

P.E.R.C. NO. 86-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS OPERATIONS,
INC.,

Respondent,

-and-

NEW JERSEY JOINT CONFERENCE BOARD,
A.T.U.,

Docket No. CO-84-154-116

Charging Party,

-and-

LOCAL 225, TRANSPORT WORKERS UNION
OF AMERICA,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission holds that New Jersey Transit Bus Operations, Inc. violated the New Jersey Employer-Employee Relations Act when it recognized Local 225, Transport Workers Union as majority representative of certain employees at the Vince Lombardi Park & Ride facility and illegally withdrew recognition of the New Jersey Joint Conference Board, A.T.U. A Hearing Examiner recommended this finding and the Commission, in the absence of exceptions, adopts it.

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Intervenor.

Appearances:

For the Respondent, Hon. Irwin I. Kimmelman, Attorney
General (Jeffrey Burstein, Deputy Attorney General)

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

For the Intervenor, O'Donnell & Schwartz, Esqs.
(Malcolm A. Goldstein, of Counsel)

DECISION AND ORDER

On December 12, 1983, the New Jersey Joint Conference Board, ATU ("ATU") filed an unfair practice charge against New Jersey Transit Bus Operators, Inc. ("NJTB") with the Public Employment Relations Commission. The charge alleged that the NJTB violated subsections 5.4(a)(1), (2), and (5)^{1/} of the New Jersey

^{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 (footnote continued on next page)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it withdrew recognition from ATU and conferred recognition upon Local 225, Transport Workers Union of America, AFL-CIO ("TWU") for purposes of representing NJT employees working at the Vince Lombardi Park and Ride.^{2/}

On March 8, 1984, a Complaint and Notice of Hearing was filed. NJT filed an Answer admitting that it had recognized TWU, but denying that it had done so illegally or that it had previously recognized ATU.

On May 29, 1984, Hearing Examiner Charles A. Tadduni conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but NJT and ATU filed post-hearing briefs.

On May 31, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-46, 11 NJPER ____ (¶ ____ 1985). He found that NJT had recognized ATU and had illegally withdrawn recognition of ATU in favor of TWU. He recommended an order requiring NJT to withdraw recognition from TWU, to negotiate with ATU, and to post a notice of its violation and remedial action taken.

The Hearing Examiner served his report on all parties and advised them that exceptions, if any, were due by June 14. NJT

(footnote continued from previous page)

act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; 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."

^{2/} TWU intervened in this case.

received one extension until June 24, but subsequently informed the Commission that it would not file exceptions. Neither ATU or TWU filed exceptions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-10) are accurate. We adopt and incorporate them here. Under all the circumstances of this case, We agree with the Hearing Examiner that NJT violated subsections 5.4(a)(1), (2), and (5) and that the recommended remedial action should be taken.

ORDER

Respondent NJT 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 unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

2. Dominating or interfering with the formation, existence or administration of any employee organization, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

3. Refusing to negotiate in good faith with the ATU for employees in the unit at Vince Lombardi Park & Ride, or refusing to process grievances presented for Lombardi employees by the ATU.

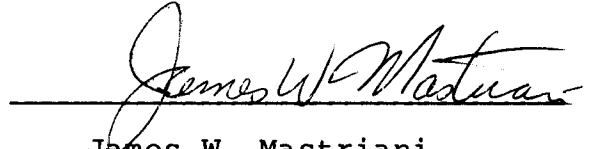
B. Take the following affirmative action:

1. Forthwith withdraw recognition from Local 225, Transport Workers Union of America, AFL-CIO, with respect to the unit of employees at Vince Lombardi Park & Ride, but maintain the status quo as to the employees there presently employed until such time as negotiations hereinafter ordered alter the said status quo.

2. Upon demand, negotiate in good faith with the N.J. Joint Conference Board, ATU with respect to terms and conditions of employment for the employees presently at the Vince Lombardi Park & Ride including, but not limited to, the necessary and appropriate job classifications, full-time or part-time, required to satisfy the terms of the contract (Alternative B) between N.J. Transit Bus Operations, Inc. and the New Jersey Turnpike Authority; said negotiations to continue until an agreement is reached or until the Commission's impasse procedures are exhausted.

