

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC VALLEY WATER COMMISSION,

Respondent,

-and-

Docket No. CO-79-235-86

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 286,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Chairman of the Commission, noting the absence of exceptions, adopts the Hearing Examiner's findings of fact, conclusions of law and recommended order for the reasons cited by the Hearing Examiner. The Chairman agreed that the decision of the Water Commission to bus its meter readers to and from work assignments was a non-negotiable managerial decision and that the Water Commission did not violate the Act by unilaterally adopting or imposing the vanning operations. However, the Chairman did agree that the Water Commission did violate the Act by refusing to negotiate in good faith with the Teamsters regarding the health and safety implications of such decision and by threatening to unilaterally change existing terms and conditions of employment upon the rejection of the proposed terms of a successor agreement. The Water Commission was ordered to cease and desist from refusing to negotiate in good faith with the Teamsters concerning the health and safety of employees arising from its decision to bus meter reader employees and from threatening to unilaterally change existing terms and conditions of employment upon the rejection of the proposed terms of a successor agreement by the Teamsters. Other portions of the Complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(3) and (5) were dismissed.

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INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 286,

Charging Party.

Appearances:

For the Respondent, Aron, Till & Salsberg, Esqs.
(Richard M. Salsberg, of Counsel)

For the Charging Party, Goldberger, Siegel & Finn, Esqs.
(Howard A. Goldberger, of Counsel)

DECISION AND ORDER

On April 16, 1979, the International Brotherhood of Teamsters, Local 286 ("Teamsters") filed a second amended unfair practice charge with the Public Employment Relations Commission alleging that the Passaic Valley Water Commission (the "Water Commission") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq. Specifically, the Teamsters allege that in December 1978, the Water Commission reneged on a collective agreement ratified by both parties which included a provision for the payment to meter readers of \$2.00 per day for the use of their cars and instead, effective January 2, 1979, implemented a policy of busing meter readers to and from work areas in violation of N.J.S.A. 34:13A-5.4(a)(3) and (5). It appearing that the allegations

of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 27, 1979. The Water Commission denied the allegations of the unfair practice charge on May 11, 1979. Hearings were held before Commission Hearing Examiner Robert T. Snyder on September 5 and 6, 1979 and January 3 and 9, 1980, at which both parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The Water Commission filed a post-hearing brief on February 13, 1980. Thereafter, on March 12, 1980, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 80-34, 6 NJPER _____ (¶ _____ 1980), a copy of which is attached to this Decision and Order and made a part hereof. The report was served upon the parties and the case was transferred to the Commission. N.J.A.C. 19:14-7.1. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. N.J.A.C. 19:14-7.3 provides, in part, that any exception which is not specifically urged shall be deemed to have been waived.

In accordance with N.J.S.A. 34:13A-6(f), the Commission has delegated to the undersigned the authority to render decisions on behalf of the Commission in cases where exceptions to Hearing Examiners' Recommended Reports and Decisions have not been filed.

The Hearing Examiner found that the decision of the Water Commission to bus its meter readers to and from work assignments was a non-negotiable managerial decision and therefore that the Water Commission did not violate the Act by unilaterally adopting or

imposing the vanning operations. He did find, however, that the Water Commission had refused to negotiate with the Teamsters regarding the safety and health implications of this decision and that this constituted a refusal to negotiate in good faith in violation of the Act. He also found that the Teamsters failed to prove by a preponderance of the evidence that the Water Commission had entered into a final and binding agreement concerning the \$2.00 daily reimbursement of meter readers for the use of their automobiles. Although there had been a tentative agreement, this agreement was rejected by both the Teamsters and the Water Commission and the Water Commission notified the Teamsters that it would not accept the \$2.00 daily reimbursement agreement. Finally, he found that a representative of the Water Commission unlawfully restrained employees in the exercise of protected rights by stating that if the Teamsters rejected the tentative agreement a second time, existing benefits would be unilaterally withdrawn.^{1/} The Hearing Examiner concluded that the Water Commission violated the Act by refusing to negotiate regarding the health and safety aspects of the employer's decision regarding the transportation of meter readers by van to and from their work sites and by threatening the unilateral withdrawal of existing benefits if employees refused to ratify a tentative agreement.

Based upon an independent review of the entire record and

1/ A unilateral change in terms and conditions of employment has been held to violate the Act. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn, 78 N.J. 25, 48 (1978) and cases cited therein.

noting particularly the absence of exceptions, the undersigned adopts the findings of fact, conclusions of law and recommended order of the Hearing Examiner substantially for the reasons cited by him. These findings are amply supported by the evidence in the record.

ORDER

For the foregoing reasons and upon the entire record herein, IT IS HEREBY ORDERED that the Passaic Valley Water Commission, its representatives and agents:

1. Cease and desist from:

a. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the health and safety of employees arising from the decision to van meter reader employees to and from their daily work locations and by threatening to unilaterally change existing terms and conditions of employment upon employee rejection of the proposed terms of a successor collective negotiations agreement.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

a. Negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the effect upon the health and safety of meter reader employees caused by the decision to van meter reader employees to and from their daily work assignments.

b. Post at its headquarters located at 1525 Main Avenue, Clifton, New Jersey, copies of the attached notice marked

"Appendix A". Copies of said notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

c. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of the Commission's Order, what steps the said Respondent has taken to comply herewith.

