

P.E.R.C. NO. 89-127

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC.

Respondent,

-and-

Docket No. CO-H-89-22

AMALGAMATED TRANSIT UNION,  
DIVISION 825,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that New Jersey Transit Bus Operations, Inc. violated the New Jersey Public Employer-Employee Relations Act when it refused to provide the Amalgamated Transit Union, Division 825 with information about an employee's employment status it needed to determine whether an arbitration award concerning the employee was being implemented properly.

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AMALGAMATED TRANSIT UNION,  
DIVISION 825,

Charging Party.

Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney  
General (Gail L. Menyuk, Deputy General Counsel)

For the Charging Party, Weitzman & Rich, Esqs.  
(Richard P. Weitzman, of counsel)

DECISION AND ORDER

On July 19, 1988, Amalgamated Transit Union, Division 825, ("ATU") filed an unfair practice charge against New Jersey Transit Bus Operations, Inc. ("NJT Bus"). The charge alleges that NJT Bus violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to provide the ATU with the results of a doctor's

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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, 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."

examination, ordered by an arbitrator, to determine Jorge Laureano's fitness for a cleaner's job.

On August 19, 1988, a Complaint and Notice of Hearing issued. On September 21, NJT Bus filed an Answer contending that it had provided some of the requested information; ATU should have gotten the rest from Laureano or obtained a release from him; the charge was moot since Laureano had been offered a cleaner's job, and the charge was a misuse of Commission processes.

On October 25, 1988, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties introduced exhibits, examined witnesses and argued orally. ATU waived a post-hearing brief. NJT Bus filed a post-hearing brief on January 10, 1989.

On March 13, 1989, the Hearing Examiner issued his report and recommended decision. H.E. No. 89-27, 15 NJPER 190 (¶20080 1988). He concluded that NJT Bus violated the Act when it failed to provide ATU with the requested information. He found that this information was needed to determine whether the Laureano arbitration award was being properly implemented. To remedy this violation, he recommended that NJT Bus provide ATU with information regarding Laureano's acceptance or rejection of the Company's offer of employment as a cleaner and post a notice. He denied ATU's request for attorney fees and costs.

On March 27, 1989, NJT Bus filed exceptions. Its arguments are addressed in this decision.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-11) are accurate with this minor correction. The "EAP" referred to as "State Employee Advisory Service" is correctly titled "New Jersey Transit Employee Assistance Program." We incorporate these findings.

Refusal to provide a majority representative with information relevant to contract administration is a refusal to negotiate in good faith. N.J.S.A. 34:13A-5.4(a)(5); City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11, 12 (¶20003 1988); State of New Jersey, P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd App. Div. Dkt. No. A-2047-87T7 (12/27/88); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987), adopting H.E. No. 87-65, 13 NJPER 423 (¶18164 1987); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981); see also NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956). Ensuring that an arbitration award is properly implemented is part of contract administration.

We reject NJT Bus's contention that it did not have to supply the requested information because the information was also in the possession of Laureano and his attorney. Possession of relevant information by an employee does not remove the general obligation to provide to the majority representative information relevant to contract administration. Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 328, 329 (¶19121 1988), aff'd App. Div. Dkt. No. A-4698-87TI (4/28/89) (release of names and addresses of agency fee payers even

absent employee consent); City of Atlantic City (copies of disciplinary notices sent to employees); N.J. Transit (release of medical test results).

We also reject the contention that the information did not have to be supplied because Laureano was never disqualified from employment. Laureano was denied a cleaner's position. An arbitrator awarded him backpay and ordered a prompt physical examination to determine his fitness for the job. The arbitrator held:

Provision 3: "[E]xam must set forth objective findings of his inability to perform the cleaner's job in order to disqualify him. If there are no objective findings, Mr. Laureano shall immediately be offered said job."

Provision 6: "The company and the union shall within 30 days after receipt of the first exam, agree upon and schedule an independent exam by a neutral physician."

Provision 7: "Should the exam not discover any objective findings of inability to perform the intended job, Mr. Laureano will immediately be given such a position with full pay, retroactive from the time of the first exam."