3. Post at 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 NJT has taken to comply herewith.

A handwritten signature in cursive script, reading "James W. Mastriani", is written over a horizontal line.

James W. Mastriani

Chairman

Chairman Mastriani, Commissioners Johnson, Wenzler, Hipp and Suskin voted in favor of this decision. None opposed. Commissioner Graves did not participate.

DATED: Trenton, New Jersey

July 15, 1985

ISSUED: July 16, 1985

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 our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

WE WILL cease and desist from dominating or interfering with the formation, existence or administration of any employee organization, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

WE WILL cease and desist from refusing to negotiate in good faith with the ATU for employees in the unit at Vince Lombardi Park & Ride, or refusing to process grievances presented for Lombardi employees by the ATU.

WE WILL forthwith withdraw recognition from Local 225, Transport Workers Union of America, AFL-CIO, with respect to the unit of employees at Vince Lombardi Park & Ride, but maintain the status quo as to the employees there presently employed until such time as negotiations hereinafter ordered alter the said status quo.

WE WILL upon demand, negotiate in good faith with the N.J. Joint Conference Board, ATU with respect to terms and conditions of employment for employees presently at the Vince Lombardi Park & Ride including, but not limited to the necessary and appropriate job classifications, full-time or part-time, required to satisfy the terms of the contract, (Alternative B) between N.J. Transit Bus Operations, Inc. and the New Jersey Turnpike Authority; said negotiations to continue until an agreement is reached or until the Commission's impasse procedures are exhausted.

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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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-and-

NEW JERSEY JOINT CONFERENCE
BOARD, A.T.U.,

DOCKET NO. CO-84-154-116

Charging Party,

-and-

LOCAL 225, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO.

Intervenor.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated §§5.4(a)(1), (2) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally and without notification to the ATU withdrew its de facto recognition of the ATU as the collective negotiations representative for a unit of employees which included field service employees at the Vince Lombardi Park & Ride in October 1983. Thereafter, Respondent recognized and negotiated with the Intervenor as to the terms and conditions of employment for the employees at Vince Lombardi Park & Ride. The Hearing Examiner determined that the Respondent unlawfully assisted the Intervenor and interfered with the formation, existence and administration of the Charging Party and, additionally, acted in bad faith. See, Ana Colon, Inc., 266 NLRB No. 112, 112 LRRM 1434 (1983).

The Hearing Examiner's recommended order requires that the Respondent withdraw recognition immediately from the Intervenor and maintain the status quo -- regarding terms and conditions of employment -- at Vince Lombardi Park & Ride until such time as negotiations with the ATU result in a change therein. Further, the Respondent was ordered to negotiate in good faith with the ATU with

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Appearances:

For the Respondent
Honorable Irwin I. Kimmelman, Attorney General
(Jeffrey Burstein, D. A. G.)

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

For the Intervenor
O'Donnell & Schwartz, Esqs.
(Malcolm A. Goldstein, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public
Employment Relations Commission (hereinafter the "Commission") on

December 12, 1983, by the New Jersey Joint Conference Board, ATU (hereinafter the "ATU") alleging that New Jersey Transit Bus Operations, Inc. (hereinafter "NJT") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that NJT, on January 31, 1983, began operations at Vince Lombardi Park & Ride in Ridgefield, New Jersey; that NJT employed two ticket agents, who were paid pursuant to the collective negotiations agreement between ATU and NJT; that NJT recognized ATU as the collective negotiations representative for the said employees; that on May 2, 1983, NJT submitted a bid to the New Jersey Turnpike Authority (hereinafter the "Turnpike") to continue to provide service at the Vince Lombardi Park & Ride facility; that on September 23, 1983, the Turnpike awarded the Vince Lombardi Park & Ride contract to NJT, after which NJT unilaterally determined to assign part-time attendants to staff the Vince Lombardi Park & Ride during the morning rush hour; that NJT transferred two ticket agents covered by the ATU agreement to other positions with NJT; and finally, that NJT assigned the work at the Vince Lombardi Park & Ride to certain employees currently stationed at the Fairview Garage, which is represented by Local 225, Transport Workers Union of America, AFL-CIO (hereinafter the "TWU"), notwithstanding that ATU had been recognized as the collective negotiations representative by NJT at the Vince Lombardi Park & Ride, supra; all

of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 8, 1984. Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 29, 1984, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and NJT and ATU filed post-hearing briefs by October 19, 1984.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of NJT and ATU, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

^{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; "(2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

FINDINGS OF FACT

1. New Jersey Transit Bus Operations, Inc. is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The New Jersey Joint Conference Board, ATU and Local 225, Transport Workers Union of America, AFL-CIO are public employee representatives with the meaning of the Act, as amended, and are subject to its provisions.