3. IT IS FURTHER ORDERED that so much of the Complaint as alleges violations of N.J.S.A. 34:13A-5.4(a)(3) and (5) arising from a failure to negotiate the decision to van meter readers to and from their work assignments be dismissed.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
April 21, 1980

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 by refusing to negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the health and safety of employees arising from the decision to van meter reader employees to and from their daily work locations and by threatening to unilaterally change existing terms and conditions of employment upon employee rejection of the proposed terms of a successor collective negotiations agreement.

WE WILL negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the effect upon the health and safety of meter reader employees caused by the decision to van meter reader employees to and from their daily work assignments.

PASSAIC VALLEY WATER COMMISSION

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

PASSAIC VALLEY WATER COMMISSION,

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- and -

Docket No. CO-79-235-86

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 286,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Commission violated Section 13:A-5.4(a)(5) of the New Jersey Employer-Employee Relations Act by failing and refusing to negotiate the effects upon the health and safety of its meter reader employees arising from a decision to transport these employees to and from their work assignments by Commission van and discontinuing a practice of permitting them to travel by their own automobiles. The Examiner concludes that the decision to transport by Commission van was a management decision not subject to the negotiations obligation. The Examiner also found that a Commission warning to employees that existing terms and benefits of employment would be unilaterally changed if the employees refused to ratify a tentative agreement on a successor labor agreement constitutes an independent violation by the Commission of its negotiating duty under the Act.

The Examiner recommends that the Commission cease its unlawful conduct and negotiate in good faith with the Teamsters on the health and safety issues raised by the meter readers.

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.

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Appearances:

For the Respondent - Aron, Till & Salsberg, Esqs.
(Mr. Richard M. Salsberg, Of Counsel)

For the Charging Party - Goldberger, Siegel & Finn, Esqs.
(Mr. Howard A. Goldberger, Of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On April 16, 1979, the International Brotherhood of Teamsters, Local 286 ("Teamsters" or "Charging Party") filed a second amended unfair practice charge with the Public Employment Relations Commission ("P.E.R.C.") alleging that the Passaic Valley Water Commission ("Commission" or "Respondent") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended ("Act"), N.J.S.A. 34:13A-1 et seq. Specifically, the Teamsters allege that in December 1978 the Commission reneged on a collective agreement ratified by both parties including provision for payment to meter readers of \$2.00 per day for use of car with certain conditions, which represented an increase of \$1.00 in a longstanding practice between the parties, and instead, effective January 2, 1979, and with a punitive motive, unilaterally imposed a policy of bussing employees to and from work areas assigned to them in violation of N.J.S.A. 34:13A-5.4(a)(3) and (5). ^{1/}

^{1/} These subsections prohibit employers, their representatives or agents from:
"(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
(continued next page)

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued thereon on April 27, 1979. By answer filed on May 11, 1979, incorporating an earlier response filed to the original charge, Respondent denied the allegations of unfair practice, raising the defenses that agreement on payment of \$2.00 was never finally reached, and, in any event, related to a management prerogative which the Commission was free to change unilaterally as a policy decision not subject to the negotiations obligation. ^{2/} Hearings were held on September 5 ^{3/} and 6, 1979 and January 3 ^{4/} and 9, ^{5/} 1980. Both parties were given full opportunity to examine witnesses, present evidence and to argue orally. Only the Respondent filed a post-hearing brief on February 13, 1980 and it has been duly considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor I make the following:

1/ (continued)

of the rights guaranteed to them by this Act; 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/ In a bench ruling, the Hearing Examiner denied without prejudice to its renewal at close of hearing a preliminary motion made by Respondent to dismiss the Complaint, grounded on the non-negotiability of the subject matter (Tr. 15-18).
- 3/ By further amendment granted at opening of hearing over objection of Respondent, the charge and Complaint now also allege violation of subd. (a)(6) based upon the same conduct contained in the amended charge upon which Complaint issued. The claim had already been made in each of the prior written charges thus placing Respondent on actual notice of the nature of the allegation made therein, and the amendment was sufficiently related to the last amended charge filed timely on April 16, 1979 so as to constitute a valid amendment thereto rather than a new time-barred charge. See Allied Industrial Workers, 227 NLRB No. 215, 94 LRRM 1699. This subsection prohibit public employers, their representatives or agents from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."
- 4/ Continued hearing was unfortunately delayed for four months because of the sudden hospitalization with a serious illness of a key Charging Party representative and prospective witness.
- 5/ No testimony was adduced nor evidence offered on January 9, 1980. The record on that date, consisting solely of limited colloquy between counsel and the Examiner, has been ordered consolidated physically with the transcript of hearing held on January 3, 1980.

