

I.R. NO. 92-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Respondent,

-and-

Docket No. CO-91-14

NEW JERSEY TURNPIKE SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

In an action brought by the New Jersey Turnpike Supervisors Association against the New Jersey Turnpike Authority, a Commission Designee declines to restrain the Authority from furnishing vehicles to certain employees represented by the Association. The Authority admitted that the commutational privileges of employees would be removed and that they expressed a willingness to negotiate this recall policy. Accordingly, there is evidence that the Authority met its duty to negotiate over the loss of vehicles and the application was denied.

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Appearances:

For the Respondent
Schwartz, Tobia & Stanziale, attorneys
(Kent A.F. Weisert, of counsel)

For the Charging Party
Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

INTERLOCUTORY DECISION

On July 16, 1990, the New Jersey Turnpike Supervisors Association ("Association") filed an unfair practice charge against the New Jersey Turnpike Authority alleging that the employer violated N.J.S.A. 34:13A-1 et seq; specifically subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} when it unilaterally announced

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

that it was no longer furnishing vehicles to certain employees represented by the Association. It was also alleged that the Authority refused to negotiate over the withdrawal of these vehicles. A Complaint and Notice of Hearing was issued on this matter on February 27, 1991 and on May 28, 1991 a hearing was conducted before a Public Employment Relations Commission hearing examiner.^{2/}

On June 21, 1991, the Association filed an Order to Show Cause with Temporary Restraints together with a supporting certification. It was certified that some 13 employees represented by the Association, who were not involved in the case before, were notified that their assigned vehicles would be removed from them effective June 28, 1991. The parties are now negotiating for a successor contract. The current agreement expires July 1, 1991. It was alleged that the removal of these vehicles during negotiations, and pending the issuance of the Hearing Examiner's decision, would create a harm which can only be cured by the granting of interim relief.

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

2/ Post hearing briefs are due on July 15, 1991.

The Authority, by way of its answer and certification, admits that the "commutational privileges" of employees would be removed and that the parties were engaged in negotiations for a new agreement. It was certified that the Authority has consistently expressed a willingness to negotiate concerning the economic impact of its vehicle recall policy. The Authority wants these negotiations to be in conjunction with the ongoing negotiations for a new contract. On July 2, 1991, the Authority presented an offer to the Association to compensate the affected employees at the rate of \$60 a month. The Authority further certified that it is willing to engage in further negotiations with the Association.

The Order to Show Cause was executed and made returnable for July 10, 1991. At that time both parties argued orally and had the opportunity to submit briefs and present evidence.

In Morris County Park Commission, 8 NJPER 561 (¶13259 1982), the Commission held that an employer has the non-negotiable right to deploy its vehicles as it sees fit. However, an employer is required to negotiate over offsetting compensation for employees who have lost the economic benefit of the use of an employer's vehicles.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission

decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{3/}

Although the unilateral alteration of a term and condition of employment during negotiations may interfere with negotiations in a manner which is irreparable, it is not certain here that there was a unilateral alteration of a term and condition of employment. An employer has a non-negotiable right to reassign its vehicles. When such a reassignment occurs the employer must negotiate over the lost economic benefit with the majority representative.^{4/} There is evidence here that the employer made a good faith effort to so negotiate. Also the imminent issuance of a recommended decision here does not create a situation calling for an interim order. Accordingly, I do not believe the Association satisfied its heavy burden.

The Application for interim relief is denied.


 Edmund G. Gerber
 Commission Designee

DATED: July 18, 1991
 Trenton, New Jersey

^{3/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

^{4/} Nothing in Morris suggests negotiations must occur prior to the removal of the cars.