I.R. NO. 91-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and- Docket No. CO-91-128

AMALGAMATED TRANSIT UNION
DIVISION 824,

Charging Party.

SYNOPSIS

In an Application for Interim Relief brought by the Amalgamated Transit Union, Division 824, a Commission Designee declines to restrain New Jersey Transit from implementing an agreement entered into with Suburban Transit to mutually reduce the number of bus trips each ran weekdays along Route 9. N.J. Transit went from 243 to 221 trips per day and Suburban went from 106 to 86 trips per day.

New Jersey Transit and Division 824 have contract provisions limiting subcontracting. The President of Division 824 was running for re-election of the Division. The election was scheduled for December 7, 1989 while New Jersey Transit announced it's agreement on November 28, 1990. The President of Division 824 claimed the agreement and its announcement were designed to interfere with the internal union election.

I.R. NO. 91-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and- Docket No. CO-91-128

AMALGAMATED TRANSIT UNION
DIVISION 824,

Charging Party.

Appearances:

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

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

INTERLOCUTORY DECISION

On December 3, 1990, the Amalgamated Transit Union, Division 824, AFL-CIO ("ATU") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the New Jersey Bus Operation, Inc., ("NJ Transit") alleging that it violated subsections 5.4(a)(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")[1/] by entering into an agreement to subcontract bus trips

---

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

on the Route 9 corridor to Suburban Trails Corporation ("Suburban") without prior discussions with the ATU and without providing advance warning or documentation in violation of contract provision 15(I) of the agreement entitled "Subcontracting".

> 1. SUBCONTRACTING. Except as provided below, the Company will not undertake the contracting out of the kind or nature of work presently and normally performed by bargaining unit employee.
>
> The Company reserves the right to continue its present practices of contracting out certain work of the nature and kind of such work as was contracted out in the past.
>
> If and when a new technology makes the performance of certain types of work economically unfeasible, such work may be contracted out, provided that no bargaining unit employee shall be laid off as a result of such contracting out. The Company agrees to notify the Union in advance of any contracting out of work by reason of this paragraph.
>
> It is specifically understood that no maintenance work will be subcontracted to a subsidiary company.

1/ Footnote Continued From Previous Page

> restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The charge was accompanied by a request for interim relief and Order to Show Cause. The Order was made returnable for December 11, 1990.

The ATU also argues that its president, James P. Lynch, was running for president of Division 824. The election was scheduled for December 7, 1990. The announcement of the agreement with Suburban was made on November 28, 1990. It is alleged that this announcement was timed in a way to interfere with Lynch's ability to run for president by the implication that employees would be laid off.

NJ Transit argued that the agreement between it and Suburban was a coordinated service agreement and subject to the approval of both the Interstate Commerce Commission and the New Jersey Port Authority. Until it receives such approval, no action involving the ATU's employees will take place. Moreover, NJ Transit argued that it cannot at this time predict the extent of impact on the employees and the time to do so is now. NJ Transit maintains that the agreement with Suburban does not constitute subcontracting work previously done by the ATU members. "Rather, it is an agreement between competitors whereby the amount of work done by each is reduced by means of coordinated schedules to more efficiently serve the needs of their passengers. In addition the agreement is not being developed solely or predominately for economic purposes, although there may be economic ramifications related thereto."

It is undisputed that NJ Transit schedules 243 bus trips along Route 9 each weekday. Suburban operates 106 each weekday. Under the new agreement, NJ Transit will run 221 bus trips and Suburban will run 86 trips per day. The results of this agreement will be a reduction of the duplicate trips run each day. The fares for Suburban will be the same as NJ Transit and the tickets will be interchangeable. Albert R. Hasbrouck, III, Assistant Executive Director of NJ Transit, stated that the agreement would go into effect in the next four to six months and would lead to the possible displacement of 10 full time operators and 4 mechanics at the Howell garage.

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, the ATU has failed to meet its burden. It is not certain that the agreement between NJ Transit and Suburban constitutes subcontracting within the meaning of the contract provision between the parties. Subcontracting normally means an employer entered into a contract with another entity to provide services for that same employer. Here, NJ Transit has only agreed to reduce its level of services. Moreover, there is no evidence adduced by the ATU to demonstrate that NJ Transit's announcement was timed to interfere with the upcoming ATU election aside from the very timing of the announcement. While such timing is evidence of bad faith, in and of itself, it does not prove that the agreement of subcontracting services was motivated by bad faith.

Accordingly, the ATU's Application is denied.

Edmund G. Gerber
Commission Designee

DATED: December 14, 1990
Trenton, New Jersey