Laureano was examined January 19, 1988. He was not offered employment until June 27, 1988. Instead, he was referred to the EAP. ATU was told only that Laureano was in the EAP to clear up a problem. When ATU's president asked when Laureano was going to return to work, NJT Bus's manager of labor relations said he did not know. ATU's attorney twice asked NJT Bus to advise it of Laureano's status. NJT Bus did not respond. It was not until August 23 that the manager of labor relations advised ATU's president that Laureano had been offered a job in June. We need not decide whether Laureano

was disqualified by the first examination or whether NJT Bus had to provide ATU with Laureano's medical records. We simply decide that ATU had a right, as majority representative, to be apprised of Laureano's employment status at each stage. Without that information, ATU was unable to determine whether Laureano had been disqualified and whether the arbitration award was being properly implemented.

Accordingly, we find that NJT Bus violated subsection 5.4(a)(5) and, derivatively, 5.4(a)(1), by refusing to supply information to ATU relevant to its contract administration.<sup>2/</sup>

ORDER

New Jersey Transit Bus Operations, Inc. is ordered to:

A. Cease and desist from

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to provide ATU with information about Laureano's employment status it needed to determine whether an arbitration award concerning Jorge Laureano was being implemented properly.

2. Refusing to properly process grievances presented by the ATU, particularly by refusing to provide the ATU with information about Laureano's employment status it needed to determine whether an arbitration award was being implemented properly.

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<sup>2/</sup> We reject ATU's application for attorney fees and costs. Commercial Tp. Bd. of Ed. v. Commercial Tp. Supp. Staff Ass'n, App. Div. Dkt. No. A-1642-82T2 (12/8/83), aff'g P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982).

B. Take the following affirmative action:

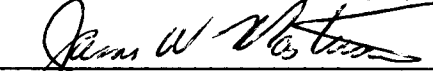
1. Provide ATU with all relevant information about Laureano's employment status needed to determine whether the Laureano arbitration award is being implemented properly.

2. Upon request and the showing of a proper nexus, and absent a compelling rationale for withholding information, provide the ATU with information it needs to properly process grievances, and information it needs to determine that arbitration awards are being implemented properly.

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioner Smith was not present.

DATED: Trenton, New Jersey  
May 15, 1989  
ISSUED: May 16, 1989

# 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 cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to provide ATU with information about Laureano's employment status it needed to determine whether an arbitration award concerning Jorge Laureano was being implemented properly.

WE WILL cease and desist from refusing to properly process grievances presented by the ATU, particularly by refusing to provide the ATU with information about Laureano's employment status it needed to determine whether an arbitration award was being implemented properly.

WE WILL provide ATU with all relevant information about Laureano's employment status needed to determine whether the Laureano arbitration award is being implemented properly.

WE WILL upon request and the showing of a proper nexus, and absent a compelling rationale for withholding information, provide the ATU with information it needs to properly process grievances, and information it needs to determine that arbitration awards are being implemented properly.

Docket No. \_\_\_\_\_

\_\_\_\_\_  
(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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.



H.E. NO. 89-27

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

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Respondent,

-and-

Docket No. CO-H-89-22

AMALGAMATED TRANSIT UNION,  
DIVISION 825,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that New Jersey Transit Bus Operations, Inc. violated the New Jersey Employer-Employee Relations Act when it failed and refused to provide the Amalgamated Transit Union, Division 825, with information it needed to determine whether an arbitration award was being implemented properly. The Hearing Examiner concluded that the ATU was neither required to obtain the information from the named grievant, nor to obtain a release from the grievant in order to obtain the information.

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.

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Docket No. CO-H-89-22

AMALGAMATED TRANSIT UNION,  
DIVISION 825,

Charging Party.

Appearances:

For the Respondent, W. Cary Edwards, Attorney General of  
New Jersey (Gail L. Menyuk, D.A.G.)

For the Charging Party, Weitzman & Rich, Esqs.  
(Richard P. Weitzman, of counsel)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public  
Employment Relations Commission ("Commission") on July 19, 1988 by  
Amalgamated Transit Union, Division 825 ("ATU") alleging that New  
Jersey Transit Bus Operations, Inc., ("Company") violated  
subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee  
Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").<sup>1/</sup> The ATU

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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. (5) Refusing to

alleged that the Company refused to provide it with information needed to properly represent employee Jorge Laureano. The ATU explained that pursuant to an arbitration award, Laureano was to be physically examined to determine his fitness for a cleaners job with the Company. The ATU alleged that the Company did not inform it of the results of the physical examination, making it unable to properly represent Laureano, and causing Laureano to threaten the ATU with legal action.