FINDINGS OF FACT

1. The Respondent is a public utility supplying water at retail to residences and businesses in the cities of Passaic, Paterson, Clifton and at wholesale to other areas. The Charging Party is a successor employee organization to the Passaic County Municipal Employees Union, which, since in or about 1969, has represented all blue collar employees employed by the Respondent for purposes of collective negotiations with Respondent concerning the terms and conditions of their employment. ^{6/} Among the 250 such employees are approximately 12 meter readers who daily cover assigned routes recording water meter readings in residences and commercial establishments.

2. For many years, at least the last 20, until January 2, 1979, meter readers received a sum of money paid in cash monthly in addition to their regular pay check representing a reimbursement for out-of-pocket transportation expenses in going to and returning from their assigned routes after reporting for work to the Respondents' headquarters each morning. This reimbursement has never been included on the employees' W-2 form. In the early years the payment reimbursed for use of public transportation. In 1968, at the request of the Charging Party's predecessor, based upon the increased cost of bus transportation needed to service the accounts, the Respondent increased the expense allowance to meter readers for transportation from 80¢ per day per man to \$1.00 per day per man. Since that time and for a number of years until January 2, 1979, the practice was for meter readers to use their own automobiles in going to and from these assigned routes ^{7/} and to receive a \$1.00 reimbursement. The \$1.00 was paid only for days during a given month on which a meter reader actually was in the field working an assigned route and the readers invariably used their automobiles to get to their routes (Tr. 75, 167, 354-5, 403-4). The Commission maintained records of the sums paid monthly to employees (R-1).

3. This practice had always been viewed by the Commission as a policy matter concerning the manner and means by which it carries out its obligations

^{6/} I find and conclude that Respondent is a public employer, and Charging Party is an employee organization and majority representative of public employees, respectively, within the meaning of the Act.

^{7/} These routes vary in distance up to a maximum of 3 to 4 miles from Respondent's offices. Thus, the maximum milage covered by an employee in driving to and returning from his route was approximately 7 to 8 miles per day.

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to supply metered water to its customers. The Commission has never agreed to inclusion of the travel reimbursement in the successive collective agreements it has negotiated and entered with the Teamsters (Tr. 203). So long as the practice continued in effect, the Commission asked new employees if they had automobiles and a driver's license (Tr. 332), and informed them they would be using their own cars to get to and from their routes. ^{8/} (Tr. 166-7).

4. The work day for meter readers, until Summer 1979, always consisted of 8 hours from 8:15 a.m. to 4:15 p.m. including 1 hour for lunch (Tr. 193-4). Up until January 2, 1979, it was spent as follows: The employees would report for work, some as early as 7:30 a.m. They would get their route assignments, including a batch of meter reading cards. From their assignment sheets, any instructions regarding entrance location and keys would be copied onto the cards, the keys would be procured and the employees would then proceed by their own automobile to the route assigned. After completing their assigned area, which involved recording up to 150 separate readings, the employees were expected to return to the Commission's offices by 3:45 p.m. They were then to sort out and hand in their meter cards in separate batches representing meters read and recorded and meters which could not be read and recorded because of lack of access or time or because of malfunctioning meters. The employees then left at the end of their work day. At least some of the meter readers who lived close by took no lunch time until they had completed their daily readings by about 2:00 p.m., then drove to their homes, had lunch, sorted out and checked their cards and returned to the Commission's offices between 3:45 and 4:00 p.m. (Tr. 78-80; 167-69). This practice did not accord with Commission policy, which did not countenance allowing meter readers to do any of their work at home (Tr. 193). However, the Commission made no effort (until January 2, 1979) to stop it in spite of the fact that at least during inclement weather Commission policy requiring employees to call in that they could not complete their routes was not being followed, yet at the end of the day uncompleted route cards were being turned in. From these facts, Commission Personnel Director John Galleta inferred employees went home and did not return to complete their routes (Tr. 197).

^{8/} An undated job description introduced into evidence appends in handwriting to a typed list of job requirements that a meter reader "needs valid drivers license." The Commission explained this requirement as related to the use of meter readers in operating Commission vehicles on special reading assignments in the absence of the special employee, but it may be more broadly interpreted while the general practice of readers' use of their own vehicles continued.

5. James Kirwin, employed by Respondent as a meter reader for the last ten years, and a deputy shop steward for the Teamsters, testified to the benefits which accrued to the employees from use of their automobiles. Their cars served as a locker, a shelter from the elements, a place to rest, a haven in case of threat to their safety, and a quick means of leaving their route in case of emergency (Tr. 76-77; 88; 91-93). As a locker, Kirwin stored extra meter cards, pencils, clothing, insect spray and dog repellent. As a shelter, Kirwin stayed in his car during rainstorms or to rest, take a work break in hot weather. The car served also as a place of safety where, in certain rundown neighborhoods, the meter reader found undesirable or threatening persons on the street. ^{2/} If a meter reader got rain soaked or filthy from dirt in metered cellars or took ill on the route, or could not locate a public toilet (or did not want to ask a customer to use his), he could if he lived nearby, return home for a change of clothing or to use his own toilet or to rest.

