D.U.P. NO. 2001-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF TRANSPORTATION),

Respondent,

-and-

Docket No. CO-2000-351

C.W.A., AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices finds that the charging party, CWA, AFL-CIO, is the certified majority representative as set forth on the face of the charge and therefore has standing to file this charge alleging a violation of 5.4a(5) of the Act.

The Director dismisses CWA, AFL-CIO's allegations that the employer violated 5.4a(5) of the Act when it discontinued the assignment of a state vehicle for the use of a negotiations unit employee without negotiating with CWA. The Director finds that once the employee was reassigned to a single work location, he would have been using the state vehicle for commuting purposes alone and that the employer was not obligated to negotiate over its decision to restrict the employees use of the vehicle since that decision is not a negotiable term and condition of employment.

The Director issues a complaint on the CWA allegation that the State violated 5.4a(1) and (3) of the Act by restricting the employee's use of the state vehicle for allegedly discriminatory and retaliatory reasons as a result of CWA's processing grievances on behalf of the employee. The Director finds that these allegations, if true, may constitute unfair practices within the meaning of the Act.

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Appearances:

For the Respondent,
John J. Farmer, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party,
James H. Dennis, Jr., Representative

DECISION

On May 18 and 30, 2000, the Communication Workers of America, AFL-CIO (CWA) filed an unfair practice charge and amended charge, respectively, with the Public Employment Relations Commission (Commission) against the State of New Jersey, Department of Transportation (State or DOT). CWA alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act); specifically 5.4a(1), (3) and (5)[1/] when

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

on April 16, 2000 it restricted employee William Farrell from using his assigned State car to commute between his home and his work site. CWA claims that the State's action was in retaliation for grievances CWA filed on Farrell's behalf in the autumn of 1999. CWA also alleges that the State violated 5.4a(5) of the Act by unilaterally changing Farrell's terms and conditions of employment when it terminated his use of the State car.

The State asserts that the instant charge was filed by a representative of CWA Local 1032, not CWA International, the certified negotiations representative for State employees. The State maintains that since CWA Local 1032 is not the majority representative, it lacks standing to allege a violation of 5.4a(5). The State also argues that CWA has not alleged in its charge the specific protected activity in which Farrell engaged that led to the alleged retaliation. Finally, the State argues that pursuant to a settlement of the grievance in December 1999, Farrell was granted permission to begin and end his workday at the DOT Freehold Office. Since Farrell was no longer required to report to and from DOT field

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1/ Footnote Continued From Previous Page

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.

locations directly from his home, the State contends that it could not justify his assignment of a State car purely for commuting purposes.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated April 3, 2001, I advised the parties that I was not inclined to issue a complaint on the 5.4a(5) allegation in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party has responded. Based upon the following, I find that the complaint issuance standard has not been met as to the alleged violation of 5.4a(5) of the Act.

CWA, AFL-CIO, is the certified employee representative of the State's higher level supervisors. CWA and the State are parties to a collective negotiations agreement which covers the period July 1, 1999 through June 30, 2003. Article IV of the parties' agreement provides a grievance procedure.

William Farrell is a regional equipment supervisor employed by the State DOT and is a member of CWA's higher level unit. Prior to April 16, 2000, Farrell was required to report from his home to DOT field offices in his assigned region and to return to his home

from those field offices. He was assigned a State vehicle which he used, in part, for commuting between his home and the field offices.

In the autumn of 1999, CWA filed two grievances on Farrell's behalf. On December 15, 1999, CWA and DOT reached a settlement of the grievances, which provided that Farrell would start and end his workday at the DOT Freehold office. By letter dated March 2, 2000, the DOT regional maintenance engineer informed Farrell that, because he was now beginning and ending his day at the Freehold office and working normal work hours pursuant to the December grievance settlement, the State could not justify his continued assignment of a State vehicle to commute. Therefore, effective March 13, 2000, Farrell's State car was taken away. A subsequent letter to Farrell from the executive director of central regional operations dated April 16, 2000 describes Farrell's reassignment from his regular supervisory duties to special projects in DOT effective April 24, 2000. As set forth in the parties' grievance settlement, the letter reflected that Farrell's work assignment required him to start and end his day at the Freehold office.

The parties dispute whether CWA or Farrell were warned that Farrell would lose the use of his State car as a consequence of settling the grievance by Farrell's reassignment to the Freehold office.

ANALYSIS

Standing Issue

The State asserts that a representative of CWA Local 1032 filed the instant charge and that Local 1032 does not have standing to charge a violation of 5.4a(5) of the Act. It states that only the CWA International as the certified negotiations representative has standing to file an a(5) charge. However, I find that, contrary to the State's assertion, the face of the charge names "CWA, AFL-CIO" as the Charging Party, not CWA Local 1032. Moreover, the charge was signed by a CWA national representative, not a Local 1032 representative.2/ Therefore, I find the Charging Party in the instant case is the certified majority representative and, as such, has standing to file a charge alleging a violation of 5.4a(5) of the Act.

5.4a(5) Claim

CWA alleges that the State violated 5.4a(5) of the Act when it changed Farrell's working conditions by taking away his State car without negotiations.

In Morris County Park Comm. and Morris Council No. 6, NJCSA, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984), the Commission held that a public employer has a managerial prerogative to prohibit or limit the use of its vehicles for employee

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2/ We generally presume that the representative signing on behalf of a filing party is authorized to act on that party's behalf unless we are informed otherwise.

commutation. Therefore, the employer is not obligated to negotiate over its decision to restrict the employee's use of its cars, since this is not a negotiable term and condition of employment. See also New Jersey Turnpike Authority, P.E.R.C. No. 93-72, 19 NJPER 154 (¶24077 1993), adopting H.E. No. 93-1, 18 NJPER 381 (¶23171 1992).

In this case, once Farrell was no longer required to report to DOT field offices from his home, he would have been using the State vehicle for commuting purposes only. Applying Morris County, the State can exercise its prerogative to prohibit Farrell's use of a State vehicle for commuting purposes without incurring a negotiations obligation with CWA. Accordingly, I find that the State did not commit a violation of 5.4a(5) when it discontinued Farrell's car assignment without negotiations.3/

Therefore, based upon the foregoing, I find that the Commission's complaint issuance standard has not been met with regard to the alleged violation of 5.4a(5) of the Act and I decline to issue a complaint on that allegation.

As to the allegations that the State's restriction on Farrell's use of the State vehicle was discriminatory and done in

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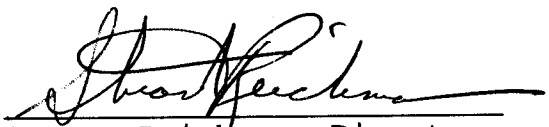
3/ In prior Commission cases, the employer effected an across-the-board cut in commuter car use, triggering a demand by the union to negotiate offsetting compensation for the economic impact to unit employees as a class. Here, CWA made no such demand to negotiate offsetting compensation. In any event, unlike Morris County and New Jersey Turnpike, the extent to which the use of State cars for commuting could be considered an economic benefit to unit employees is likely subject to existing practices, as well as State and DOT regulations.

retaliation against the CWA's processing of Farrell's grievances in violation of 5.4a(1) and (3) of the Act, I find that these allegations, if true, may constitute unfair practices within the meaning of the Act. I will issue a complaint on that issue.

ORDER

A complaint and notice of hearing will issue with regard to the alleged violations of 5.4a(1) and (3) of the Act. All other allegations of the charge are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: April 19, 2001
Trenton, New Jersey