fleet and are used

2/ The County recognized as much when, as its Administrator testified, it offered compensation for loss of an assigned vehicle to employees who produced documentation that a vehicle was part of their job benefits. Although the affected employees in this case did not produce documentation that the use of a County vehicle was a perquisite of their jobs, their testimony, which we credit, conclusively establishes this tie.

extensively during the day in various construction projects, investigations, and inspections. This is not a case where a negotiated agreement, in lieu of compensation, explicitly provides employees with vehicles which are not an integral part of the public employer's mission. Further, the directive applied across-the-board to almost all County departments and employees, not just the Park Commission or the employees in this unit. If the County could not issue this directive, its ability to determine the appropriate size and deployment of the vehicle fleet and to insure the fleet's readiness for County business might be impaired. In short, the directive does implicate the County's sole responsibility to determine how governmental services are delivered. Local 195 and State of New Jersey, 88 N.J. 393 (1982).

The interests of both employees and employer in this case may be accommodated without violence to either statutory rights or managerial prerogatives. Section 5.3 of our Act provides in part: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." We believe that the directive modified an existing rule governing a working condition because it reduced a form of compensation[3/] which, through

3/ A violation of section 5.3 may be established regardless of whether the parties had a collective agreement specifying the condition in dispute. See, In re New Brunswick Bd. of Ed., 4 NJPER 84,85,87, n. 15 (¶4040 1978). Thus, we do not place the same significance as the County and the Park Commission on the parties' stipulation that they had not negotiated over the assignment of County vehicles, or on the fully-bargained clause of the contract. Statutory rights granted by section 5.3 cannot be so easily waived. In re Township of Ocean, 7 NJPER 333 (¶12149 1981).

an established past practice, had risen to the level of a negotiated benefit. To that extent, the directive violates our Act just as would a directive reducing an employee's salary where record evidence demonstrates that part of the salary reflected a compensation offset for transportation expenses. However, we also believe that the County has a right to deploy its vehicles as it sees fit, a right the directive implements. To that extent, the directive does not violate our Act. The appropriate solution, which we adopt, is to uphold the directive's restrictions on using County vehicles, but to require the County to negotiate over offsetting compensation for those employees who have lost the economic benefit of using a County vehicle to commute, a mutually recognized and longstanding benefit. Compare, Ramapo-Indian Hills Ed. Assn, Inc. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980) (employer has unilateral right to make assignments, but must negotiate compensation for assignments).[4/] This approach protects both the County's managerial ability to plan desirable reductions in fleet size and the employee's statutory right not to have a form of

4/ We recognize that there would be no negotiations obligation concerning offsetting compensation had the negotiations history demonstrated a reserved contractual right to take away the vehicles without negotiating compensation or had we found that the vehicles were provided purely as a gratuity or for official business purposes. However, as we discussed earlier, n. 2 supra, the record establishes that the affected employees received vehicles as a benefit that came with their jobs. It would be most unfair, as the County recognized when it compensated employees who could show their documented entitlement to a vehicle, to allow an employer to take away that benefit without negotiating over compensation.

compensation which has risen to the level of a negotiated benefit reduced unilaterally.[5/]

Accordingly, we hold that the County and Park Commission violated subsections 5.3 and subsections 5.4(a)(1) and (5) of our Act when they failed to negotiate the issue of compensation for those employees who lost the economic benefit of using County vehicles for commuting purposes. We will order the County and Park Commission to negotiate as they were required to do under our Act at the time the employees lost this economic benefit.

ORDER

IT IS HEREBY ORDERED that:

A. The County of Morris and the Morris County Park Commission cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate over compensation for those employees who lost the economic benefit of using County vehicles for commuting purposes; and

2. Refusing to negotiate over compensation for those employees who lost the economic benefit of using County vehicles for commuting purposes.

5/ Other jurisdictions have found mandatorily negotiable the assignment of employer vehicles for commuting purposes. See, e.g., In re County of Onodaga, 13 PERB (¶7011 N.Y. Sup. Ct., App. Div. 4th Dist. 1980); In re County of Nassau, 13 PERB 3095 (N.Y. PERB 1980); In re Bucksport School Dist., 3 NPER 20-12009 (Main PERB 12/22/80). We, however, must apply the particular tests set forth in State of New Jersey v. Local 195, IFPTE, AFL-CIO, 88 N.J. 393 (1982). These tests require us to balance and accommodate, as we have done, the respective interests of the employer and the employees.

B. The County of Morris and the Morris County Park Commission take the following steps:

1. Negotiate with Council #6 over compensation for those employees who lost the economic benefit of using County vehicles for commuting purposes.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondents have taken to comply herewith.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin, Graves, Hipp, Hartnett and Newbaker voted for this decision. Commissioner Butch voted against this decision.

