I.R. NO. 86-26

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Respondent,

-and-

DOCKET NO. CO-86-330

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION and
DANIEL BRAGG

Charging Parties

SYNOPSIS

In an application for Interim Relief brought by Union Council 8, N.J.C.S.A., a Commission Designee declined to restrain the County of Union from implementing its announced plans to curtail free van service to its employees. The County of Union and Union Council #8 were negotiating a successor agreement when the County announced that it would no longer provide van service to and from bus stops in the Town of Scotch Plains. Although such service is a term and condition of employment, the deployment of the vans is a management prerogative. Morris County Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (13259, 1982). The facts concerning whether the County would negotiate over this loss of compensation was in dispute.

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Appearances:

For the Respondent
Apruzzese, McDermott, Mastro & Murphy
(Robert T. Clarke, of counsel)

For the Charging Party
Fox & Fox
(David I. Fox, of counsel)

DECISION

On May 29, 1986, Union Council No. 8, NJCSA and Daniel Bragg, filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the County of Union ("County") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically subsections 5.4(a)(1), (3), and (5) of the Act[1/] when, during the

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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

Footnote Continued on Next Page

course of negotiations between Council 8 and the County for employees at John E. Runnells Hospital, it was announced that the hospital was unilaterally eliminating its omnibus van pool. The vans provide free transportation for use by patients and employees between bus stops in Scotch Plains and the hospital.

The unfair practice charge was accompanied by an application for interim relief and an order to show cause. The Order was executed and made returnable for June 17, 1986. On that day I conducted a Show Cause Hearing on behalf of the Commission. Both parties submitted affidavits and briefs and argued orally at the hearing.

The standards that have been developed by the Commission for evaluating interim relief requests are quite similar to those applied by the courts when confronted with similar applications. The test is twofold: The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and further, it must show there will be irreparable harm if the requested relief is not

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1/ Footnote Continued From Previous Page

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."

granted.[2/] Both standards must be satisfied before the requested relief will be granted.

It is undisputed that Daniel Bragg is the vice-president of Union Council 8 and heads the negotiations committee at the hospital. In addition he is an omnibus driver in the hospital's transportation unit. His unit would be directly affected by the elimination of the omnibus van service.

The Association maintains that, given the timing of the Hospital's actions and the position with Mr. Bragg holds with the Association, the Hospital's actions are an effort to intimidate and restrain Mr. Bragg and Coucil 8 from engaging in negotiations and unlawful discrimination against Mr. Bragg, Council 8 and members of the negotiating commission. It is further alleged that the reduction of van services in the transportation unit will also have a chilling effect on the current negotiations for a successor agreement and it is an effort to intimidate and restrain these employees and the general membership of Council 8 from exercising their collective bargaining rights. Council 8 asked that the County be restrained from implementing its decision to layoff the van and bus drivers.

2/ In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975; and In re Township of Stafford, P.E.R.C. No. 79-9, 1 NJPER 59 (1975).

It is undisputed that, in fact, Mr. Bragg will not be laid off if this plan is carried through. Mr. Bragg has enough seniority so that he will be maintained as a bus driver.

On May 5, 1986, the County, through its hospital administrator, Kathleen Hoza, informed Olga Sachenski, the president of Union Council 8, that due to budgetary constraints, the County will be reducing the size of its van pool at the Hospital and implementing reductions of the Hospital's transportation unit. This reduction would take place on June 1, 1986. If the union wanted to "discuss the impact of this decision on these employees who use the van service for commuting, please contact my office within fourteen days from the above date." The County subsequently agreed to delay implementation until the last week of June.

A dispute arose at the hearing as to whether or not Council 8 sought to negotiate this matter with the County. The attorneys present made divergent representations as to whether or not Council 8 sought to negotiate over the County's actions. I asked the parties to submit affidavits in support of their respective positions. Council 8 produced an affidavit by Mr. Bragg wherein he maintained that the County refused to negotiate, on the other hand, the County produced an affidavit from Frederick Danser, Special Labor Counsel to the County, who maintained that in conversations with David Fox, attorney for Council 1, Fox explicitly stated he was not interested in negotiations over this matter and took the position that the county had to maintain the status quo and maintain the bus driver positions.

ANALYSIS

The Commission has long held that an employer cannot unilaterally alter terms and conditions of employment during the pendency of negotiations and if such an alterations occurs, the Commission will issue an order restoring the status quo ante. See, In re State of New Jersey, I.R. 84-6, 10 NJPER 95 (¶15049 1983; County of Morris and Morris Council No. 6, I.R. 85-12, 11 NJPER 271 (¶16096 1985). Here, however, the alterations of the terms and conditions of employment is not simply a matter of salary. Rather, the alteration involved the County's decision to eliminate bus service for some its employees. In Morris County Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), the Commission held that when the County of Morris recalled County cars from certain employees who formerly were allowed to use them communting to and from work, the County of Morris unilaterally altered a benefit which was a cognizable term and condition of employment from these employees. However, the Commission upheld the right of the County to issue the directive. It held that the employer's ability to determine the appropriate size and deployment of its vehicle fleet implicates the County's sole responsibility to determine how government services are delivered and, citing Local 195 v. State of New Jersey, 88 N.J. 393 (1982), the Commission held that Morris County had the right to recall these vehicles. However, the Commission went on to hold that the employer had an obligation to negotiate concerning this loss of a benefit at the time the cars were taken from its employees.

The same rationale must apply here. At the time Union County made its lawful decision to curtail the use of its vehicles, it had the obligation to negotiate concerning the loss of the benefit of free transportation to its employees.

The letter which went out to the union at the time the decision was made on May 5, 1986, states that the County would prepare to "discuss the impact of this decision". The word discuss is, in the negotiations context, a term of art and is clearly something less than negotiate. See Local 195 v. State of New Jersey supra. However, the affidavits of Bragg and Danser are squarely in conflict as to whether there was a verbal invitation to negotiate or even whether Council 8 was willing to negotiate.

Given this conflict concerning an essential component of Council 8's case, I must find that Council 8 has not met its burden here . Accordingly, its application for interim relief is denied.

It is noted that although the charging party alleged the promulgation of the notices of layoff constitute a violation of §5.4(a)(3), it did not proffer evidence of animus. Although the timing of the notices is suspect, given that Bragg will not be laid off, it has not shown that it has a substantial likelihood of success in proving these allegations.

This is an interim order only and this matter will now be processed in the normal manner before the Public Employment Relations Commission.

Edmund G. Gerber
Commission Designee

DATED: June 25, 1986
Trenton, New Jersey