6. Personnel Director Galletta testified that from time to time over the years he had received anonymous telephone calls from persons informing him that meter readers were taking their wives shopping during working hours and from customers complaining that their meters had not been read on scheduled dates and that meter readers had not waited for them to open their doors and would not return to read their meters while still on their block. No meter readers had been disciplined as a result, although Galletta had received the impression from the readers he had discussed these matters with that they were aware of the identity of the callers and Galletta had informed them to be careful and that if such practices continued he would assign someone to be with them on their routes (Tr. 334-42).

7. Negotiations for a successor collective agreement for the period commencing January 1, 1979 had commenced between the parties in October 1978. The Teamsters' list of written proposals numbered 14 and included, inter alia, demands for a salary increase, a 20¢ differential for jackhammer (laborer), \$2.00 a day with the money to be shown in the pay check for inspectors and meter readers, a one hour lunch break after the fourth overtime hour and a dental plan (CP-1). On the \$2.00 demand, the Commission responded that the reimbursement for use of car was a management prerogative and voiced the possibility of bussing meter

^{2/} Kirwin also testified that two of his colleagues were physically threatened or accosted by customers who mistook them for prowlers (Tr. 89-90). It should be noted that the Commission has followed a policy of using two man meter reading crews in dangerous neighborhoods, even before January 2, 1979 (Tr. 345).

readers to and from their work sites. By the time of the fourth bargaining session, on December 11, 1978, Commissioner Anthony Pasquariello, Chairman of Respondents' negotiating committee tentatively agreed with Pat V. Nardolilli, Teamsters Business Agent and Chief Negotiator, that the meter readers receive \$2.00 per day provided they maintain \$300,000/\$100,000 liability insurance coverage, and have the Commission included by name as an insured on the employees' automobile policies. ^{10/} It was also understood that this agreement (as well as the item relating to the over-time lunch break) in accord with past practice would not be included in the written contract. Furthermore, because of concern expressed that the employees' might incur added insurance costs without the assurance of Commission retention of its policy regarding the new reimbursement rate, Pasquariello assured the Teamsters that the Commission would provide 90 days notice of any change in its policy so that employees could timely cancel the added coverage if desired. It was also understood that this understanding was subject to ratification by both parties on the submission of the completed negotiated agreement. As a consequence of the Respondent's tentative agreement on travel reimbursement for meter readers, the teamsters dropped their demand for salary differential for jackhammer operators.

8. After two further meetings, on December 14 and 18, 1978, tentative agreement was reached on salary and dental plan, the last remaining disputed terms of a successor contract for a two year period to December 31, 1980 (Tr. 377). A Teamster contract ratification meeting was set for December 20, 1978 at 4:00 p.m. The notice listed ten items comprising the Commission's "Final Offer," including as item 8 - "Meter Readers - \$2.00 per day (increase of \$1.00 per day). In hand money \$500.00 per year for use of car. Provision: that meter readers have auto insurance coverage of \$100,000 - \$300,000 - \$100,000 liability and to include PVWC on policy as employer." The tentative agreement was rejected by a majority of the membership apparently because of dissatisfaction with the money package and an immediate meeting to renew negotiations was requested of Commissioner Pasquariello by Teamsters President Louis D. Duva in a letter dated December 21, 1979. In a reply the same date, Pasquariello recommended that since it appeared that the details of the proposed settlement were misunderstood by the membership, they be

^{10/} In 1972, the Commission had directed that all employees who used their cars on Commission business during work hours produce valid certificates of auto insurance with certain minimum coverage as well as naming the Commission as an insured (Tr. 346). Insurance policies had not been produced for Commission review or inspection since that time and the policy was probably not regularly enforced (Tr. 293).

further informed in detail and be given an opportunity to take a new vote on the present proposal. Pasquariello also called Duva's attention to the fact that "...your membership rejected your final proposal, not ours. We did, however, agree with your final proposal." ^{11/} Copies were forwarded to all Commissioners.

9. A meeting was arranged for December 26, 1978, following this correspondence of December 21. In the interim, the Commission met and over Pasquariello's contrary vote rejected the \$2.00 reimbursement for meter readers' use of their cars and, further, agreed that the employees would henceforth be vanned to their work assignments and that Galletta should so inform the meter readers (Tr. 261-263). At the December 26 meeting Nardolilli, who could not attend, was replaced by Duva as chief spokesman for the Teamsters. Pasquariello, assisted by Commissioner Emil T. Bolcar and Galletta, attended for the Commission. Duva indicated he wanted to take the same proposal back to the membership a second time and asked for the Commission's agreement. After caucuses by each side Pasquariello replied that the Teamsters could re-submit the original proposal to its membership but that meter readers were now going to be vanned to their work sites. According to Pasquariello's unrebutted testimony Duva responded "Let's get the contract in, and we'll worry about this and sit down later on," or something along those lines (Tr. 263-264). ^{12/} Pasquariello also testified that at this meeting, Commissioner Bolcar said, "Don't forget we will also threaten retroactivity and everything. Everything stops, hospitalization and all, because he wanted this thing out of the way." (Tr. 283). ^{13/} Following this meeting, Galletta sent a memorandum dated December 28, 1978 to meter reader Foreman Joseph DeYonker informing him that effective January 2, 1979, the Commission will provide transportation for all water meter readers to and from their assigned routes. Also on December 28, a Teamster notice was posted advising the membership that because of an error which may have been made in not giving them enough time to discuss the contents of the original offer, a special meeting was being called for January 2, 1979 to discuss, explain and vote on this new contract again. This notice was accompanied by the original flyer itemizing the

^{11/} The Commission had not yet voted on the final proposals. A majority vote required the agreement of 3 of the 4 Commissioners. Pasquariello testified that the agreement referred to encompassed the written contract and not the 'side bar' travel reimbursement understanding which he viewed as a policy decision.