3. The New Jersey Transit Corporation was created pursuant to the Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq. Pursuant to this act, the New Jersey Transit Corporation, on October 14, 1980, acquired Transport of New Jersey and its subsidiary, Maplewood Equipment Company. Both of these latter companies became wholly-owned subsidiaries of the corporate entity now known as New Jersey Transit Bus Operations, Inc. ("NJT" herein; Tr 86). Due to this history, three unions represent bus drivers and field salaried employees of NJT, namely, the ATU, the TWU and the United Transportation Union ("UTU") (TR 94, 102, 103).

4. Manhattan Transit Company was until January 28, 1983, a private carrier whose operations included express bus service between the Vince Lombardi Park & Ride facility in Ridgefield, New Jersey and New York City. On January 25, 1983, NJT learned that Manhattan Transit intended to file for bankruptcy and discontinue all commuter bus operations on January 28, 1983 (Tr 87, 88, 93). As

a result, NJT reached an agreement with the New Jersey Turnpike Authority (hereinafter the "Turnpike") that it be allowed to "step into the shoes" of Manhattan Transit and continue to operate the Vince Lombardi Park & Ride on a "temporary basis" (Tr 88). NJT advised both the ATU and the TWU of the temporary nature of NJT's operation of the Vince Lombardi Park & Ride due to the Turnpike's intention to receive public bids from a variety of carriers for the permanent contract (Tr 125-127).^{2/} The Hearing Examiner credits the testimony of Butler that he told Thomas Huntsinger of the ATU of the temporary nature of NJT's operation of the Vince Lombardi Park & Ride (Tr 125), notwithstanding that Louis Snyers, an ATU business agent, denied having been so informed (Tr 59).^{3/}

5. It was stipulated that NJT began operating the Vince Lombardi Park & Ride on a temporary basis on January 31, 1983, and that it decided that two employees were required to sell bus tickets there (Tr 5). Butler testified that NJT decided to utilize two

^{2/} Edward F. Butler Jr., Director of Legal Affairs for NJT, testified without contradiction that neither he nor anyone else from NJT ever executed any formal notice recognizing ATU as the majority representative for the employees at the Vince Lombardi Park & Ride (Tr 95).

^{3/} In crediting Butler, the Hearing Examiner notes that the ATU, in litigating this matter, failed to rebut Butler's testimony by producing Huntsinger.

employee members of ATU because "... the only people we had that could sell tickets were members of the Amalgamated Transit Union..." (Tr 108).

6. The collective negotiations agreement between NJT and ATU, covering "field salaried employees," was effective from March 24, 1981 to March 23, 1984, and contains a classification "Ticket Agent B" (J-1, p.15).^{4/} It was stipulated that the two employees selected to staff the Vince Lombardi Park & Ride, supra,^{5/} were paid pursuant to J-1 and compensated initially at \$393.20 per week until March 26, 1983, after which their salary was increased to \$407.15 per week pursuant to the provisions of J-1, the ATU contract for field salaried employees. (Tr 5).

7. Under the ATU's "Field Salaried Employees" agreement, NJT is required to post job vacancies for bidding (J-1, p.9; Tr 32). Butler had agreed that such posting and bidding would take place (Tr. 112, 113). In accordance therewith, a notice was posted

4/ The operative collective negotiations agreement between NJT and TWU was effective from May 1, 1981 to April 30, 1984 (J-2). This agreement, in Article VIII, contains job classifications and a wage structure for "field salaried employees" but does not contain a comparable classification to "Ticket Agent B" in J-1 (see J-2, pp. 45, 46).