A Complaint and Notice of Hearing (C-1) was issued on August 29, 1988. The Company filed an Answer (C-2) on September 21, 1988. It argued that it provided some but not all of the requested information to the ATU; that Laureano had all the information but that the ATU neglected to obtain that information from him or obtain a release from him in order to obtain the information from the Company; that the Charge was moot because Laureano was offered a cleaner's job; and that the Charge was a misuse of the Commission's process.

A hearing was conducted in this matter on October 25, 1988. Both parties presented witnesses and argued orally.<sup>2/</sup> The

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1/ Footnote Continued From Previous Page

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/ The transcript which will be referred to as "T," was not received until December 19, 1988.

ATU waived filing a post-hearing brief. The Company filed a brief on January 20, 1989.

Although the ATU did not outline in the Charge the specific remedy it was seeking, in its opening argument at hearing the ATU requested a monetary remedy in addition to a finding that the Company violated the Act. The ATU is seeking reimbursement for its legal fees and cost of suit incurred in bringing and prosecuting this Charge. (T29-T30, T64-T65).<sup>3/</sup>

Based upon the entire record I make the following:

#### Findings of Fact

##### Background

Jorge Laureano commenced employment as a bus driver with Transport of New Jersey, the predecessor employer to the Company, in 1970. In 1979 Laureano was involved in an accident while driving a Company bus. In 1980 Laureano was terminated and the ATU, which represented him, filed a grievance. The grievance proceeded to arbitration and in 1982 the grievance was sustained. Laureano received back pay but was not ordered reinstated unless he passed a

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<sup>3/</sup> At the conclusion of his opening argument and prior to resting on his direct case, counsel for the ATU requested that the remedy here include legal fees and cost of suit (T30,T64). The ATU's counsel offered to give testimony or an affidavit of service at my discretion, to establish the value of the legal services and costs (T30, T64). At the conclusion of the ATU's case on direct, I indicated that I preferred an affidavit of service be filed rather than testimony to establish ATU fees and costs (T64-T65). At the conclusion of the hearing I indicated that the affidavit of service could be filed at any time (T108). Nevertheless, no affidavit of service was filed in this matter.

physical exam. In November 1982 Laureano failed the physical exam. In December 1982 a Superior Court Judge confirmed the arbitration award but did not order reinstatement and permitted the ATU to contest the exam results. In 1983 an ATU doctor concluded that Laureano was fit to return to work, but in September 1984 a third doctor concluded that Laureano was not fit to drive a bus (CP-1, R-4).

In December 1984 Laureano requested an assignment to a cleaners position pursuant to the collective agreement between the Company and ATU. In 1985 a grievance was filed regarding Laureano's right to bid on - and the Company's failure to properly examine and consider him for - a cleaners job. The ATU asked the Company to waive the preliminary steps and go directly to arbitration. When the Company did not respond, the ATU filed for arbitration (CP-1).

In December 1985 Laureano's private attorney, Carl Johnson, filed a civil action in Superior Court (R-4) against the Company seeking damages arising from Laureano's discharge as a bus driver.

In November 1987, an award issued (CP-1) regarding Laureano's arbitration over the cleaners job. The arbitrator awarded back pay, and held that Laureano be promptly examined to determine his fitness for a cleaners job. The arbitrator also held that:

Said exam must set forth objective findings of his inability to perform the cleaner's job in order to disqualify him. If there are no objective findings Mr. Laureano shall immediately be offered said job.

The award also provided for a second exam by a different doctor if objective findings were found by the first doctor (CP-1).<sup>4/</sup>

Pertinent Facts

1. The facts that caused the filing of the Charge began with the issuance of CP-1 on November 3, 1987. That award required the prompt scheduling of a physical exam for Laureano to determine his fitness for a cleaners job. By letter of December 3, 1987 (CP-2), the ATU's attorney asked the Company's attorney if the Company intended to comply with CP-1, and, if so, when the physical exam would be scheduled. The Company's attorney responded on December 9, 1987 (CP-3) that the Company would comply, and that either Laureano or Lou Rossi, ATU Division 825 President, would be contacted to schedule the physical exam.

