

I.R. NO. 91-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT, MERCER INC.,

Respondent,

-and-

Docket No. CO-91-241

AMALGAMATED TRANSIT UNION, DIVISION 540,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the New Jersey Transit, Mercer Inc. from eliminating the position of cashier. The Amalgamated Transit Union, Division 540 claimed that the elimination of this position had an unlawful chilling effect on the negotiations for a successor agreement. New Jersey Transit had installed automated fare machines which eliminated many of the tasks done by cashiers. Accordingly, the elimination of the cashier's position was not negotiable. However, one employee was ordered to work a double shift on Sundays. No good cause was shown for this assignment and under the circumstances such an assignment was negotiable. New Jersey Transit, Mercer was ordered to rescind the assignment.

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Appearances:

For the Respondent
Robert J. DelTufo, Attorney General
(David S. Griffiths, Deputy Attorney General)

For the Charging Party
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

INTERLOCUTORY DECISION

On March 11, 1991, Amalgamated Transit Union, Division 540 ("ATU") filed an unfair practice charge against New Jersey Transit, Mercer Inc. ("NJ Transit") alleging that NJ Transit engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq., specifically, subsections 5.4 (a)(1), (2), (3), (4), (5) and (7). NJ Transit and the ATU are parties to a collective negotiations agreement which expired on June 30, 1990. The parties are engaged in negotiations for a successor agreement and, pursuant to N.J.S.A. 27:25-14(c), the appointment of an interest arbitrator has been requested. In October 1987, the ATU sought to restrain NJ Transit from reorganizing the dispatchers department. The parties entered

into a settlement agreement in February 1988 which resolved that dispute. The settlement provided that the reorganization of the dispatchers department posted on October 27, 1987 was withdrawn. The agreement also covered some nine other outstanding disputes between the ATU and NJ Transit.

NJ Transit employs four dispatchers and one cashier in the dispatchers department. It is alleged that on or about March 2, 1991, NJ Transit eliminated the position of cashier by assigning some of the cashier's duties to the garage employees and the balance of the cashier's duties to the dispatchers. This unilateral change in terms and conditions of employment was done without negotiations with the ATU and, according to the ATU, is a violation of the February 1988 settlement agreement. The ATU argues that such a unilateral change during the course of negotiations had an unlawful chilling effect on the pending interest arbitration and it seeks an injunction against NJ Transit pending a final Commission decision.

An Order to Show Cause was executed and made returnable for April 8, 1991.^{1/} NJ Transit does not dispute that it eliminated the cashiers position.

By way of certification of Robert Byrne, NJ Transit states that it decided to utilize electronic fare boxes on certain of the buses it operates. As a result of the introduction of the electronic fare boxes, much of the work previously done by the

^{1/} The hearing was conducted on that date. During that time, the parties submitted briefs and affidavits and argued orally.

cashiers was eliminated. Prior to the introduction of the electronic fare boxes, passengers entering a bus were required to pay exact change and deposited their fares into a fare box. The money from the fares was not counted. The drivers were not required to register the amount paid at the time of receipt and at sometime during each day, buses would have their fare box contents removed and counted by a cashier. The cashier would also bag cash receipts and prepare appropriate paper work for bank deposit.

With the new electronic fare boxes, drivers are now required to key into the fare box the fare of each passenger entering each vehicle. Everyday, the bus has it fare removed and deposited in a safe at the garage. The safe is later turned over to a bank which counts its contents. Byrne certifies that these electronic fare boxes have eliminated 90% of the cashier's duties. Management, therefore, decided to eliminate the title of cashier and to reassign the remaining 10% of the cashiers work to the dispatchers.

The ATU, by way of certification of Stephen Szucsik, maintains that only a small part of the cashiers job has been eliminated and that dispatchers now have to fill out bank deposit slips, keep records and count school script. These are some of the most time consuming of the cashier's duties and the dispatchers have suffered a substantial increase in their assigned duties.

Prior to the elimination of the cashier's position, there was an open Sunday overtime shift. Byrne certified that immediately

following the elimination of the cashier position, when management requested a volunteer to work the open Sunday shift, no one volunteered, and the shift had to be staffed by management personnel. Accordingly Ms. Parrish, a dispatcher, who already worked a split shift on Sunday was assigned to work the open Sunday shift. Her hours now begin at 6 a.m. Sunday morning. She works to 10 a.m., has two hours off, and works from noon to four p.m.. She has eight hours off and then works from midnight to 8 a.m. The shift schedule reveals that ATU employees only failed to volunteer for the open Sunday shift one time before Parrish was assigned this shift on March 10, 1991.

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.^{2/}

^{2/} 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, there is a meaningful and substantial factual dispute as to the impact of electronic fare boxes on the dispatcher work load and I cannot say that the ATU has met its burden in demonstrating that the unilateral elimination of the shift was not lawful and non-negotiable. New Jersey Sports and Exposition Authority, P.E.R.C. No. 90-62, 16 NJPER 46 (¶21022 1989); Middlesex County College, I.R. No. 89-18, 15 NJPER 315 (¶20140 1989).

The prior settlement agreement is not controlling here for management had the right to introduce the electronic fare boxes and this created a new set of facts never contemplated by the settlement agreement. Any damages that flow from the increased workload of the dispatchers are financial and not irreparable. However, I find the assignment of the second shift to Ms. Parrish was not motivated by a managerial need as much as by a "game of one-upmanship". The burden on Ms. Parrish to work a split shift followed eight hours later by another eight hour shift is onerous and the damages to her are irreparable. This shift change has an impermissible chilling effect on interest arbitration. Vineland PBA 266 and City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981), lv. to app. den. App. Div. Dkt. No. AM-1037-80T3 (7/15/81); enf. granted Mot. No. M-3982-80 (7/15/81). On balance, the hardship to the ATU and Parrish are far greater than the hardship NJ Transit will suffer if I restrain this shift change.

Accordingly, I hereby Order NJ Transit to rescind the assignment of the Sunday open shift to Mr. Parrish and return this

shift to an open shift that employees may bid upon.^{3/} If NJ Transit finds that dispatchers are not volunteering for this shift, it may then apply to vacate this order.



Edmund G. Gerber
Commission Designee

DATED: April 11, 1991
Trenton, New Jersey

^{3/} This is an interim order only and pending a final Commission decision.