5/ One of the two positions was filled by a former Manhattan Transit employee, Mooni Brown, who was not then a member of the ATU but who thereafter joined it. The other position was filled through the transfer of a ticket seller at the Port Authority Bus Terminal in New York who was, and remained, a member of the ATU.

on February 24, 1983, for "Ticket Agent B" at the Vince Lombardi Park & Ride, which notice indicated that as a result of recent bidding, M. Mapp and P. Costella had successfully bid for the two Ticket Agent B positions at Vince Lombardi Park & Ride (P-1). Thus, employee Brown was bumped and assigned to a new location (Tr 36, 37).

8. On and after January 1983, the ATU provided normal representation service for the two employees at Vince Lombardi Park & Ride, including the processing of a disciplinary grievance on behalf of Costella (Tr 37, 38). Also, NJT checked off union dues and remitted them to ATU in accordance with J-1 (Tr 34).

9. In late May 1983, the Turnpike awarded NJT the contract for Vince Lombardi Park & Ride, after having received bids from private carriers as well as NJT (Tr 89). After the Governor's veto of the bid, the Turnpike requested NJT to continue providing service at Vince Lombardi Park & Ride on a temporary basis (Tr 89, 90). In late July 1983, the Turnpike issued a second request for bids, which was subsequently cancelled. Finally, a third request for bids was issued in August 1983, with bids due by September 23, 1983 (J-3). This third request required each bidder to provide a separate price quotation for two alternative methods of service operation of the Lombardi Park & Ride. The second method, "Alternative B," differed from the prior operation of the Vince Lombardi Park & Ride, both by Manhattan Transit and NJT, in that it required the operator to operate and staff entrance booths to the

facility with additional employees for the sale of bus tickets (Tr 91). NJT was awarded the contract pursuant to "Alternative B" and commenced operations on November 15, 1983 (Tr 5, 6, 91, 92).

10. In mid-Summer 1983, Joyce Gallagher, the Director of Port Authority operations, advised ATU agent Snyers that there "may be some changes" at Vince Lombardi Park & Ride due to the bidding requested by the Turnpike and that "they were going to have the booths outside and change the operation" (Tr 39). Snyers testified without contradiction that there was no indication by Gallagher that a "changing of the union was ever considered" (Tr 40). Snyers' first real knowledge that a change in operational methods was to take place on November 15, 1983, occurred when he saw a notice posted on a booth at the Vince Lombardi Park & Ride on November 10th (P-2; Tr 40).

11. During the week following November 10, Snyers met with NJT agent Butler. Butler asked if Snyers would agree to the use of part-time employees to staff the Lombardi operation and received a negative response (Tr 41, 42). Snyers stated that the ATU agreement did not provide for part-time employees (Tr 42). On either the same day or the following day, Butler informed Snyers that he had received a letter from TWU, and that TWU had agreed to the use of part-time employees at Lombardi as a result of which the "ATU people" were not going to be at Vince Lombardi Park & Ride on November 15 (Tr 43, 44).

12. Shortly after the Turnpike awarded the bid to NJT on September 23, 1983, Butler received a telephone call from Frank A. Caiazzo, the President of TWU Local 225, in which Caiazzo stated that he had learned that the bid was awarded to NJT and he wanted to assert his claim to representation at the Vince Lombardi Park & Ride location (Tr 95, 96). TWU had informed NJT of its claim to jurisdiction at Vince Lombardi Park & Ride soon after NJT commenced operations on a temporary basis early in 1983 (Tr 136, 137). NJT had never informed ATU of this rival claim. At the request of Butler, Caiazzo put his claim in writing on September 29, 1983 (R-1). During October 1983, Butler met with Caiazzo and conducted negotiations concerning the terms and conditions of employment of the employees to be assigned to the Vince Lombardi Park & Ride on and after November 15, 1983 (Tr 119). During this period, neither Butler nor anyone else from NJT ever notified ATU of the decision to negotiate with TWU (Tr 119).