Laureano was contacted and a physical exam was performed on January 19, 1988 (T67, T80). When Laureano arrived for the physical he was accompanied by his personal attorney, Carl Johnson. (T67)

Part of Laureano's physical included a urine screen test (T83). Laureano tested positive on that test, but was not disqualified from receiving a cleaners job (T81). Rather, the Company determined that further clarification of Laureano's medical condition was needed; thus, he was not told to report to work

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<sup>4/</sup> In February 1988 a summary judgment order (R-4A) was issued dismissing R-4 as a result of a satisfactory medical report finding Laureano unfit for a bus driver position. In March 1988 an amended arbitration award (CP-1A) was issued amending CP-1, but did not change the award relevant to this case.

(T81-T82). Instead, he was told to participate in the State Employee Advisory Service program (T44, T83).<sup>5/</sup>

In late January (sometime after January 19) or early February 1988, Rossi spoke to Elizabeth Rosenblatt Schneider, Company Manager of Medical Services, regarding Laureano's physical exam (T44, T82). Rossi asked why Laureano had not been qualified for the cleaners job, and Schneider told him that Laureano was in the EAS program to clear up a problem (T44, T82, T83). Schneider did not tell Rossi why Laureano was sent to the EAS, and did not tell him about the urine screen test (T83-T85). She believed that was confidential because it was Company policy not to release medical information unless the employee signed a release naming the person to whom the information could be given (T67, T82-T84). She did explain to Rossi that if he wanted to obtain medical information regarding Laureano, or copies of Laureano's medical documents, he (Rossi) needed to get Laureano to sign a medical release for Rossi (T68, T82-T84).<sup>6/</sup> Schneider concluded her conversation with Rossi

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<sup>5/</sup> Rossi testified that he State's program was called the EAP or Employee Assistance Program (T44). Actually, the official name is the Employee Advisory Service (EAS) which conducts programs to assist public employees in dealing with personnel problems that affect their ability to perform their jobs.

<sup>6/</sup> On rebuttal examination Rossi was asked if he recalled Schneider telling him that she required a release signed by Laureano in order for him (Rossi) to "give her that information." He responded "No, I don't." (T96) Even if the quoted portion of that question really was or should have

by referring him to George Corrigan, the Company's Manager of Labor Relations for further information regarding Laureano (T44, T82).

Rossi then contacted Corrigan and inquired about Laureano's status and why he was in the EAS. Corrigan confirmed that Laureano had gone to the EAS, but he gave no other information. When Rossi asked him when Laureano was going to return to work, Corrigan responded that he did not know (T44-T45).

After talking to Corrigan, Rossi contacted the ATU's attorney and told him that Corrigan would not provide information. By letter of February 22, 1988 (C-1A) the ATU's attorney asked the Company's attorney to advise him of the Company's position regarding Laureano's physical and his right to resume employment. After C-1A was sent, Rossi again asked Corrigan for information regarding Laureano, but no information was provided (T46). Rossi never contacted Laureano or Johnson to obtain a release for the medical information (T53, T60-T61).

2. Laureano never signed a release for Rossi to receive information, but on March 4, 1988 he did sign a release (R-2) to allow his personal attorney, Carl Johnson, to receive his medical

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6/ Footnote Continued From Previous Page

been, "receive that information," I do not credit Rossi's response to prove that Schneider did not tell him that a release was needed. Rossi was only asked "if he recalled" Schneider telling him about the release, and his quoted answer only indicates that he did not recall. Schneider testified on both direct and cross-examination that she told Rossi a release was needed, and noting Rossi's inability to recall, I credit her testimony. (T68, T82-T83).



information (T68-T69). That release was sent to Johnson by letter of April 15, 1988 (R-3).

Rossi had no further contact with the Company concerning Laureano until approximately June 17, 1988. On or about that day Rossi was notified by the Company that a check for Laureano's back pay was ready to be picked up and delivered. On June 17 Rossi delivered the check to Laureano at his work place (he was not a Company employee at that time) but Laureano was dissatisfied with the amount. Rossi also notified Laureano that he owed the ATU union dues. Laureano refused to accept the check, and told Rossi that he thought the ATU was only interested in the union dues (T46-T48). Rossi then advised Corrigan that Laureano rejected the check, and Corrigan indicated that he would get back to him (Rossi) at a later time (T48).

