I.R. No. 2009-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. CO-2008-405

CAMDEN COUNTY COUNCIL NO. 10,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief concerning a charge alleging that the City of Camden violated the New Jersey Employer-Employee Relations Act, by repudiating the parties collective agreement on the eve of negotiations by unilaterally changing the method of reimbursement for employees required to use their vehicles for City business. The Commission Designee held that the City had the managerial prerogative to require the employees to use City vehicles and thereby avoid any reimbursement, but that to the extent some employees were still authorized/required to use their vehicles the City was restrained from changing the previously used reimbursement method.

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Appearances:

For the Respondent, Lewis Wilson, City Attorney (Marc A. Riondino, Assistant City Attorney, of counsel)

For the Charging Party, Spear Wilderman, attorneys (James Katz, of counsel)

INTERLOCUTORY DECISION

An unfair practice charge was filed with the Public Employment Relations Commission (Commission) on June 30, 2008 by Camden County Council No. 10 (Council 10) on behalf of two separate units, a supervisory unit and a non-supervisory unit, alleging that the City of Camden (City) violated 5.4a(1), (3), (5) and (7)[1/] of the New Jersey Employer-Employee Relations Act,

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1/ These provisions 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. (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 (continued...)

N.J.S.A. 34:13A-1 et seq. (Act). Council 10 alleged that the City repudiated its collective negotiations agreement by unilaterally changing the manner and amount employees are reimbursed for using their vehicles for City business. It was alleged that historically employees who used their cars for work on a daily basis were reimbursed with a monthly monetary stipend and 15 gallons of gas per week but that the City changed the reimbursement to only the IRS mileage rate.

The charge was accompanied by an application for interim relief seeking to restrain the City from changing the reimbursement rate. An Order to Show Cause was signed on July 2, 2008, scheduling a telephone conference call return date for July 24, 2008. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The City argued that employees were not required to use their vehicles for business and that it was otherwise complying with the contractual reimbursement provision.

The following pertinent facts appear:

For as long as 30 years, City employees required to use their vehicles for City business have been reimbursed a monthly

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1/ (...continued)
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."

monetary stipend plus 15 gallons of "City" gas per week. "City" gas refers to gas from the City fuel pumps. Article XVII of both the supervisory and non-supervisory contracts which expire on December 31, 2008 provide the following pertinent language:

> A. Employees required to use their personal vehicle in the pursuit of proper and necessary City business, on a daily basis, shall be reimbursed $170.00 per month effective as of the signing of this agreement and shall be entitled to fifteen (15) gallons of City gasoline per week, for such travel. Such payment shall be made subject to written certification by the Department Head.
>
> If an employee, based upon documentation of mileage travel on City business, utilizes more than 15 gallons of gas, additional gas will be provided by the City. Submission of documentation for prior approval by the Business Administrator through the Department Head.
>
> C. Any City employee who is authorized in writing by his Director to use his personal vehicle in pursuit of City business shall be reimbursed at the current IRS mileage reimbursement rate.

As of June 2008, 37 unit members were provided the benefit in Section A above.

On June 20, 2008, the City issued a notice immediately limiting access to its fuel pumps to police, fire and DPW vehicles and restricting City employees from accessing its fuel pumps. The employees in Council 10's units were thereby limited to seek reimbursement for fuel for the use of their own vehicles for City business under Section C of Article XVII. Council 10 protested the change by letter of June 23, 2008, and by e-mail on

June 24, 2008, the City clarified its directive to allow all employees with a City vehicle to access its fuel pumps, but requiring employees who used their own vehicles to submit for mileage reimbursement pursuant to Article XVII Section C.

By affidavit and oral argument, the City maintained that employees were not required to use their vehicles for City work nor was use of their vehicles a condition of employment; employees would not be subject to discipline or termination if they refused to use their vehicles for City business and employees were not expected to advance money for fuel expenses. The City further maintained that it was committed to making a City vehicle available for any Council 10 unit member for City business by car pooling or sharing vehicles, but that it did not have a City vehicle for each of the affected Council 10 members. The City then maintained that if it authorized employees to use their personal vehicles for City business, they would be reimbursed under Section C of Article XVII.