DATED: Trenton, New Jersey
September 14, 1982
ISSUED: September 15, 1982

Appendix "A"
Recommended Order

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 interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by unilaterally altering our employees' terms and conditions of employment in regards to the use of county vehicles.

WE WILL NOT refuse to negotiate a change in the terms and conditions of employment of our employees by altering regulations concerning our employees' ability to use county vehicles without negotiating such changes.

WE WILL negotiate with Council #6 over the right of the following employees the use of their assigned county vehicles for commuting:

1) supervising foreman of the Park Commission
2) foreman of the Road Department
3) foreman of the Bridge Department
4) crew chief and engineer with field responsibilities in the Engineering Department

WE WILL restore in the Weights and Measures Department the former system where every employee got a ride to and from work.

COUNTY OF MORRIS and
MORRIS COUNTY PARK COMMISSION
(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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 82-37

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

In the Matter of

COUNTY OF MORRIS and PARK
COMMISSION OF MORRIS COUNTY,

Respondents,

-and-

Docket No. CO-81-261-161

MORRIS COUNCIL #6, N.J.C.S.A.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the County of Morris and the Park Commission of the County of Morris violated § 5.4(5) of the Public Employer-Employee Relations Act when it unilaterally altered a past practice of permitting certain designated employees the use of county vehicles for commuting.

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, 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. 82-37

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

In the Matter of

COUNTY OF MORRIS and PARK
COMMISSION OF MORRIS COUNTY,

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-and-

Docket No. CO-81-261-161

MORRIS COUNCIL #6, N.J.C.S.A.,

Charging Party.

Appearances:

For the Respondent
Youngelson & Johnson, Esqs.
(George W. Johnson, Esq.)

For the Charging Party
Morris and Hantman, Esqs.
(Allan Hantman, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 3, 1981, Morris Council #6 of the New Jersey Civil Service Association (the Association) filed an Unfair Practice Charge with the Public Employment Relations Commission (the Commission) alleging that the County of Morris (Respondent or County) violated N.J.S.A. 34:13A-5.3 et seq. (the Act) when it unilaterally and without negotiations issued a directive severely limiting employees in their use of County-owned vehicles for commuting purposes. The Charging Party made a demand to negotiate but the County has refused to do so. More specifically it was alleged that the County

violated § 5.4(a)(1), (3) and (5) of the Act. 1/

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 12, 1981.

A hearing was held on June 22, 1981, at which time both parties were given an opportunity to introduce evidence, examine and cross-examine witnesses, argue orally and present briefs. 2/ At the hearing, with the consent of both parties, the complaint in this matter was amended to identify the Park Commission of Morris County as a separate defendant. In all other aspects the case remained unchanged.

The facts adduced at the hearing were in large measure stipulated to by the parties.

On December 22, 1981, Morris County issued a directive that effective March 1, 1981, certain employees who formerly were assigned the use of County vehicles would no longer be assigned said vehicles. The significance of the directive is that these vehicles were used by employees to commute to and from work.

The contract between the parties is silent as to the assignment of vehicles. Employees in four departments were affected. These include Roads, Bridges, Engineering, Weights and Measures. The Park

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; (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."

2/ Briefs were received by October 8, 1981.

Commission is a separate employer. It has taken the same action as the County and similarly their cars were used on a regular basis for commuting. The contract between the Association and the Commission is silent as to the use of personal vehicles.

At the Park Commission the position in question is a supervisory foreman. The employee who formerly held that position had a car at his disposal. He has retired and a new employee has been promoted to fill his position. The employee who has been promoted to fill this position has not received a car.

In the Road Department, vehicles were assigned to 14 foremen. Each foreman had a pick-up truck which he was allowed to take home at night and drive to work in the morning.

Under the new policy, only the on-call foreman may take a vehicle home for the evening.

Similarly in the Bridge Department there are four foremen and each of these employees were allowed to commute in their assigned trucks but now only the on-call foreman may take a vehicle home.

In Engineering all crew chiefs and engineers with field responsibilities took vehicles home and could conduct inspections on the way to work. The new policy is that engineers with field responsibilities have to sign out for a car on the date before the car is to be used.

In Weights and Measures there were five employees who received cars. Now only the one on duty can take home a County vehicle in order to conduct investigations on the way to work.

The testimony is uncontroverted that in every division the employees in question received vehicles that they could commute with and supervisors would tell subordinates that a vehicle went with the job. The one exception was in Weights and Measures. There the practice began in 1970. Prior to this time County cars were located around the county. Because of a high level of vandalism the superintendent asked the employees to take the cars home. In any event, every employee of this division either drove a car or was given a ride home.

