

P.E.R.C. NO. 93-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Respondent,

-and-

Docket No. CO-H-91-14

NEW JERSEY TURNPIKE SUPERVISORS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the New Jersey Turnpike Authority violated the New Jersey Employer-Employee Relations Act by delaying negotiations over compensation to offset the loss of the use of Authority-owned vehicles for commuting. The Complaint was based on an unfair practice charge filed by the New Jersey Turnpike Supervisors Association.

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NEW JERSEY TURNPIKE SUPERVISORS
ASSOCIATION,

Charging Party.

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)

DECISION AND ORDER

On July 16, 1990, the New Jersey Turnpike Supervisors Association filed an unfair practice charge against the New Jersey Turnpike Authority. The Association alleges that the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (5) and (7),^{1/} by unilaterally implementing a policy restricting the

^{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 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

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use of Authority-owned vehicles for commuting. The Association seeks restoration of the recalled vehicles to affected unit members and negotiations over offsetting compensation retroactive to the date they were returned.

On February 27, 1991, a Complaint and Notice of Hearing issued. On March 26, the Authority filed its Answer admitting that it had implemented the policy, but denying that it had refused to negotiate over the economic impact of its actions.

On May 28, 1991, Hearing Examiner Illse E. Goldfarb conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On July 2, 1992, the Hearing Examiner issued her report and recommendations. H.E. No. 93-1, 18 NJPER 381 (¶23171 1992). She found that the Authority had a managerial prerogative to prohibit the use of its vehicles for commuting, but that it violated the Act when it delayed negotiations with the Association over compensation to offset the loss of the use of Authority-owned vehicles for commuting. She recommended that the Authority be ordered to negotiate immediately.

The Hearing Examiner served her decision on the parties and informed them that exceptions were due July 16, 1992. Neither party filed exceptions or requested an extension of time.

1/ (Footnote Continued From Previous Page)

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."

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-6) are undisputed. We incorporate them here. Based on those facts, we find that the Authority violated the Act when it sought to delay negotiations over offsetting compensation for loss of the use of Authority-owned vehicles for commuting. Since the Authority's violation relates to the timing of negotiations rather than its obligation to negotiate, we believe that a cease-and-desist order is sufficient to effectuate the Act's purposes. The remaining allegations in the Complaint are dismissed.

ORDER

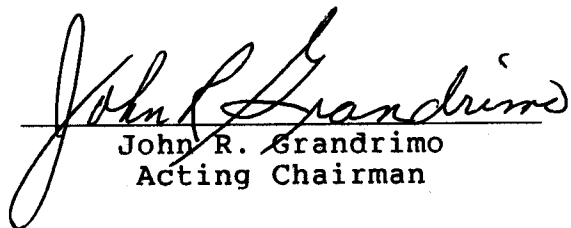
The New Jersey Turnpike Authority is ordered to:

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 delaying negotiations over compensation to offset the loss of the use of Authority-owned vehicles for commuting.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


John R. Grandrimo
Acting Chairman

Commissioners Bertolino, Goetting, Grandrimo, Regan and Smith voted in favor of this decision. None opposed. Chairman Mastriani abstained from consideration of this decision. Commissioner Wenzler was not present.

DATED: February 22, 1993
Trenton, New Jersey
ISSUED: February 23, 1993

H.E. No. 93-1

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

In the Matter of

N.J. Turnpike Authority,

Respondent,

-and-

Docket No. CO-H-91-14

N.J. Turnpike Supervisors Association,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the New Jersey Turnpike Authority violated subsection 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when refused to negotiate immediately with the New Jersey Turnpike Supervisors Association over offsetting compensation for the loss of Authority-supplied vehicles used for commutation. The Hearing Examiner recommends that the Authority negotiate immediately with the Association retroactive to the time the vehicles were recalled.

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.