^{12/} Duva did not testify on presentation of Charging Party's case-in-chief. Although present when Respondent rested its case, he was not called in rebuttal.

^{13/} As a witness, Commissioner Bolcar was not examined on this statement attributed to him.

main proposals including item 8 - the \$2.00 reimbursement.

10. Galletta immediately dispatched a letter to Duva advising him of two errors in his flyer, (1) that the items were not the Commission's final offer but rather its acceptance of the union proposal and (2) item 8 is not a negotiable item but rather Commission policy and it was definitely stated that effective January 2, 1979 water meter readers would be transported to and from their routes with company vehicles. Duva contacted Galletta and asked if something could be worked out. Galletta replied no, the Commission was not going for the \$2.00 at this time.

11. In a conversation held on the eve of the Teamster's second ratification vote on January 2, 1979, Kirwin asked Galletta what would happen if the contract was turned down again. According to Kirwin, Galletta said, "...you guys are going to lose everything..vacation, sick time, longevity..You'll go back 20 years." (Tr. 104). Galletta acknowledged replying that at that point the employees would have nothing - everything would have to be renegotiated (Tr. 330). In spite of the difference in words used, I conclude that the sense of Galletta's response was the same under either version. It constitutes a misstatement and misinterpretation of the settled law in New Jersey that pending completion of negotiations, the public employer has an obligation to maintain the status quo with respect to present terms and conditions of employment of unit employees. 14/ It was also consistent with Commissioner Bolcar's own understanding expressed at the December 26 negotiation session.

12. On January 2, 1979, the Commission commenced the vanning of the meter readers to and from their work sites. The same evening, the Teamster membership approved the tentative agreement it had previously rejected. At least one member, Kirwin, stated his belief that the bussing would cease following union approval (Tr. 103). It did not. The meter readers have continued to be bussed to date. The parties' agreement on contract terms arrived at by December 18, 1978, was incorporated in a successor contract and executed on February 5, 1979.

13. Under the new bussing arrangement, meter readers worked the same hours and had the same duties as before. They continued to report to headquarters, but were now dropped off at their assigned routes in the morning, picked up at 11:30 a.m. and brought back for lunch, taken out again in the afternoon about 1:00 p.m. and brought back after completion of their routes around 3:20 p.m. They then completed their paper work and handed in their cards at Commission offices

before they left for the day at 4:15 p.m. They were no longer reimbursed for travel as they now incurred no expense. Since the summer of 1979 the only change in this work schedule has been that, at the workers' request, they now work through their lunch hour and are picked up at 2:30 p.m., return to headquarters to do their paper work, and finish work at 3:15 p.m. According to Galletta the Commission is sensitive to potential problems in certain neighborhoods, continuing to assign two men to work certain routes together. Also, when emergencies arise because of weather conditions or other reasons, on a telephone call to headquarters, the Commission has been able to communicate by radio with the foreman's van and arrange an early pick up of the men. The Commission also relies upon known weather reports in deciding whether to dispatch the meter readers to their routes, refraining from so assigning them on bad days. Galletta acknowledged that men must take refuge from sudden downpours on customer porches and may be obliged to ask customers for the use of bathrooms.

14. After the new bussing arrangement commenced, on January 9, 1979, Duva wrote Pasquariello requesting a meeting be arranged as soon as possible to discuss and review the impact concerning the terms and conditions of meter readers. ^{15/} No response was received to this letter.

15. An earlier grievance filed by Duva on January 5, 1979 under the old contract protesting the changes in terms and conditions of employment and seeking restoration of the past working conditions was denied by Galletta on January 11, who concluded that the Commission had not changed any of the working conditions of the meter readers. A later grievance filed by Kirwin on February 27, 1979, raising the same issue and referring specifically to lack of access to mens' rooms was responded to by Galletta in a March 5, 1979 letter to Duva. Galletta referred to the Teamster's original charge signed February 28 and concluded he did not feel it would be necessary to answer it until the matter is settled since both are asking for the same resolution. The Teamsters thereafter did not pursue the grievance procedure on this dispute.