13. In the negotiations with TWU, Butler explained that NJT did not need ticket sellers under the "Alternative B" operation and that most of the employees would be parking lot attendants (Tr 98). Such a new classification was ultimately negotiated and agreed to by NJT and TWU in an amendment to J-2; said amendment was executed on November 28, 1982 (R-2). Butler, in defending his decision to recognize and negotiate with TWU for the employees at the Vince Lombardi Park & Ride, testified that because all of the buses utilized for the Vince Lombardi operation originated from the Fairview Garage, over which TWU has jurisdiction, NJT felt that TWU

"had a valid claim" to the work (Tr 100, 101). While Butler also testified that the general practice between NJT and its unions had been to place certain field salaried employees in the negotiations unit found at the garage where such field work originates (Tr 102-107), he acknowledged on cross-examination that there has never been a practice of assigning ticket sellers on the basis of the location of the origination of the buses (Tr 124).

14. Somewhat consistent with the "general practice" testified to by Butler, supra, ATU Representative Snyers testified to a specific example of this, involving field salaried employees classified as "station starters", who work at the Port Authority terminal in New York City, where the ATU, TWU and UTU all have jurisdiction (Tr 51, 103). When NJT transferred a bus line from the Madison Avenue Garage, which was UTU, to the Market Street Garage, which was ATU, the station starter, who was a member of UTU (at Madison Avenue) was transferred to ATU. According to Snyers, the starter "Moved over with the work that came over" (Tr 52, 53). However, ATU was careful to point out that the "majority of runs" practice has only been applied to allocate station starters at the Port Authority. Butler confirmed this testimony of Snyers (Tr 103-105).^{6/}

^{6/} ATU is contending, in a separate proceeding, that it should have jurisdiction over all Port Authority station starters who work on buses originating from ATU garages and that these starters should be ATU members (Tr 54, 55).

DISCUSSION AND ANALYSIS

The Respondent NJT Violated Subsections (a)(1), (2) And (5) Of The Act When, Without Notice To The ATU, It Unilaterally Recognized TWU As The Representative For Employees At The Vince Lombardi Park & Ride In October 1983

There is no question but that NJT granted ATU de facto recognition for the ticket sellers at Vince Lombardi Park & Ride on and after January 31, 1983. Butler testified that NJT decided to utilize two employees, members of ATU, at Vince Lombard Park & Ride because "...the only people we have that could sell tickets were members of the Amalgamated Transit Union..." (See Finding of Fact No. 5, supra). Thereafter, those two employees of NJT were paid under the classification "Ticket Agent B" in the ATU agreement (J-1). Position bidding for the Lombardi positions occurred in February 1983, pursuant to a notice of job vacancies. These procedures were conducted in accordance with the ATU contract. Thereafter, for 9 1/2 months, ATU provided normal representation services including the processing of a disciplinary grievance (See Findings of Fact Nos. 7 & 8, supra). Finally, NJT checked off dues and remitted same to ATU in accordance with the parties collective negotiations agreement.

The Hearing Examiner's conclusion that NJT had recognized ATU as the collective negotiations representative of the Lombardi employees on at least a de facto basis is in no way changed by the fact that NJT was operating the Vince Lombardi Park & Ride on a temporary basis in the absence of a permanent contract with the Turnpike. While the ATU had some awareness of the temporary nature

of the NJT operation, NJT never gave any indication to the ATU that their relationship at Lombardi was anything less than it seemed -- that of an employer properly dealing at arms length with the exclusive majority representative of its (NJT's) Lombardi field salaried employees. Additionally, the fact that TWU had earlier asserted a claim to the work does not undermine the initial recognitional status accorded ATU, commencing at the end of January 1983.

It is true that in mid-Summer 1983, Gallagher advised Snyers that there might be some "changes" due to the bidding requested by the Turnpike and that there were going to be ticket booths, which would change the operation (See Finding of Fact No. 11, supra). However, Snyers' testimony was uncontradicted that there was no indication by Gallagher that a change in the union was ever considered or was in any way in question.

Also, the recognitional status accorded ATU is in no way affected by the fact that TWU was alert to the fact that NJT was awarded a permanent contract by the Turnpike on September 23, 1983, and that TWU then asserted jurisdiction at Vince Lombardi Park & Ride and put said claim in writing on September 29, 1983 (See Finding of Fact No. 12, supra).