Rossi then advised the ATU's attorney about the events of June 17, which prompted a letter by the ATU's attorney to Corrigan on June 20, 1988 (C-2A). In C-2A the ATU advised Corrigan how much Laureano owed in union dues, and asked him to deduct the dues from any back pay check Laureano received. The ATU also asked Corrigan to advise it of Laureano's status; when he was examined; the results of the examination; any conditions he had to fulfill before reporting for work; and what occurred thereafter. Rossi needed further information from the Company regarding Laureano in order to properly calculate his back pay (T63).

On June 21, 1988 Johnson sent the ATU's attorney a letter (CP-4) regarding the events of June 17. Johnson first explained that Rossi should not contact Laureano directly, then he asked why Laureano did not receive a higher amount on the check shown him on June 17. Johnson further explained that he had never received any notice from the Company that Laureano had failed a medical exam. He asked the ATU to advise him if it had received any such notice. He then asked the ATU when Laureano would receive payment for certain time periods.

Johnson then questioned the ATU about the request for union dues and said the following:

Also delivered to Mr. Laureano was a letter from the union stating that if Mr. Laureano did not pay \$1,553.00 by June 24, 1988 "failure to become a member in good standing ATU Local 825, will result in the suspension of work, from N.J. Transit." Please furnish me a copy of the union contract which permits N.J. Transit Bus Operations, Inc., to terminate an employee for failure to pay union dues. Secondly, please explain why Mr. Laureano was only given seven days to make payment when the pay check which the union held onto for one month is not correct. It is expected that the appropriate back pay will be obtained from Mr. Laureano by the union or the appropriate unfair labor practice will be filed against the union. Thirdly, any further threats against my client to terminate his employment for failure to pay union dues when the union has acted improperly in this matter will result in an unfair labor practice.

Please furnish a copy of Arbitrator Scott E. Tanne's decision which permitted N.J. Transit Bus Operations, Inc. to deduct interim earnings from the back pay award. It is strongly suggested that the union waive any back pay owed by Mr. Laureano due to the union's negligence, not pursuing Mr. Laureano's grievance and arbitration in a timely matter [sic] which resulted in Mr. Laureano being penalized and not

receiving any back pay from the period of Dec. 1984 through the end of May 1985.

Rossi interpreted CP-4 as a threat of legal action against the ATU (T55-T57). No such legal action, however, has been instituted (T57-T58).

3. Later in June 1988 Johnson contacted the Company's Personnel Department regarding Laureano, and spoke to employment recruiter Kim Madlinger. Madlinger was not familiar with the Laureano matter and contacted Personnel Director, Jim Truman. Truman instructed Madlinger to offer Laureano a cleaners job at \$6.73 per hour (T88). By letter of June 27, 1988 (R-5), from Madlinger to Johnson, the Company offered Laureano a cleaners job. Johnson was asked to advise Madlinger if the offer was acceptable. Madlinger advised Corrigan's office that the employment offer was made (T89).

Johnson responded to R-5 by letter of July 12, 1988 (R-6). He argued that the rate of pay should be \$9.96 per hour and asked Madlinger to verify that amount. He also asked Madlinger to recalculate the back pay owed Laureano based upon \$9.96 per hour.

Madlinger discussed R-6 with Corrigan who authorized her to offer Laureano \$9.96 per hour for the cleaners job (T90-T95). But Corrigan instructed Madlinger to tell Johnson that any back pay issues had to be referred to him (T90). As a result of that discussion Madlinger, by letter of August 1, 1988 (R-7), advised Johnson that Laureano would receive \$9.96 per hour for the cleaners job, and she referred the back pay issue to Corrigan. She also

asked Johnson to advise her whether Laureano would accept the cleaners job. As of the hearing date, neither Johnson nor Laureano contacted the Company to accept the cleaners job (T91).

The Company did not advise Rossi in June 1988 that it was offering Laureano a job, nor did it provide him with copies of R-5, R-6 or R-7 (T98-T99). But by letter of August 23, 1988 (R-1) Corrigan advised Rossi that Laureano had been offered a job in June, but that neither Johnson nor Laureano had accepted the offer. Corrigan asked Rossi to ascertain whether Laureano was interested in the position.

