

I.R. NO. 91-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DIVISION OF MOTOR VEHICLES,

Respondent,

-and-

Docket No. CO-91-208 and
CO-91-229

SEIU, LOCAL 518,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the State of New Jersey, Division of Motor Vehicle from altering the lunch periods of its employees. The Division altered the time for lunch breaks. The effect of this alteration required some employees to eat either 1/2 hour earlier or later in the day. The designee held that this is not the type of harm that requires an extraordinary remedy by way of an interim order. The SEIU also sought to restrain the State from making assignments which cause employees greater use of their own vehicles. Compensation for use of their vehicles is statutorily pre-empted and the Designee declined to restrain the disputed assignments.

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Appearances:

For the Respondent
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, of counsel)

For the Charging Party
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

Local 518, New Jersey State Motor Vehicle Employees, SEIU filed two unfair practice charges against the Division of Motor Vehicles, State of New Jersey claiming that the State engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq., specifically subsection 5.4(a) (1) and (5)^{1/}

^{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. (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."

Local 518 also seeks interim restraints pending final Commission decisions. An Order to Show Cause was executed and made returnable for April 8, 1991.^{2/}

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/}

The first charge alleges the Division of Motor Vehicle formerly had two lunch hours - one from 11:30 a.m. to 12:30 p.m. and the other from 12:30 p.m. to 1:30 p.m.

On or about February 6, 1991, the Division of Motor Vehicle at its Delanco, South Brunswick, Flemington and Trenton inspection stations introduced a new lunch schedule, with three lunch breaks - 11 a.m. to 12 noon; 12 noon to 1 p.m. and 1 p.m. to 2 p.m.

There were no negotiations with the charging party before the Division of Motor Vehicle instituted this unilateral change.

^{2/} A hearing was held on that date.

^{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).

Here, although scheduling lunch hours maybe a negotiable matter, the standards for the granting of interim relief have not been met. Any harm from having to eat 1/2 hour earlier, i.e., 11 a.m. rather than 11:30 a.m. or 1/2 hour later, i.e., 2 p.m. rather than 1:30 p.m. is not the type of harm which calls for an extraordinary remedy, by way of an interim order.

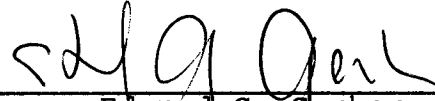
The second charge alleges that the Division of Motor Vehicle unilaterally instituted a new policy. Employees, after arriving at their assigned work locations, are being ordered to report to other distant motor vehicle inspection stations and to drive their own personal vehicle to those stations. It is alleged that this impacts on each employees affected insurance rates.

The mileage rate paid to all state employees is pre-empted and not subject to negotiations. This mileage rate is based upon the total cost of using a personal vehicle, including insurance. Initially, a uniform mileage allowance was set in N.J.S.A. Title 52 and most recently a mileage rate of 25¢ per mile was set in the 1991 (1990-1991 calendar year) Appropriations Act.

The charging party also argued at the hearing that the employees assigned to different inspection stations have longer trips home than they would if they remained at their normal work site. The employer has the right to deploy its work force. While increased compensation for the extra driving time is a severable,

negotiable issue, matters of compensation are not appropriate for interim relief.

The SEIU's application for interim relief is denied.



Edmund G. Gerber
Commission Designee

DATED: April 12, 1991
Trenton, New Jersey