

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS OPERATIONS, INC.,  
Charging Party,

-and-

Docket No. CE-2015-015

AMALGAMATED TRANSIT UNION, LOCAL NOS.  
819, 820, 821, 822, 823, 824, 825 & 880,  
Respondent.

SYNOPSIS

A Commission Designee grants an application for interim relief filed by the Charging Party alleging that the Respondent violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it refused to negotiate in good faith with the Charging Party and to conduct interest arbitration in accordance with the New Jersey Public Transportation Act (N.J.S.A. 27:25-14) and the Act.

The Respondent had filed for interest arbitration with another forum that was not under the Commission's rules.

The Charging Party argued that the Respondent should be required to negotiate in good faith with it and to conduct interest arbitration in accordance with the Commission's rules under N.J.S.A. 27:25-14(c) and the Act since there is no mutual agreement between the parties. The Charging Party, however, argued that although under the statute the Commission should have jurisdiction, that based on the "agreement" between the parties, the selection of the arbitrators must still be agreed to by the parties and not be subject to the Commission's rules.

The Respondent argued that the Commission should not have jurisdiction because the parties have an "agreement," which is an agreement between the parties under N.J.S.A. 27:25-14(c) and further that another supplemental agreement requires that any labor dispute regarding their "agreement" (and the interest arbitration procedures) must be submitted to arbitration.

The Designee found that there was no agreement between the parties, as required under the statute, and that the Respondent was required to negotiate in good faith with the Charging Party pursuant to N.J.S.A. 27:25-14 and N.J.S.A. 34:13A-1 et seq., and that the Respondent was required to cease and desist from pursuing its pending interest arbitration.

The Designee found that the Charging Party had established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and had established all the required elements to obtain interim relief.

I.R. NO. 2015-6

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819, 820, 821, 822, 823, 824, 825 & 880,

Respondent.

Appearances:

For the Charging Party, McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys (John J. Peirano, of counsel and on the brief, David M. Alberts & Henal Patel, on the brief)

For the Respondent, Cohen, Leder, Montalbano & Grossman, LLC, attorneys (Paul A. Montalbano, of counsel and on the brief)

INTERLOCUTORY DECISION

On April 29, 2015, the New Jersey Transit Bus Operations, Inc. ("NJTBO") filed an unfair practice charge against the Amalgamated Transit Union, Local Nos. 819, 820, 821, 822, 823, 824, 825, and 880 ("ATU"), which was accompanied by an application for interim relief, certifications, a brief, and exhibits. The NJTBO is the bus division of New Jersey Transit. NJTBO employs approximately 10,000 persons across three divisions in New Jersey (Northern, Central, and Southern), and operates a fleet of over 2,000 buses, serving approximately 600,000 customers on a daily basis.

The ATU is the majority representative for approximately 4,500 employees in eight different local units representing hourly employees (such as bus operators, light rail operators, and maintenance workers), field salaried employees (such as depot and district clerks, ticket agents, and inspectors), and general office clerical workers (such as typists, clerks, and receptionists). The NJTBO and the ATU are parties to three expired collective negotiations agreements ("CNAs") that were in effect from July 1, 2008 through June 30, 2010 covering the hourly employees, the field salaried employees and the general office and clerical employees. The ATU has filed for interest arbitration with the American Arbitration Association, not under the Commission's rules, and the matter is pending.

The charge alleges that the ATU violated 5.4b(3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by refusing to negotiate in good faith with the NJTBO and to conduct interest arbitration in accordance with the New Jersey Public Transportation Act (N.J.S.A. 27:25-14) and the Act. The application seeks an Order requiring the ATU to negotiate in good faith with the NJTBO and to conduct interest

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<sup>1/</sup> These provisions prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the Commission."

arbitration in accordance with the above statues. Additionally, the NJTBO is seeking a temporary, preliminary and permanent injunction barring any arbitrator selected by the ATU from serving as its labor counsel, expert witness, or in any other advocacy position, during the interest arbitration proceedings.

On April 30, 2015, an Order to Show Cause was issued. The ATU filed an opposition brief,<sup>2/</sup> a certification and exhibits. The parties presented oral argument via telephone conference call on May 14.