H.E. NO. 93-1

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

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Docket No. CO-H-91-14

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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)

HEARING EXAMINER'S
REPORT AND RECOMMENDED DECISION

On July 16, 1990, the New Jersey Turnpike Supervisors Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the New Jersey Turnpike Authority violated subsections 5.4(a)(1), (2), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The Association alleges that the Authority

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

unilaterally implemented a policy restricting the commutational use of Authority-owned vehicles assigned to certain unit employees. The Association seeks restoration of the recalled vehicles to affected unit members and negotiations over compensation for the commutational value of the vehicles retroactive to the date they were returned.

A Complaint and Notice of Hearing issued on February 27, 1991 (C-1).^{2/} On March 26, 1991 the Authority filed an Answer (C-2), admitting that it had implemented the policy disallowing the use of Turnpike vehicles for commutation purposes without negotiations, but denying that it refused to negotiate over the economic impact of its actions. On May 28, 1991 I conducted a hearing at which the parties examined witnesses and presented

1/ Footnote Continued From Previous Page

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 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/ The exhibits are designated as follows: Commission exhibits are "C"; the Charging Party's exhibits are "CP"; Respondent's exhibits are "R" and joint exhibits are "J". "T" refers to the May 28, 1991 hearing transcript.

exhibits.^{3/} The parties filed briefs by August 1, 1991. Based upon the entire record in this matter I make the following:

FINDINGS OF FACT

1. On June 27, 1989, the Authority adopted a policy limiting the use of Turnpike-owned vehicles to those employees who drive 15,000 miles or more per year while on 24 hour on-call duty. The policy specifically prohibited the use of a Authority vehicle for commutation or personal use (R-1). This policy was a departure from an established Authority practice of assigning cars to employees in certain titles to use to commute to and from work (J-7; T24-25; T37; T76; T78; T110). The policy was not implemented until March 5, 1990, when Executive Director Frank B. Holman issued a memo to all departmental directors specifying the number of vehicles each department would be required to recall from employees currently assigned vehicles who did not meet the specifications of the policy.^{4/} The effective date of the recall was 90 days from the date of the memo (J-8). In early March 1990, four unit members

^{3/} On June 21, 1991, the Association filed a request for interim relief seeking to restrain the Authority from recalling cars from an additional 13 Association members until the parties negotiated the economic impact of the reassignment. The Commission Designee issued a decision on July 18, 1991, denying relief. I.R. No. 92-2, 17 NJPER 389 (¶22184 1991)

^{4/} The number of vehicles to be recalled was derived from "recommendations" previously submitted from each department (T138-139; J-8).

employed in the department of toll collections and one unit member in the department of administrative services were told to relinquish their assigned cars to the motor pool effective the latter part of June, 1990 (R-4; CP-4; T106; T111; T123). These five employees used their assigned cars to commute to and from work (CP-1; T14; T28; T110). They were instructed that if they needed a car to conduct Authority business, they must request one in advance from the motor pool (T129; R-4; R-5).

2. On or about April 15, 1990, Association president Michael Calleo received a copy of a memo written by an Association member to his immediate supervisor protesting a directive that he turn in his assigned car (CP-2; T50; T84). Calleo testified that this was first time he was aware of the Authority's policy to discontinue the commutational use of its vehicles (T50).

On April 30, 1990, Calleo wrote to Human Resources Director Robert Gasser to protest the recall of the cars from the five Association members and to formally request negotiations (J-2; T50). The Association restated its request in a June 5, 1990 letter from Association attorney Richard Loccke to Authority General Counsel Herbert Olarsch.^{5/}

^{5/} Loccke argued that the policy violated the preservation of rights clause, Article 12, of the parties' collective negotiations agreement.(J-3). Article 12 states:

The parties agree that all benefits, rights, duties, obligations, terms and conditions of employment that are