16. Charging Party introduced into evidence an arbitration award issued by Joseph F. Wildebush, Arbitrator, on January 10, 1972, determining that the Commission had violated its agreement with the Teamsters in connection with the

^{15/} This letter was understood by the Commissioner to refer to the changes in terms and conditions of employment resulting from the change in transportation to and from the work site.

pay of Senior Water Repairmen, directing the Commission to reimburse those Repairmen who were deprived of their $2\frac{1}{2}$ hours of pay per week and to continue the grieved payments for the duration of the current collective bargaining agreement (CP-14). The Commission had engaged in a practice of compensating the Repairmen on an overtime budget for performing some additional clerical duties. Without working the overtime hours, the Repairmen were paid $1\frac{1}{4}$ hours per week at overtime (double time), the equivalent of $2\frac{1}{4}$ hours straight pay. In 1971, the Commission decided the extra payment was "overtime" and eliminated it as not required. The Arbitrator reasoned that as the money was paid pursuant to a longstanding negotiated settlement for clerical work actually performed, the Commission could not rely on a management right's provision which excepted understandings contained in the agreement to defeat a claimed breach grounded on a unilateral act violative of an express provision preventing any reduction in present wages or working conditions.

ANALYSIS

This proceeding presents a number of issues which shall be dealt with in turn. The first and threshold issue is whether the Commission's decision to change the manner of transportation of employees to their work assignments after commencement of the work day is subject to a negotiation obligation. ^{16/}

Respondent argues in its brief that the Commission's imposition of a van as opposed to use of a personal automobile relates directly to the "means or methods of accomplishing the service" of providing water to its customers. Thus, under the standards for determining whether a subject matter is or is not negotiable first set forth at length by P.E.R.C. in such opinions as Byram ^{17/} and Rutgers, ^{18/} the Commission's decision should be insulated from the bargaining duty.

^{16/} As to negotiability, there are only two categories of subjects for employees other than police or firemen, mandatorily negotiable terms and conditions of employment and nonnegotiable matters of governmental policy. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 114; Chapter 85, Laws of 1977. The meter readers are neither police officers nor fire fighters.

^{17/} Byram Bd. of Ed. and Byram Twp. Ed. Assn., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affm'd. 152 N.J. Super. 12 (App. Div. 1977). In reliance on Dunellen Bd. of Ed. v. Dunellen Ed. Assn., 64 N.J. 17, 24 (1973), the Court in Byram phrased the standard as follows: "...if the subject matter otherwise intimately and directly affects the work and welfare of the teachers and will not significantly interfere with management's educational responsibilities, the Board should be required to negotiate it..." Id. at 29.

^{18/} Rutgers, The State University and Rutgers Council of American Association of University Chapters, P.E.R.C. No. 76-13, 2 NJPER 13.

Respondent also relies on such decisions as those in Brookdale Community College Police Force, P.E.R.C. No. 77-53 and City of Trenton, P.E.R.C. No. 79-56 in support of its contention. In Brookdale, P.E.R.C. held the subject of whether and at what times members of the College's campus police force shall carry firearms is not a required subject of negotiation. In City of Trenton, P.E.R.C. concluded that the determination of the daily police uniform is not a required subject. Finally, Respondent cites Town of Irvington v. Irvington FBA Local #29, P.E.R.C. No. 78-84, 4 NJPER 251 (para. 4127 1978), rev'd. App. Div. Docket No. A-52223-77, pet. for certif. den. ___ N.J. ___ (2/19/80), which held that a change of shift assignments of a municipal police department is not mandatorily negotiable, for the proposition that where negotiations would be detrimental to the public welfare a municipality or public authority may rely upon its grant of statutory authority to foreclose negotiations with respect to a subject matter which engages its authority, particularly where the Irvington Court failed to accord deference to P.E.R.C.'s expertise in determining the negotiability of a term or condition of employment.

The Charging Party argued at the hearing that the health and safety factors to which its employee witnesses alluded demonstrates that the change in mode of transportation intimately affects terms and conditions of employment without seriously affecting the Commission's manner of operation. The Teamsters further argued that as the Commission's claimed concerns with efficiency and productivity never surfaced during the negotiations, but only belatedly in Galletta's testimony (see Finding of Fact No. 6), the Commission's real motive had been to force Teamster adoption of the tentative agreement without change on salary or other terms through the use of scare tactics, i.e., the spectre of bussing as well as unilateral withdrawal of many pre-existing benefits. Thus, the issue of vaning does not really involve Commission managerial authority. Finally, the Teamsters argue that by virtue of the practice pursuant to which employees received \$1.00 a day for each day worked in the field without regard to use of a personal automobile, the payment has taken on the characteristics of a true benefit, just like money paid in hand to the Senior Water Repairmen in the 1971 Wildebush Arbitration Award.

There is merit to the notion that the way in which these employees arrive at their work location takes on the elements of a managerial function which should be exercised free of the obligation to negotiate. The decision to change the manner in which the meter readers are transported from employer headquarters to their

assignments and back again involve questions of efficiency and control which partake of the prerogatives of management in fulfilling its mission of providing metered water to its customers. Matters of essential managerial prerogative delegated to the employer by the Legislature may not be bargained away. ^{19/} This conclusion is reached here without drawing the inference from the Irvington decision sought by Respondent.