In October 1983, when Butler unilaterally undertook to recognize TWU as the collective negotiations representative for the employees at Vince Lombardi Park & Ride and entered into negotiations with Caiazzo, this was of no legal force and effect vis-a-vis the recognitional status already accorded the ATU for the

work at the facility. The legal position of NJT was not strengthened by the fact that it had decided that under Alternative B ticket sellers were not needed and that most of the employees would be parking lot attendants. True, making this decision was the exercise of a managerial prerogative. However, it did not excuse NJT from notifying and commencing negotiations with ATU concerning changes necessitated by Alternative B for employees at the Vince Lombardi Park & Ride. Under the circumstances of this case, NJT's managerial decision concerning staffing did not enable it to reallocate positions and work among its negotiations units and unions.

While NJT may have correctly sought to staff the Lombardi operation with parking lot attendants -- as opposed to ticket sellers -- its decision to recognize and negotiate with the union which agreed to this staffing procedure was in error. The Hearing Examiner believes that the entire pattern of evidence in this case points to a de facto recognition of the ATU early in the game, and that this recognition was withdrawn and a new organization was recognized after it was apparent that ATU would resist the staffing changeover desired by NJT.^{7/}

^{7/} Noteworthy in NJT's recognition of TWU to represent the field salaried employees at Lombardi is that up until that time (October 1983), TWU represented no employees like ticket agents or parking lot attendants. Thus, TWU had to negotiate a new provision in its contract to cover these employees for which they were newly recognized as majority representative. On the other hand, ATU had for a long time prior to 1983 represented such field salaried employees as ticket agents and
(Footnote continued on next page)

The Hearing Examiner does not credit NJT's reason for the changeover -- i.e., that TWU had the greater number of runs through Lombardi. From Respondent's view, at best, the "majority of runs" explanation is not clearly established in this record. It was squarely contradicted by the ATU. At worst, the "majority of runs" measure was one utilized only to determine field salaried employees staffing on the New York City side of the operation.

Finally, the Hearing Examiner notes that even assuming arguendo that NJT's motivations herein were as they contend -- that the TWU recognition was made in accordance with the "majority of runs" past practice -- the "procedure" followed by NJT to recognize TWU was, under the circumstances, contrary to common sense and, more importantly, to the decisions and rules of the Commission. N.J.A.C. 19:11-3.1 states:

(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the commission.

(b) The commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.8 (Timeliness of petitions), provided the following criteria have been satisfied prior to the

(Footnote continued from previous page)
parking lot attendants. In fact, it was for that very reason that NJT initially chose to "recognize" ATU as the representative of the Lombardi employees in January 1983.

written grant of such recognition by a public employer:

(1) The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit; (2) The public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit; (3) The public employer shall serve written notification upon any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification shall be made at least 10 days prior to the grant of recognition and shall contain the information set forth in paragraph 2 of this subsection; (4) Another employee organization has not within the 10-day period notified the public employer, in writing, of a claim to represent any of the employees involved in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the director of representaton; (5) Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved. (emphasis added).

It is clear from the foregoing that in order to effectuate a valid recognition, a notice must be posted and notice must be given to any employee organization that has claimed an interest in representing said employees within the last year; said

notice must clearly indicate to all interested parties that the employer will accord recognition to the organization described in the notice within 10 days. In this matter, NJT did not comply with subsection 3.1 in granting the TWU recognition.^{8/}

The Hearing Examiner draws upon NLRB precedent in concluding that the conduct of NJT in and after October 1983 constituted a violation of §§ (a)(1), (2) and (5) of the Act.^{9/} For example, in Mountain State Construction Co., Inc., 207 NLRB No. 4, 85 LRRM 1111 (1973), an employer violated Section 8 (a)(2)