#### FINDINGS OF FACT

The New Jersey Supreme Court has set forth the background for the creation of New Jersey Transit (and also NJTBO):

In 1979 the Legislature passed the Public Transportation Act (the Act), L.1979, c. 150, N.J.S.A. 27:25-1 to -24, creating New Jersey Transit (NJT), a public corporation, for the purpose of converting New Jersey's mass-transit system from one of private enterprise to one owned and operated by the State. NJT, through use of federal funds, either directly or through subsidiaries acquired mass-transit companies and their assets, mainly buses and trains, and became the employer of the existing mass-transit work force.

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<sup>2/</sup> The ATU also filed a supporting brief and certification with exhibits from an application filed in New Jersey Superior Court seeking an Order requiring the NJTBO to resolve disputes between the parties concerning interest arbitration, encountered during the arbitration process, to be resolved by another arbitration as opposed to this instant application before the Commission. These documents were incorporated into the ATU's opposition brief filed in this proceeding.

[In re NJ Transit Bus Operations, 125 N.J. 41, 43-44 (1991)].

N.J.S.A. 27:25-14(c) governs the resolution of a continuing failure to resolve an impasse and provides in pertinent part (emphasis added):

c. The enforcement of the rights and duties of the employer and employees shall be governed by the "New Jersey Employer-Employee Relations Act" P.L.1944, c. 100 (C. 34:13A-1 et seq.) and shall be within the jurisdiction of the Public Employment Relations Commission (Commission) established pursuant to that act. In carrying out this function, the Commission shall be guided by the relevant Federal or State labor law and practices, as developed under the "Labor Management Relations Act, 1947" or under the "Railway Labor Act," (45 U.S.C. 151 et seq.), provided however that employees shall not have the right to strike except as provided by the "Railway Labor Act." Whenever negotiations between the employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the Commission shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse, including the assignment of a mediator. In the event of a failure to resolve the impasse by mediation, the Commission shall, at the request of either party, invoke fact finding with recommendations for settlement of all issues in dispute. Fact-finding shall be limited to those issues that are within the required scope of negotiations. In the event of a continuing failure to resolve an impasse by means of the procedure set forth above, and notwithstanding the fact that such procedures have not been exhausted, but not later than 30 days prior to the expiration of a collectively negotiated contract, the procedures set forth in paragraph (2) of subsection d. of Section 3 and Sections 4

through 8 of C. 85, P.L.1977 (N.J.S.A. 34:13A-16(d)(2) through 34:13A-21) shall be the sole method of dispute resolution unless the parties mutually agree upon an alternative form of arbitration;

In September of 1980, the parties entered into an agreement ("Agreement") pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 5333(b)). The agreement provided for selection of three arbitrators, one chosen by each party and one neutral, through the American Arbitration Association. In pertinent part to this application, the agreement provided the following in the event of an impasse between the parties regarding subsequent CNAs:

(c) In the event that negotiations between NJ Transit and an exclusive representative, concerning the making or maintaining of collective bargaining agreements, and the terms to be included in such agreements shall reach an impasse, which is defined as either

- (a) the exhaustion of fact finding; or
- (b) a point in time not later than thirty (30) days prior to the expiration of a collectively negotiated contract,

the parties will meet to determine the form of arbitration to be followed in solving the impasse. The parties shall consider alternative forms of arbitration including, but not limited to traditional interest arbitration as practiced in the Transit Industry and final offer arbitration. In the event the parties cannot agree on a terminal procedure for the settlement of the impasse, then the procedures to be followed shall be those set forth in Section 14(c) of c. 150 P.L.1979 (N.J.S.A. 27:25-14(c)) and paragraph 2 of subsection (d) of section 3 and sections

4 through 8 of c. 85 P.L.1977 except that the selection of the arbitrators will be governed by the procedures set forth in Section 19(a) of this Agreement.

In December of 1980 the parties entered into a supplemental agreement ("Supplemental Agreement") which provides:

In the event that NJ-03-0034, or any other Project to assist in financing the purchase of Transport of New Jersey and Maplewood Equipment Company ("Acquisition Project"), is approved for federal funding under the Urban Mass Transportation Act, as amended ("Act"), the parties hereto agree that the following terms and conditions shall apply for the protection of affected employees, pursuant to Section 13(c) of the Act:

(1) The Section 13(c) agreement dated September 15, 1980 (Section 13(c) agreement), shall apply to the Acquisition Project and shall be certified by the Department of Labor, along with this supplemental agreement, for specification in the contract of assistance.

(2) This supplemental agreement relates only to changes which are a result of the Acquisition Project, as defined in paragraph (2) of the Section 13(c) agreement.