Charging Party's arguments are rejected. While the health and safety factors intimately and directly affect the work and welfare of these employees, I conclude that required negotiations as to the Commission's decision to implement a bussing operation would significantly interfere with this aspect of the exercise of the Commission's governmental authority. ^{20/} Furthermore, the fact that the managerial concerns did not surface at the bargaining table does not mean that an employer may not legitimately rely on them so long as they are bona fide. These concerns are, even if the Commission apparently was somewhat lax in policing employee work performance. Certainly the anxiety expressed at the table about cost implications arising from the absence of insurance protection when employee's used their own vehicles on Commission business is reason enough for management authority to be implicated. As to the "threat" of bussing, I conclude that the weight of the evidence in the record does not support a conclusion that the Commission raised the bussing issue at the table only, or primarily, as a bargaining ploy. Even if it had, I don't see that this makes any difference given my prior conclusion. The Commission statements regarding an intent to change existing benefits is a separate issue which will be dealt with, infra. Finally, Charging Party's attempt to equate compensation for additional work performed with payment for expenses incurred must fail. Apparently, the Commission's policing of the travel reimbursement was sloppy. However, the fact that the money represented a reimbursement for travel costs incurred in performing work duties is clearly substantiated on the record. Accordingly, I conclude that the Respondent did not violate the Act by unilaterally imposing a vanning operation and ceasing to make any travel reimbursement.

^{19/} Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Assn., 79 N.J.311, 321 (1979); Bd. of Ed. of the Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove Regional Ed. Assn., 164 N.J. Super. 106, affm'd. ___ N.J. ___ (2/14/80); Town of Irvington v. PBA Local #29, P.E.R.C. No. 78-84, 4 NJPER 251 (para. 4127 1978), rev'd. 170 N.J. Super. 539 (1979), pet. for certif. den. ___ N.J. ___ (2/19/80); see N.J.S.A. 40:62-14.8.

^{20/} State v. State Supervisory Employees Assn., 78 N.J. 54 at 67 (1978).

The Commission's failure and refusal to negotiate the health and safety, implications of its decision presents a separate issue. Such subjects are clearly terms and conditions of employment. ^{21/} A recent decision of the Court in Newark Bd. of Ed. and Newark Teachers' Union Local 481, A.F.T., AFL-CIO, App. Div. Docket No. A-2060-78 (2/26/80) sheds some light on the surviving nature of the employer's obligation to bargain as to "...the effects of the exercise of a managerial prerogative." ^{22/} Contrary to Point II of Respondent's brief, the Supreme Court has not rejected required bargaining as to the effects of all managerial decisions, only as to some of them, only as to those which would emasculate managerial prerogatives or place an undue cost burden on the employer. In Newark Bd. of Ed., after quoting the well settled definition of terms and conditions of employment as stated by the Supreme Court in State v. State Supervisory Employees Assn., supra, 78 N.J. at 67 (very much like the quote from the Byram Court in n. 17, supra, the Court continued (slip. op. at pp. 5 and 6):

"Applying this definition, New Jersey courts have consistently found that a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in workload was caused by a change in educational policy. See Bd. of Ed. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Assn., supra; Burlington Cty. College Faculty Assn. v. Bd. of Trustees, 64 N.J. 10, 12 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); In re Byram Tp. Bd. of Ed. 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Galloway Tp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978)."

Applying this formulation to the instant proceeding, I conclude that requiring negotiations as to the health and safety subjects raised by Teamster witnesses would not significantly interfere with the Respondent's determination to bus employees to and from the work site. Neither would they impose a burdensome cost. Indeed, Respondent's Personnel Director Galletta testified as to the Commission's concerns for minimizing unsafe and unhealthy working conditions upon the change. Where, as here, the employee organization sought to negotiate

^{21/} See e.g. Brookdale Community College, supra.

^{22/} Bd. of Ed. of the Woodstown-Pilesgrove Regional School District, supra, slip. op. at p. 7.

these subjects the employer was obliged to respond at the table. Its failure and refusal to do so constitutes a violation of N.J.S.A. 34:13A-5.4(a)(5). ^{23/}

With respect to the alleged refusal to reduce a negotiated agreement to writing and to sign such agreement, I conclude that the evidence fails to sustain Charging Party's position that Respondent at any time entered into a final and binding agreement containing a \$2.00 daily reimbursement of employees for continued use of their own automobiles. The record is clear that the tentative agreement on reimbursement of December 11, which was made part of the final tentative agreement of December 18, was rejected by the Teamsters on December 20 before the Commission voted to reject Commissioner Pasquariello's proposal. Thereafter, on December 26, the Commission informed the Teamsters of the change in policy. The agreement which the Teamsters thereafter approved on January 2 could not have included the reimbursement agreement of December 11, and even if the Teamsters believed it did, there was no meeting of the minds between the parties. I shall therefore recommend dismissal of the subd. (a)(6) allegation.

The record sustains the conclusion that Personnel Director Galletta on behalf of the Commission warned employee Kirwin that if the Teamsters rejected the agreement a second time on January 2, existing benefits would be unilaterally withdrawn. This matter was fully litigated between the parties. ^{24/} In the context of the ongoing negotiating process, these statements unlawfully restrained employees in the exercise of the right protected by the Act to assist their representative in the negotiation process. ^{25/} Accordingly, I will recommend that

^{23/} Respondent's claim that the Charging Party waived its right to protest the Respondent's refusal to negotiate the unilateral changes in health and safety conditions of employees caused by the policy change to vaning is rejected. A waiver of negotiating rights must be established by clear and convincing proof. Such proof is lacking. The terms of the agreement which was ratified on January 2, 1979 was silent as to the mode of transportation. Duva may have believed he could effect a change even after the ratification. He surely did not give his assent to the change in policy or its effect upon employee health and safety, as Respondent suggests at p. 42 of its brief, and his letter of January 9 shows that he acted on that belief.