^{8/} Although not directly analagous to the case at hand, the Commission has adopted the principles formulated by the NLRB in Midwest Piping Co., Inc., 63 NLRB 1060, 17 LRRM 40 (1945), as modified by Shea Chemical Corp., 121 NLRB 1027, 42 LRRM 1486 (1958). See Middlesex Cty. (Roosevelt Hosp.), P.E.R.C. No. 81-129, 7 NJPER 266 (1981) and Cty. of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (1983). Although the factual situation in Midwest Piping and Middlesex Cty. involved the neutrality requirement by an employer in the case of an outside union petitioning for an election in a unit represented by an incumbent union, it appears to the Hearing Examiner that the "neutrality principle" applies with equal force to the instant matter. At the very least, if these two organizations (ATU and TWU) started out on an equal footing herein, what NJT owed to the ATU was the requirement to stay "neutral" in the face of competing union jurisdictional claims. Instead, NJT went ahead and recognized one of the two rival organizations (TWU) with no apparent factual or legal basis for doing so. However, the Hearing Examiner does not believe that the organizations started out on an equal footing. Rather, the circumstances of this case clearly point to the ATU as having a legitimate claim as the exclusive majority representative at Lombardi and a reasonable expectation of continuing to be treated as such.

^{9/} The New Jersey Supreme Court has sanctioned a resort by the Commission to NLRB precedent in deciding cases under our Act: In re Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Educational Secretaries, 78 N.J. 1, 9 (1978).

and (5) of the National Labor Relations Act when, at a time that its collective bargaining contracts with four unions were still in effect, it executed a contract with another union. This conduct was held to have constituted a complete rejection of the collective bargaining principle. Similarly, in Argano Electric Corp., 248 NLRB No. 49, 104 LRRM 1093 (1980), an employer violated Sections 8(a)(2), (3) and (5) of the National Labor Relations Act by having recognized and contracted with another union at a time when it was bound by a multi-employer contract with an incumbent union, and thus refused to recognize the incumbent union and honor the existing contract.

In Pacific Erectors, Inc., 256 NLRB No. 66, 107 LRRM 1284 (1981), an employer that executed a memorandum of agreement violated the National Labor Relations Act when it abrogated that agreement and simultaneously signed a new agreement with another union. The NLRB noted that the employer should have sought to resolve disputes within the confines of the existing contract even though, in that case, there was no clear indication that the grievance and arbitration provisions would have been available to the employer. Also, in Ana Colon, Inc., 266 NLRB No. 112, 112 LRRM 1434 (1983), an employer, which had a collective bargaining contract with an incumbent union violated Sections 8(a)(2), (3) and (5) of the National Labor Relations Act by withdrawing recognition from the incumbent union and executing a union-security contract with another union.

Thus, the Hearing Examiner concludes that the Respondent NJT violated §§(a)(1), (2) and (5) of the Act when it unilaterally and without notification to the ATU withdrew its de facto

recognition of ATU for the employees of the Vince Lombardi Park & Ride, shifted recognition to TWU and thereafter negotiated an amendment to TWU's collective negotiations agreement (J-2) covering said Lombardi employees.

The authorities cited by the Respondent, emanating from both the Commission and the federal sector, fail to persuade the Hearing Examiner that he should reach a contrary result, i.e., dismiss the Complaint.

Considering first the Commission decisions cited,^{10/} these cases uniformly involve either unit clarification petitions where an employee was deemed excluded from the unit or a finding by the Commission to the same effect without a unit clarification determination and are, thus, readily distinguishable from the instant factual situation. There has been no independent determination that any of the employees at Vince Lombardi Park & Ride, represented by the ATU until November 1983, were not appropriately included in its unit. Nor does the state of the record developed in the instant case place the Hearing Examiner in a position to make a unit clarification determination and none of the parties hereto have requested that he do so.^{11/}

^{10/} Neptune Tp. Bd. of Ed., H.E. No. 79-28, 5 NJPER 10 (1978); Plumsted Bd. of Ed., D.U.P. No. 78-4, 3 NJPER 335 (1977); Manalapan-Englishtown Bd. of Ed., P.E.R.C. No. 78-24, 3 NJPER 380 (1977); and Passaic Cty. Reg. H/S Dist. No. 1, P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

^{11/} Additionally, Bergen Cty. Vocational Schools, H.O. No. 84-9, 10 NJPER 90 (1984) and Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (1981) are of no aid to Respondent's position since these cases involved the consideration of the stability of collective negotiations units of long standing (which the Commission did not disturb).