3. In a June 28, 1990 letter to Calleo, Executive Director Donald L. Watson agreed to negotiate the impact of the policy in conjunction with the parties' overall negotiations for a successor agreement. The parties' agreement would expire on June 30, 1991 and negotiations for the successor agreement were scheduled to begin in December 1990 (J-4). Loccke responded to Watson in a letter dated June 29, 1990, demanding that negotiations on the recall of the vehicles begin with Olarsch as soon as possible. Loccke also requested that the Authority delay recalling the vehicles until the parties began negotiations on this matter (J-5). On July 3, 1990, Fredrick Title, senior attorney for the Turnpike, replied to Loccke on behalf of Watson. Title stated that the the recall date for the cars would not be stayed. He reiterated Watson's proposal for addressing the issue during negotiations for a successor agreement (J-6).^{6/}

5/ Footnote Continued From Previous Page

not specifically set forth in this Agreement, which shall be maintained in not less then (sic) the standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Employee pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished (J-1)

6/ Negotiations between the parties for a successor agreement began in March 1991 (T71; T127). At the request of the Association, economic proposals were held in abeyance while the parties negotiated other noneconomic matters (T135).

4. One Association member returned his assigned car to the motor pool at the end of June 1990 (T76) and another relinquished his car on July 10, 1990 (T76). These employees purchased cars to use for commutation (T91; T112). Three Association members still commute to and from work in Authority cars because they are assigned to vacation relief duty and have the use of the vacationing employee's assigned car (T-46; T129; R-4).

5. On July 3, 1990, Calleo filed a grievance requesting that the cars be returned (R-2). On July 11, 1990, Interim Director of Human Resources Mary-Elizabeth Garrity rejected the grievance, stating that the policy would be the subject of "discussions" between the parties (R-3).

ANALYSIS

The Association argued that the Authority had an obligation to negotiate prior to adopting a policy restricting the commutational use of its vehicles. The Authority argues that reducing the size of its fleet is a managerial prerogative and therefore the policy was a non-negotiable issue.

A public employer has a managerial prerogative to determine the size and the deployment of its fleet. Therefore, the Authority's adoption of a policy prohibiting the use of its vehicles for commutation without first negotiating with the Association is not a violation of the Act. Morris Cty. and Morris Cty. Park Comm.

and Morris Coun. No. 6, NJCSA, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. A-795-82T2 (1/12/84), certif. den. 97 N.J. 672 (1984). However, the Authority's non-negotiable prerogative to recall vehicles is severable from its obligation to negotiate over an alternative form of compensation for the affected employees. Morris Cty.; State of N.J. (Office of Employee Relations) and Council of N.J. State College Locals, NJSFT,AFT-CIO, P.E.R.C. No. 89-137, 15 NJPER 421 (¶20175 1989), aff'd in pt., rev'd in pt., App. Div. Dkt. No. A-6339-88T3 (5/21/90). Although the Authority did not have an obligation to negotiate before implementing the policy, it did have an obligation to negotiate the issue of compensation for the recalled cars.

The facts are uncontested. After the Association discovered that the Authority was about to implement the policy to recall Authority-owned cars from certain Association members, it made a demand to negotiate on April 30, 1990, which was reiterated on June 5, 1990. After the cars were recalled, the Association again made a demand that negotiations begin as soon as possible. The Authority's response to all of the Association's demands, however, was to put off negotiations on the issue of compensation for the loss of the cars. The Authority insisted that the parties wait for 6 months or until the parties began their negotiations for a successor agreement.

The Authority does not dispute the Association's right to demand negotiations for compensation in lieu of the use of the

cars. The issue here is limited to whether the Authority violated 5.4(a)(5) and derivatively (a)(1) of the Act by failing to negotiate the severable economic issue when the Association made its demands. I find that it did.