A County witness testified that the County ran a survey of the use of all its vehicles and issued a directive to its various departments to limit this type of usage of its cars in order to keep costs down.

The County has argued that the issuance of the directive was the implementation of an essential managerial prerogative which it cannot bargain away and was therefore not a term and condition of employment and cite Byram Twp. Bd/Ed v. Byram Twp. Ed/Assn, 152 N.J.Super. 12, 377 2d 745 (App. Div. 1977), Ridgefield Park Ed/Assn v. Ridgefield Park Bd/Ed, 78 N.J. 144 (1978) and Woodstown-Pilesgrove Regional, 81 N.J. 582 (1980).

However contrary the County's position, its action was not an "essential managerial prerogative." It was done in order to keep costs down; that is, it was a budgetary consideration. In Woodstown-Pilesgrove, supra, budgetary considerations did not "significantly or substantially trench upon the managerial prerogatives of the board of education," at p. 594.

The fact that the assignment of vehicles for use in commuting is not covered under the contract is not controlling here. The Commission has consistently held that an employer "has the obligation to negotiate, prior to implementing a proposed change in an established practice governing working conditions which is explicitly or impliedly included under the terms of the parties." New Brunswick Bd/Ed, P.E.R.C. No. 78-47, 4 NJPER 84.

It cannot be disputed that when the County employees had the right to commute in county vehicles they enjoyed a tangible economic benefit which by itself is a term and condition of employment. In Twp. of Bridgewater, P.E.R.C. No. 82-3, 7 NJPER 434 (¶12193 1981), the Commission held that the use of garage facilities by employees to fix their private vehicles on their own time was a term and condition of employment:

> Although on its face, a connection between an employee's use of Township facilities and equipment to repair his own vehicle, and the services he must perform during the workday, is not direct, this by and of itself is not enough to find the subject to be non-negotiable. It is well established that forms of compensation are terms and conditions of employment, notwithstanding the nexus between the benefit and the work performed. There is virtually no connection between an employee's child's dental care and that employee's work, and yet it is traditionally accepted that dental plans which include family coverage are terms and conditions of employment when those dental plans are a method of additional compensation. It is apparent that compensation, in any legal form, is a term and condition of employment regardless of the connection between the benefit and the work performed by an employee. Whether the form of compensation is typical or not is not a factor which should effect the negotiability of the benefit. For the past ten years the employees of the Township have been using the Township's garage and equipment to repair and maintain their own motor vehicles and thus have been reaping an economic benefit from this use which can well be considered a form of compensation. (footnotes omitted)

In conclusion it is clear that the employees in question have commuted in County cars for an extended and in most cases an indefinite period of time. This gives rise to an established past practice. Before this practice could be changed the employer had the duty to negotiate this change with the Charging Party. The Park Commission's employee bears special comment since the employee in that position is new and has never used a vehicle for commuting. The fact that prior employees received cars created an obligation that continues with the continuation of the position. The obligation does not cease when the individual who held that position retired. See Galloway Bd/Ed and Galloway Assn of Ed'l Secys, 78 N.J. 1 (1978). Accordingly it is hereby recommended that the Commission find that the failure of the County of Morris to so negotiate constitutes a violation of § 5.4(a)(1) and (5) of the Act. No facts were introduced to prove the § 5.4(a)(3) allegations. It is therefore recommended that this portion of the charge be dismissed. It is further recommended that the Commission issue the following:

Recommended Order

1. The County of Morris and the Morris County Park Commission cease and desist from

A) interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by unilaterally altering its employees' terms and conditions of employment in regards to the use of county vehicles.

B) Refusing to negotiate a change in the terms and conditions of employment of its employees by altering regulations con-

cerning its employees' ability to use county vehicles without first negotiating such changes.

2. The County of Morris and the Morris County Park Commission take the following steps:

A) Negotiate with Council #6 over the right of the employees, listed in 2(B) below, to use their assigned county vehicles for commuting purposes.

B) Pending the conclusion of said negotiations the rights of the following employees the use of their assigned county vehicles for commuting. The employees are

1) supervising foreman of the Park Commission

2) foreman of the Road Department

3) foreman of the Bridge Department

4) crew chief and engineer with field responsibilities in the Engineering Department.

Except that in the Weights and Measures Department the former system where every employee got a ride to and from work shall be restored.

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

D) Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

Edmund G. Gerber
Hearing Examiner

Dated: March 1, 1982
Trenton, New Jersey