Corrigan also told Rossi in R-1 that a correct back pay check for Laureano was available in the Company's office and that Rossi could pick it up. Rossi did not contact Laureano after receiving R-1, but he did contact the ATU attorney regarding that letter (T51-T52).

#### Analysis

The Company violated subsection 5.4(a)(5) and derivatively (a)(1) of the Act by withholding information from the ATU after it had been requested regarding the results of Laureano's physical examination, and by failing to advise the ATU in June 1988 that Laureano was being offered a cleaners job. The Company's argument that the ATU could have obtained the same information from Laureano or his personal attorney was not an acceptable defense to its responsibility to provide information to the majority representative.

The Commission has established that a public employer must supply information on request to a majority representative of its employees if the information is potentially relevant and will be of use to the union in carrying out its statutory duties. Shrewsbury Bd.Ed., P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981)(Shrewsbury); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987) affirming H.E. No. 87-65, 13 NJPER 423 (¶18164 1987)(N.J. Transit); State of New Jersey, P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), mot. for recon. den., P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd App. Div. Dkt. No. A-2047-87T7 (12/27/88).<sup>7/</sup>

The information regarding Laureano's fitness to perform a cleaners job, and the Company's actual offer of a job, was relevant, indeed necessary, for the ATU to properly carry out its duty of representing Laureano concerning the grievance to get him a cleaners job. Although the record is silent as to who actually filed that grievance (Laureano or the ATU), it was the ATU that filed for arbitration and actively represented Laureano in the arbitration proceeding.<sup>8/</sup> In fact, the arbitration award itself required the

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<sup>7/</sup> See also State of New Jersey, P.E.R.C. No. 87-149, 13 NJPER 504, 505 (¶18187 1987); City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11, 12 (¶20003 1988).

<sup>8/</sup> Although Johnson, Laureano's personal attorney, was present at the arbitration the record does not reflect whether he actually participated in the arbitration. The record does show, however, that the ATU's attorney, and Rossi, actively participated in the arbitration on Laureano's behalf.

ATU's participation in scheduling a second exam in the event the first exam contained objective findings of Laureano's inability to perform the job. Item 6 of the award said:

The Company and union shall, within 30 days, after receipt of the first exam, agree upon and schedule an independent exam by a neutral physician.

The ATU had to know the results of the first exam in order to know whether it was necessary to arrange a second exam. By not releasing the complete results of the exam to the ATU, the Company was preventing it from properly performing its statutory duty to fairly represent Laureano.

The Company's decision to withhold information from the ATU was based upon certain legal misconceptions. First, the Company developed a policy requiring employees to sign release forms in order to release employee medical information to their union or attorneys. Although the Company may have had the right to formulate such a policy for its own purposes, it did not show that the policy was required by State statutory or decisional law. The obligation to provide information to the ATU, however, is based upon our Act and the Commission's interpretation of the rights and obligations therein. Thus, the Company's release form policy did not preempt its obligation to provide information to the ATU, and the Company cannot rely on that policy as a defense to its actions. Shrewsbury.

Second, Laureano was entitled to retain his own attorney and to direct the Company and ATU to only contact him through his attorney. The arbitration award in CP-1, however, was an award on

behalf of the ATU from which Laureano received a benefit. With respect to the implementation of the arbitration award, it was the Company's obligation to communicate with the ATU to ensure the proper implementation of the award. The Company certainly had the right to communicate the exam results to Laureano or to Johnson on Laureano's behalf, and in that instance may have had the right to require Johnson to obtain a release from Laureano. But the Company had an obligation to communicate those exam results directly to the ATU regardless of any prior notification to Laureano, and whether or not Laureano had signed a release for the ATU. Shrewsbury; N.J. Transit.

Similarly, while the Company had the right to communicate a job offer to Johnson on Laureano's behalf, it had the obligation to communicate the offer to the ATU. The Company did not satisfy its duty to provide information to the ATU by merely providing the information to Laureano. The ATU was not required to seek out Laureano to obtain the information.