(3) The parties to the supplemental agreement hereby agree that, as applied to the Acquisition Project, the general obligation of the Parties to negotiate and arbitrate any changes in the collective bargaining agreements between Transport of New Jersey or Maplewood Equipment Company and the Unions signatory hereto, which are governed by the provisions of paragraph (4), except changes thereunder involving wages or pension rights, benefits and improvements for either active or retired employees and paragraphs (5), (6), (14), (17(a)), 17 (b)) and (18) of the Section 13(c) agreement, shall include she further specific obligation

under paragraph 19(c) of the Section 13(c) agreement, to submit any such unresolved dispute concerning the terms to be included in such collective bargaining agreements, to traditional interest arbitration as practiced in the transit industry, unless the parties otherwise agree upon a different terminal procedure for the settlement of such dispute.

(4) In the event there arises any labor dispute with respect to the protection afforded by this supplemental agreement, or with respect to the interpretation, application or enforcement of the provisions of this supplemental agreement, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, it may be submitted to arbitration, pursuant to paragraph 19(a) of the September 15, 1980 Section 13(c) agreement, upon the request of NJ Transit or the Unions.

In Witness Whereof, the parties hereto have executed this agreement by the duly authorized representatives this 13th day of December 1980 to be effective November 24, 1980.

The relevant past practice reveals the parties proceeded to interest arbitration under the Commission's rules (N.J.A.C. 19:16-5.6) before an arbitrator; the arbitrator was selected on June 30, 1987 and the Award was issued on January 12, 1989.<sup>3/</sup>

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<sup>3/</sup> The Commission's records indicate, and I take administrative notice, that the ATU filed for interest arbitration before the Commission in Docket Nos. IA-2003-002 and IA-2006-003; these matters ultimately settled and no Awards were issued by an interest arbitrator.



CONCLUSIONS OF LAW

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<sup>4/</sup> 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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing

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4/ Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

except in the most clear and compelling circumstances.

As set forth above, the NJTBO argues that the ATU should be required to negotiate in good faith with the NJTBO and to conduct interest arbitration in accordance with the Commission's rules under N.J.S.A. 27:25-14(c) and the Act since there is no mutual agreement between the parties. The NJTBO, however, argues that although the under the statute the Commission should have jurisdiction, that based on the Agreement, the selection of the arbitrators must still be agreed to by the parties and not be subject to the Commission's rules.

The ATU argues that the Commission should not have jurisdiction because the parties have the Agreement, which is an agreement between the parties under N.J.S.A. 27:25-14(c) and further that the Supplemental Agreement requires that any labor dispute regarding the Agreement (and the interest arbitration procedures) must be submitted to arbitration. At oral argument, the NJTBO asserted that the Supplemental Agreement only applies to the acquisition by New Jersey Transit of the Transport of New Jersey and Maplewood Equipment Company ("Acquisition Project") and does not affect the Agreement regarding the jurisdiction of the Commission.

In re NJ Transit Bus Operations, a scope of negotiations case, the Court referenced the ability of NJT and the employees to proceed to interest arbitration under the Act:

The issue before us arises from the attempt of NJT and the unions to negotiate new contracts. The dispute between NJT and the unions concerns what matters are properly the subject of negotiations and what matters are committed to the exclusive determination of the employer, NJT. The dispute regarding the scope of negotiations goes to the heart of the employer/employee relationship, for it determines which matters employees may negotiate about and thereby assure protection of their interests, and which matters may be unilaterally determined by the employer. "Scope of negotiations" determinations are important in all public employee cases, but especially here, for although there is no right to strike, there is a provision in the Act allowing interest arbitration when the employer and employee fail to agree concerning a matter. N.J.S.A. 27:25-14c (making applicable N.J.S.A. 34:13A-16(d)(2) to -21, providing interest arbitration for police and fire departments). Therefore, if a matter is within the scope of negotiations, the Act entitles the employees not only to negotiate but if unsuccessful at the negotiating table, assures them, if impasse results, of a determination by a neutral arbitrator.