The Federal Court of Appeals cases cited by the Respondent at pages 7 and 8 of its Brief are not apposite to the instant matter. For example, Colecraft Mfg. Co. v. NLRB, 385 F.2d 998, 66 LRRM 2677 (2nd Cir. 1967) reversed the NLRB's finding that an employer violated Section 8(a)(5) of the NLRA when it refused to bargain with a union where the union requested a unit larger than that found appropriate. There was no second union involved. NJT in the instant case has not placed on the record evidence which would support a finding that the inclusion of employees staffing the Lombardi Park & Ride in the extant ATU unit is not appropriate. What NJT has asserted is its unilateral right to determine which union it will negotiate with on and after the award of the contract to it by the Turnpike under Alternative B. The other federal cases cited stand for the same proposition as Colecraft, supra. See, NLRB v. Richman Brothers Co., 387 F.2d 809, 67 LRRM 2051 (7th Cir. 1967).

Having thus considered the Commission and federal sector cases cited by NJT, the Hearing Examiner rejects their applicability herein.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following conclusions and recommendations.

CONCLUSIONS OF LAW

Respondent NJT violated N.J.S.A. 34:13A-5.4(a)(1), (2) and (5) when it unilaterally and without notice to ATU withdrew its de

facto recognition of ATU as majority representative of the employees staffing the Vince Lombardi Park & Ride and thereafter recognized and entered into negotiations with TWU in October 1983, which resulted in an amendment to the TWU agreement (J-2) which covered said Lombardi employees.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. The Respondent NJT desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

2. Dominating or interfering with the formation, existence or administration of any employee organization, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

3. Refusing to negotiate in good faith with the ATU for employees in the unit at Vince Lombardi Park & Ride, or refusing to process grievances presented for Lombardi employees by the ATU.

B. That the Respondent NJT take the following affirmative action:

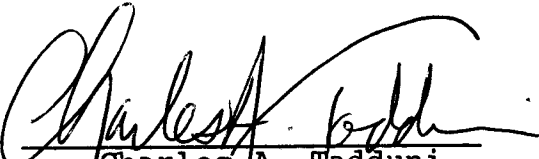
1. Forthwith withdraw recognition from Local 225, Transport Workers Union of America, AFL-CIO, with respect to the unit of employees at Vince Lombardi Park & Ride, but maintain the

status quo as to the employees there presently employed until such time as negotiations hereinafter ordered alter the said status quo.

2. Upon demand, negotiate in good faith with the N.J. Joint Conference Board, ATU with respect to terms and conditions of employment for the employees presently at the Vince Lombardi Park & Ride including, but not limited to, the necessary and appropriate job classifications, full-time or part-time, required to satisfy the terms of the contract (Alternative B) between N.J. Transit Bus Operations, Inc. and the New Jersey Turnpike Authority; said negotiations to continue until an agreement is reached or until the Commission's impasse procedures are exhausted.

3. Post at 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 NJT has taken to comply herewith.


Charles A. Tadduni
Hearing Examiner

DATED: May 31, 1985
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:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

WE WILL NOT dominate or interfere with the formation, existence or administration of any employee organization, particularly, by unilaterally withdrawing de facto recognition from ATU and entering into negotiations with TWU for employees at Vince Lombardi Park & Ride.

WE WILL NOT refuse to negotiate in good faith with the ATU for employees in the unit at Vince Lombardi Park & Ride, or refusing to process grievances presented by the ATU.

WE WILL forthwith withdraw recognition from Local 225, Transport Workers Union of America, AFL-CIO with respect to the unit of employees at Vince Lombardi Park & Ride, but maintaining the status quo as to the employees there presently employed until such time as negotiations hereinafter ordered alter the said status quo.

WE WILL upon demand, negotiate in good faith with the N.J. Joint Conference Board, ATU with respect to terms and conditions of employment for the employees presently in the unit at the Vince Lombardi Park & Ride, including but not limited to, the necessary and appropriate job classifications, full-time or part-time, required to satisfy the terms of the contract (Alternative B) between N.J. Transit Bus Operations, Inc. and the New Jersey Turnpike Authority; said negotiations to continue until an agreement is reached or until the Commission's impasse procedures are exhausted.

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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State State Street, Trenton, New Jersey 08618 Telephone (609) 292-9830.