

I.R. NO. 2005-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT
BUS OPERATIONS, INC.,

Petitioner,

-and-

Docket No. SN-2005-030

AMALGAMATED TRANSIT UNION,
NEW JERSEY STATE COUNCIL,

Respondent.

SYNOPSIS

A Commission designee declines the request of New Jersey Transit Bus Operations, Inc., for interim restraints of arbitration of four grievances filed by the Amalgamated Transit Union, New Jersey State Council. The grievances involve job descriptions, salary and bonuses for the positions "Garage Clerk" and "Garage Clerk, Senior" and for employees claiming to hold those titles.

Applying the standards of negotiability for employees covered by the New Jersey Public Transportation Act of 1979, as construed in N.J. Transit Bus Operations Inc., New Jersey Transit Corporation and Amalgamated Transit Union, et al., 125 N.J. 41 (1991), the designee concludes that all four grievances relate to issues that are mandatorily negotiable for transit employees as they settle an aspect of the employer-employee relationship and would not, if sustained in arbitration, interfere with the statutory mission of the employer.

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NEW JERSEY STATE COUNCIL,
DIVISION LOCAL 819,

Respondent.

Appearances:

For the Petitioner, Peter C. Harvey, Attorney General
(Sharon Price-Cates Deputy Attorney General, of counsel
and on the brief)

For the Respondent, Kroll, Heineman & Giblin, LLC,
attorneys (Raymond G. Heineman, of counsel and on the
brief)

INTERLOCUTORY DECISION

On November 16 and 23, 2004, New Jersey Transit Bus
Operations, Inc. (NJTB or the employer) petitioned for a scope of
negotiations determination. The employer seeks restraints of
binding arbitration of four grievances filed by the Amalgamated
Transit Union, New Jersey State Council (ATU). The grievances
involve job descriptions, salary and bonuses for the positions
"Garage Clerk" and "Garage Clerk, Senior" and for employees
claiming to hold those titles.

Both parties have filed briefs and exhibits. On March 24, 2005, NJT filed an application for interim relief seeking temporary restraints of the four arbitrations pending a final determination of the Commission.^{1/} It filed a proposed order to Show cause and a brief in support of its application. On March 29, 2005, the Association filed a response opposing the interim relief request.

On March 29, 2005, acting as Commission Designee pursuant to N.J.A.C. 19:14-9.2(d), I executed an Order to Show Cause returnable on April 12, 2005. Both parties appeared on the return date and argued orally. At the end of the Order to Show Cause Hearing I denied the request for interim restraints of arbitration, stating my findings and conclusions on the record. This written decision contains my reasoning.

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.

^{1/} The earliest of the arbitration hearings was sscheduled for April 15, 2005.

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). Where a restraint of binding grievance arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, 155 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975); City of Newark, I.R. No. 2005-4, 30 NJPER 459, 460 (¶152 2004).

NJT asserts that although the relief sought in some of the grievances is economic, grievances 04-0018 and 04-0295 seek to require NJT to make promotions. It contends that by arguing that the employees in cases 04-0019 and 04-0021 should be deemed "Senior Garage Clerks," the ATU is attempting to require NJT to fill positions that no longer exist and is circumventing its obligation to negotiate with NJT over the duties and qualifications of the position "garage clerk."

ATU responds that all four grievances seek to enforce agreements made concerning the appropriate compensation to be paid employees based upon their duties and job classifications. It asserts that it has been the parties' practice to designate any clerk working as the only clerk in a particular garage as a "Senior Garage Clerk" and pay that worker accordingly.

The scope of negotiations for non-police employees of NJT is broader than that applicable to public employees generally. See NJ Transit Bus Operations, Inc., P.E.R.C. No. 88-74, 14 NJPER 169 (¶19070; 1988); cited with approval in NJ Transit Bus Operations, 125 N.J. 41, 60 (1991). Summarizing the Commission's analysis, the Court observed:

Basically, that standard calls for negotiation on any subject that affects the employees' working conditions as long as such negotiations do not substantially interfere with the goals of NJT, with its "statutory mission." As interpreted by PERC in its rulings in its first opinion, this standard seems to mean that where the only consequence of negotiation is higher costs, that is not enough to bar negotiations.

Applying this standard I conclude that the Commission is substantially likely to decline to restrain arbitration as the issues raised in the grievances relate to "an aspect of the relationship between the employer and the employees." 14 NJPER at 174.

Job classifications were among the issues in dispute in the Commission's first opinion in NJ Transit Bus Operations, Inc. The Commission noted:

Changes in work assignments and job classifications are mandatorily negotiable in the private sector. They can affect employee rates of pay, work hours and working conditions, and the ability of the union to preserve the work of the bargaining unit. Therefore, in general, we find this clause to be mandatorily negotiable. However, NJ Transit does have the right to change job

classifications and specifications where necessary to enable it to fulfill its statutory mission. For example, where new technology has resulted in the need for employees to perform new and different assignments, NJ Transit must have the authority to direct that such work be done. For example, NJ Transit could not be required to negotiate over its decision to purchase vehicles which might create the need for a new job specification. However, even under those circumstances, the effects of such changes (such as compensation for the different duties) are mandatorily negotiable.

Even assuming that there are job duties that the employer seeks to change that may be the result of changes in technology, I conclude that it has not shown that the Commission would be substantially likely to find that the grievances could compromise the statutory mission of NJT.^{2/} Essentially all the grievances assert that the duties they are performing are those of a higher title and/or they are not being paid the negotiated compensation pertinent to the performance of those duties.

In E. Brunswick Principals & Supervisors Ass'n and E. Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd NJPER Supp.2d 285 (¶229 App. Div. 1992), an arbitrator found that despite changes in job titles following a

^{2/} I do not concur with NJT's framing of the dispute as involving promotional decisions. However, during the Order to Show Cause hearing, counsel for the ATU noted that the Commission found that promotional issues, that would be non-negotiable for most public employees, were within the scope of negotiations for NJT workers because they settled an aspect of the employer-employee relationship. 14 NJPER at 177-178.

management reorganization, the holders of the new positions were performing duties that warranted higher pay rates. The Commission found the issue to be mandatorily negotiable. Its position was sustained by the Appellate Division.

The ATU's assertion that garage clerks who are the sole employees in their job classification assigned to a particular garage shall be deemed to have senior status or be eligible for premium pay raises a mandatorily negotiable issue. In Lopatcong Tp., P.E.R.C. No. 91-15, 16 NJPER 479 (¶21207 1990) the Commission held that an agreement giving premium pay to police officers required to patrol alone after midnight was legally negotiable and enforceable through binding arbitration. Similarly, in New Jersey Highway Authority and IFPTE Local 193 (Toll Supervisors of America), AFL-CIO, P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd 29 NJPER 276 (¶82 App. Div. 2003), the Appellate division affirmed the Commission's decision allowing arbitration of a grievance seeking extra pay for certain toll supervisors. The extra compensation was allegedly due when a supervisor, assigned to a toll plaza with only one toll collector, was required to cover for the collector during a break, a duty that had been removed from the toll supervisor job description.

ORDER

The request of New Jersey Transit Bus Operations, Inc. for interim restraints of binding arbitration of New Jersey State Board of Mediation Arbitration Case Nos. 04-0018, 04-0019, 04-0018 and 04-0295 pending the final decision or further order of the Commission is denied.

BY ORDER OF THE COMMISSION



Don Horowitz
Commission Designee

Dated: April 27, 2005
Trenton, New Jersey