The City also maintained that its recent directives on this subject were issued because it needed to "prioritize the allocation of gas based upon public safety and fiscal reasons" and to assure there was sufficient fuel for police, fire and DPW vehicles. It noted that the fuel pumps at Fire Headquarters were inoperable causing greater congestion at the City's only other fueling location. While the City listed both logistical and financial concerns affecting its fuel pumps, it did not argue it

was unable to provide City fuel to civilian employees required to use their own vehicle for City business.

Council 10 by affidavit and argument maintained that it is about to engage in negotiations for a new collective agreement and that employees required to use their vehicles for work on a daily basis will be unable to assume the out-of-pocket costs caused by reimbursement under Section C rather than Section A of Article XVII. Council 10 argued that by discontinuing reimbursement under Section A, the City was forcing it to negotiate back the benefits the City has provided under Section A for numerous years.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

This case involves the balance between the City's managerial right to require its employees to use City vehicles (and gas) to

conduct City business and restrict its employees from performing City business in their own vehicles, and its obligation to negotiate over and honor existing terms and conditions regarding reimbursement for requiring its employees to use their own vehicles to perform City business. The City can eliminate the entire reimbursement cost under Article XVII by requiring all employees to use City vehicles, but to the extent it "authorizes" employees to use their vehicles on a daily basis it is obligated to reimburse those employees in accordance with Section A.

To the extent the City argues that it has not historically "required" employees to use their vehicles for work, the City has known that employees used their vehicles for work on a daily basis and it has regularly reimbursed employees in accordance with Section A. Therefore, for purposes of this application, I find the City's acceptance of the practice constituted its requirement that employees use their own vehicles. Now the City has clearly expressed that its employees are not required to use their vehicles for work and that City vehicles are available. It has the right to institute that restriction.

The problem, however, is that the City in argument has also said that employees can use their vehicles on a daily basis if they would like, but that they then would only be reimbursed in accordance with Section C. The City cannot have it both ways. It cannot say employees are not required to use their vehicles for work but then authorize/encourage employees to use their

vehicles on a daily or regular basis and not reimburse in accordance with Section A as they did in the past. For purposes of this application only, I find that the City's authorization that employees can use their vehicles for City work on a daily basis constitutes its "requirement" they do so in accordance with the Section A reimbursement language.

The Commission has held that the repudiation of an established term and condition of employment can violate the Act, New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419, 422-423 (¶15191 1984), and that where the parties have agreed by contract to provide employees a specific benefit, the employer is bound to maintain the benefit during the life of the contract. Middletown Twp., P.E.R.C. No. 98-77, 24 NJPER 28, 29 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Sussex Cty., I.R. No. 2003-13, 29 NJPER 274, 275 (¶81 2003). The Commission has often restrained employers from repudiating contractual benefits. Borough of Paramus, I.R. No. 2005-14, 31 NJPER 202 (¶80 2005); Burlington Cty., I.R. No. 2004-8, 30 NJPER 56 (¶16 2004); Sussex Cty.; City of Trenton, I.R. No. 2003-4, 28 NJPER 368 (¶33134 2002); Burlington Cty., I.R. No. 2001-13, 27 NJPER 263 (¶32093 2001).

Based upon the above facts and analysis, I find that if the City authorizes/requires employees to use their vehicles for City business on a daily basis but only reimburses them in accordance with Section C of Article XVII, there is a substantial likelihood

that it will have repudiated the parties collective agreement. Since the parties are on the eve of negotiations and since employees will suffer undue hardship if required to use their vehicles on a daily basis without the Section A reimbursement benefits, I find any change in reimbursement for the daily/regular use of employee vehicles for City business would constitute irreparable harm.

Accordingly, I issue the following:

ORDER

To the extent the City authorizes/requires employees represented by Council 10 to use their vehicles to perform City business on a daily/regular basis, the City is restrained from changing the reimbursement method from Article XVII Section A to Section C without having completed negotiations over that subject with Council 10.

Arnold H. Zudick
Commission Designee

DATED: July 30, 2008
Trenton, New Jersey