^{24/} See In re Bd. of Ed., Englewood Public Schools, P.E.R.C. No. 76-18 and Brookdale Comm. College and George J. Abel, P.E.R.C. No. 78-80.

^{25/} In re Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4. The Commission's conduct in this regard should be distinguished from its stated position on December 26 that it would not agree to retroactivity, a legitimate negotiating position after Teamster rejection of the contract at the initial ratification.

in this respect as well as in the refusal to negotiate as to health and safety, Respondent has violated subd. (a)(5). ^{26/}

I further conclude that by the foregoing conduct the Commission did not discriminate in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, in violation of subd. (a)(3). As found, the Commission was free to eliminate use by employees of their own automobiles. As to the threat of unilateral withdrawal of benefits, it did not materialize in any change in terms or conditions of employment, a necessary prerequisite for a finding of violation. ^{27/} The threat did unlawfully inhibit the negotiations position of the Charging Party but that is conduct violative of the employer's negotiating duty without regard to discriminatory motive.

Respondent renews in its brief a contention that this Examiner should have recused himself from continued hearing of the proceeding because of having become privy to correspondence from Kirwin to third parties concerning settlement discussions and positions prior to convening the January 3, 1980 hearing. The Examiner received a copy of the correspondence as one of the persons listed on Kirwin's original letter to receive copies. The original ruling denying this application and denying a stay of hearing to permit an interlocutory appeal to the Commission is hereby reaffirmed, and for the same grounds recited in the transcript (see Tr. 236 to 250).

CONCLUSIONS OF LAW

1. By failing and refusing to negotiate as to the health and safety claims of employees resulting from the change in management policy regarding transportation of meter reader employees to and from their work sites, Respondent Commission has thereby engaged in, and is engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(5).

2. By threatening unit employees with the unilateral withdrawal of existing terms and conditions of employment if the employees refused to ratify a tentative agreement on terms of a successor collective negotiations agreement, Respondent Commission has refused to negotiate in good faith, thereby engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(5).

3. By unilaterally implementing a new policy requiring meter reader

^{26/} The charge and complaint does not allege any violation of N.J.S.A. 34:13A-5.4(a)(1).

^{27/} See In re Tp. of Hillside, P.E.R.C. No. 77-4.

employees to be bussed by its own vehicles to and from their work sites and by engaging in the conduct described in paragraph 2, above, Respondent Commission has not engaged in any unfair practice within the meaning of N.J.S.A. 34:13A-5.4 (3) or (5).

RECOMMENDED ORDER

For the foregoing reasons and upon the entire record herein, IT IS HEREBY ORDERED that the Passaic Valley Water Commission, its representatives and agents:

1. Cease and desist from:

a. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the health and safety of employees arising from the decision to van meter reader employees to and from their daily work locations and by threatening to unilaterally change existing terms and conditions of employment upon employee rejection of the proposed terms of a successor collective negotiations agreement.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

a. Negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the effect upon the health and safety of meter reader employees caused by the decision to van meter reader employees to and from their daily work assignments.

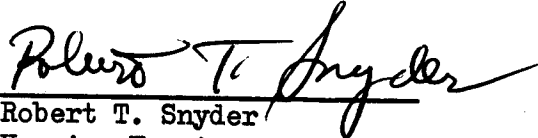
b. Post at its headquarters located at 1525 Main Avenue, Clifton, New Jersey, copies of the attached notice marked "Appendix A." Copies of said notice on forms to be provided by P.E.R.C. shall, after being duly signed by Respondent representative be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

c. Notify the Chairman of P.E.R.C., in writing, within twenty (20) days of receipt of P.E.R.C.'s Order, what steps the said Respondent has taken to comply herewith.

3. IT IS FURTHER ORDERED that so much of the Complaint as alleges violation of N.J.S.A. 34:13A-5.4(a)(3) and (5) arising from a failure to negotiate

the decision to van meter readers to and from their work assignments and the threat to unilaterally change terms and conditions of employment under the circumstances disclosed by the record be dismissed in their entirety.

DATED: March 12, 1980
Newark, New Jersey


Robert T. Snyder
Hearing Examiner

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 by refusing to negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the health and safety of employees arising from the decision to van meter reader employees to and from their daily work locations and by threatening to unilaterally change existing terms and conditions of employment upon employee rejection of the proposed terms of a successor collective negotiations agreement.

WE WILL negotiate in good faith with the International Brotherhood of Teamsters Local No. 286 concerning the effect upon the health and safety of meter reader employees caused by the decision to van meter reader employees to and from their daily work assignments.

PASSAIC VALLEY WATER COMMISSION

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780