The obligation to negotiate over an economic or procedural issue severable from a managerial prerogative arises when the union makes a demand. State of N.J. (OER) (certain procedures and compensation issues involving mandatory retirement); Middlesex Cty. Bd. of Soc. Serv., P.E.R.C. No. 88-119, 14 NJPER 359 (¶19139 1988) (procedure to determine who among a qualified group of employees as determined by the employer receives an employer vehicle); State of N.J., P.E.R.C. No. 92-65, 18 NJPER 50 (¶23021 1991) (issues related to the decision to close the State Department of Personnel); Elizabeth and Elizabeth Firefighters Ass'n, Local 2040, IAFF, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985) (issue of who pays for doctor's visits to verify sick leave); Jersey City Medical Ctr.; P.E.R.C. No. 89-24, 14 NJPER 577 (¶19244 1988) (issue of parking spaces for nurses) and Bor. of Edge, P.E.R.C. No. 91-50, 17 NJPER 2 (¶22001 1990) (proposal for dropping off and picking up officers to and from work is negotiable). In a recent case the Commission found that an employer does not fulfill its obligation to negotiate a union's prior claim for compensation by expressing a willingness to negotiate a claim only when the parties negotiate a successor agreement. Monmouth Cty. Judiciary, P.E.R.C. No. 92-121, 18 NJPER ____ (¶_____ 1992).

Although it may have been convenient for the Authority to postpone negotiations until the parties began their overall negotiations in December 1990, the Authority's obligation to negotiate the separate, severable issue arose when the Association made its demands in the spring of 1990. Unit members were suffering an immediate economic loss which the Authority could not delay addressing.

The Association requests as a remedy that the Authority restore affected unit members to the status quo ante and return the recalled cars. This remedy is inappropriate. The appropriate remedy must balance the employer's non-negotiable right to restrict the use of its vehicles with the union's right to negotiate compensation for a lost benefit. Morris Cty. Therefore, I recommend that the parties negotiate immediately over offsetting compensation for those unit members whose cars have been recalled.

Accordingly, I find that the Authority violated subsection 5.4(a)(5) and derivatively (a)(1) of the Act when it refused to immediately negotiate with the Association over offsetting compensation for the loss of the Authority-supplied commutation. The Association also alleged that the Authority's actions violated subsections 5.4(a)(1), (3) and (7) of the Act. There are no facts in the record to support an independent (a)(1) violation or violations of subsections (a)(3) or (7) of the Act. Therefore I recommend that this portion of the charge be dismissed.

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

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Authority cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them under the Act by refusing to immediately negotiate over offsetting compensation for those unit members who lost the economic benefit of using Authority vehicles for commutation; and

2. Refusing to immediately negotiate upon demand over offsetting compensation for those employees who lost the economic benefit of using Authority vehicles for commutation.

B. That the Authority take the following steps:

1. Negotiate with the Association over compensation for those unit members who lost the commutational use of Authority-owned vehicles retroactive to the time the Authority recalled the vehicles.


2. Negotiate with the Association upon demand over compensation for unit members who lost the commutational use of Authority vehicles to be paid prospectively during the term of the successor contract .

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 shall, after being signed by

the Turnpike's authorized representative, be posted immediately and be maintained by the Turnpike 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 of notice what steps the Turnpike has taken to comply with this order.

C. That the subsections 5.4(a)(1), (a)(3) and (a)(7) allegations be dismissed.


Ilse E. Goldfarb
Hearing Examiner

DATED: July 2, 1992
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 cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them under the Act by refusing to immediately negotiate over offsetting compensation for those unit members who lost the economic benefit of using Authority vehicles for commutation; and

WE WILL cease and desist from refusing to immediately negotiate upon demand over offsetting compensation for those employees who lost the economic benefit of using Authority vehicles for commutation.

WE WILL negotiate with the Association over compensation for those unit members who lost the commutational use of Authority-owned vehicles retroactive to the time the Authority recalled the vehicles.

WE WILL negotiate with the Association upon demand over compensation for unit members who lost the commutational use of Authority vehicles to be paid prospectively during the term of the successor contract .

Docket No. CO-H-91-14

NEW JERSEY TURNPIKE AUTHORITY

(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.