[In re NJ Transit Bus Operations, 125 N.J. at 45-46]

The Court further stated:

Section c [N.J.S.A. 27:25-14c] goes on to provide that on impasse the interest arbitration procedures applicable to police and firefighters, see N.J.S.A. 34:13A-16d(2) to -21, shall apply. Presumably this provision has as its primary objective the avoidance of strikes—illegal or not. It has other implications of importance here, however, in this most critical economic sector, formerly private, now public, with employees who no longer have the right to strike. It represents what is undoubtedly the most significant difference between the

rights of other public employees and the mass-transit workers covered by the Act. It is a monumental difference, unprecedented in the public employee field, except for police and firefighters...Here the parties are on a footing of absolute equality, the Legislature has decreed that when these formerly private employees find themselves unable to agree with their employer, they may not strike but are otherwise equal, for they may commit the interest dispute, be it money or other matters, to neutral arbitrators for binding resolution.

[Id. at 54-55]

The Commission has reviewed N.J.S.A. 27:25-14 and granted interim relief in a matter where NJT acquired the Mercer County Improvement Authority and the union had filed for interest arbitration under N.J.S.A. 40:37A-96 (a statute that applied to counties as opposed to the State) approximately three months prior to the acquisition. The Commission held:

We hold that the applicable statute governing labor negotiations between NJT Mercer and Division 540 is N.J.S.A. 27:25-14. This conclusion is based on the plain language of the respective statutes and accepted principles of statutory construction. It is well-settled that where the language of a statute is clear, our sole function is to enforce it according to its terms. E.g. Sheeran v. Nationwide Mutual Ins. Co., Inc., 80 N.J. 548, 556 (1979). The dispositive fact here is that the employees represented by Division 540 are employed by NJT Mercer, not MCIA, and the unresolved labor dispute that currently exists is between Division 540 and NJT Mercer, not Division 540 and MCIA. In these circumstances, the legislature has directed, in plain and unmistakable language, that such unresolved disputes be settled

pursuant to N.J.S.A. 27:25-14. We are required to follow this direction.

[N.J. Transit Mercer, Inc. P.E.R.C. No. 85-43, 10 NJPER 626 (¶15301 1984)]

The New Jersey Legislature set the policy for the Act in N.J.S.A. 34:13A-2. Declaration of policy:

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

I find that the Agreement and Supplemental Agreement<sup>5/</sup> are not dispositive in this matter based on N.J.S.A. 27:25-14, the guidance from the Legislature and the New Jersey Supreme Court and the past practice of the parties of proceeding to and filing

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<sup>5/</sup> Additionally, the Supplemental Agreement is ambiguous because it is not clear if it only applies to the Acquisition Project.

for interest arbitration under the Commission's rules. I find that although the parties have the Agreement, N.J.S.A. 27:25-14(c) states that the Act "[S]hall be the sole method of dispute resolution unless the parties mutually agree upon an alternative form of arbitration." The filing of the instant application is clear evidence that the parties have not mutually agreed upon an alternate form of arbitration.

Based on the foregoing, the NJTBO has demonstrated a substantial likelihood of success in a final Commission decision. I also find that NJTBO has established that irreparable harm may occur if interim relief is not granted because it has been nearly five years since the parties' CNAs have expired and labor relations instability may result from further negotiations delay. N.J. Transit Mercer, Inc.

Next, in deciding whether to grant interim relief, the relative hardship to the parties must be considered and a determination made that the public interest will not be injured by the interim order. Crowe. I find that there is no hardship to the ATU as they will only be required to follow N.J.S.A. 27:25-14 and proceed to a different interest arbitration forum under the Commission's rules. NJTBO will suffer hardship if labor relations negotiations do not occur in a timely manner and in accordance with the statute. As a result, I find that the relative hardship to the parties weighs in favor of the NJTBO.

Finally, in considering the public interest, I find that it is furthered by the parties adhering to the collective negotiations process and the law since this results in labor stability and promotes the public interest. Additionally, 600,000 members of the public rely transportation on a daily basis and could be impacted by labor instability.

As set forth above, I find that the NJTBO has established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief. The application for interim relief is granted. Since interim relief is granted, I have not addressed the issue of the ATU's selection of its arbitrator and his role. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

Having granted the NJTBO's application, I nevertheless, encourage the parties to consider a negotiated resolution to this matter to avoid negative employment actions.

ORDER

Pending the final Commission decision in this matter, Amalgamated Transit Unit is ordered to:

A. Negotiate in good faith with the New Jersey Transit Bus Operations, Inc. pursuant to N.J.S.A. 27:25-14 and N.J.S.A. 34:13A-1 et seq., and

B. Cease and desist from pursuing the currently pending interest arbitration before the American Arbitration Association.

The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's rules.



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David N. Gambert  
Commission Designee

DATED: June 11, 2015

Trenton, New Jersey