Both Shrewsbury and N.J. Transit are relevant to the facts here. In Shrewsbury an individual employee filed a grievance over an involuntary transfer. The employee and employer subsequently settled the grievance. The union requested the employer to provide it with copies of all correspondence regarding the grievance, but the employer refused in substantial part because the employee did not consent to the disclosure of information. The Commission held that even where the employee filed and processed the grievance, the

union had the right of access to information pertaining to grievances arising under the terms of the union's and employer's collective agreement. The employee's consent was unnecessary. Shrewsbury at 236.

Similarly here, Laureano's consent or release of information was not necessary for the ATU to receive information regarding the grievance filed pursuant to its collective agreement. The Company in its post-hearing brief attempted to distinguish Shrewsbury from the facts here by arguing that the ATU did not show that it could not obtain the information from Laureano. That argument lacks merit. The ATU cannot be required to seek out Laureano to obtain information that the Company is required to provide to the majority representative.

In N.J. Transit the Commission held that the Company violated the Act by failing to provide the ATU with information it needed to process a grievance. The Commission held that the ATU was entitled to the results of a urinalysis test. The result must be the same here. The ATU needed to know the results of the urinalysis test to determine what additional action it had to take to have the arbitration award implemented.

The Company's attempt to distinguish N.J. Transit also lacks merit. The Company argued that this case does not concern the processing of a grievance, but only the implementation of an arbitration award. Additionally, it argued that the ATU could have obtained the required information from Laureano.



Neither argument has merit. The Company's logic that the implementation of an arbitration award is somehow not part of the grievance processing procedure is entirely misplaced. The implementation of an arbitration award is a vital part of the processing of the grievance. Where the award, as here, specifically provides for alternative procedures depending upon the results of a mandated physical exam, it is vital that the union be provided with the information.

Finally, the Company's argument that the Charge should be dismissed because Laureano was offered a job, and that the Charge was a misuse of the Commission's process are without merit. The Company's subsequent job offer does not negate its prior unlawful conduct. Besides, the Company's failure to communicate the job offer to the ATU on or about the time the offer was made to Johnson, was itself a violation of the Act.

In accordance with the above analysis, the Company's failure to provide the ATU with the requested information violated subsection 5.4(a)(5) and derivatively (a)(1) of the Act.

#### Remedy

The posting of the attached notice is the appropriate remedy. The ATU's request for attorney fees and costs is denied. See Commercial Tp. Bd.Ed. v. Commercial Tp. Supp. Staff Assoc., App.

Div. Dkt. No. A-1642-82T2, 10 NJPER 78 (¶15043 12/8/83); State of N.J., P.E.R.C. No. 87-88, 13 NJPER 117 (¶18051 1987).<sup>9/</sup>

Based upon the above findings and analysis, I make the following:

Recommended Order

I recommend that the Commission ORDER:

A. That the Company cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to provide the ATU with information it needed to determine that an arbitration award issued on behalf of Jorge Laureano was properly implemented.

2. Refusing to properly process grievances presented by the ATU, particularly by refusing to provide the ATU with information it needs to determine that arbitration awards are properly implemented.

B. That the Company take the following affirmative action:

1. Provide the ATU, upon request, with information regarding Laureano's acceptance or rejection of the Company's offer of employment for a cleaners position.

2. Upon request and the showing of a proper nexus, and absent a compelling rationale for withholding information,

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<sup>9/</sup> The ATU's decision not to submit an affidavit of service was not the basis for denying the request for attorney fees and cost of suit.

provide the ATU with information it needs to properly process grievances, and information it needs to determine that arbitration awards are being implemented properly.

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

  
Arnold H. Zudick  
Hearing Examiner

Dated: March 13, 1989  
Trenton, New Jersey

# 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:

### Notice

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to provide the ATU with information it needed to determine that an arbitration award issued on behalf of Jorge Laureano was properly implemented.

WE WILL cease and desist from refusing to properly process grievances presented by the ATU, particularly by refusing to provide the ATU with information it needs to determine that arbitration awards are properly implemented.

WE WILL, upon request, provide the ATU with information regarding Laureano's acceptance or rejection of an offer of employment for a cleaners position.

WE WILL, upon request and the showing of a proper nexus, and absent compelling reasons to withhold information, provide the ATU with information it needs to properly process grievances, and information it needs to determine that arbitration awards are being implemented properly.

Docket No. CO-H-89-22

New Jersey Transit Bus Operations, Inc.  
(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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.