

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

N.J. TRANSIT MERCER, INC.,

Charging Party,

-and-

Docket No. CE-85-6

DIVISION 540, AMALGAMATED
TRANSIT UNION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants interim relief in an unfair practice proceeding initiated by N.J. Transit Mercer, Inc. against Division 540, Amalgamated Transit Union. The Commission finds there to be a substantial likelihood that Division 540 violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with N.J. Transit Mercer, Inc. pursuant to N.J.S.A. 27:25-14, the statute governing labor relations concerning employees of N.J. Transit, and when it insisted on proceeding to interest arbitration pursuant to N.J.S.A. 40:37A-96. The Commission further finds that irreparable harm may occur if N.J. Transit Mercer's request for injunctive relief is not granted. Pending a final determination, the Commission orders Division 540 to negotiate with New Jersey Transit Mercer pursuant to N.J.S.A. 27:25-14 and cease and desist from pursuing interest arbitration under N.J.S.A. 40:37A-96.

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Appearances:

For the Charging Party, Grotta, Glassman & Hoffman, P.C.
(M. Joan Foster, of Counsel)

For the Respondent, Weitzman & Rich, P.A.
(Richard P. Weitzman, of Counsel)

DECISION AND ORDER ON MOTION FOR INTERIM RELIEF

On September 7, 1984, N.J. Transit Mercer, Inc. ("NJT Mercer") filed an unfair practice charge against Division 540, Amalgamated Transit Union ("Division 540") with the Public Employment Relations Commission. The charge alleges that Division 540 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4 (b) (3)^{1/} when, after NJT Mercer assumed the operations of the Mercer County Improvement Authority ("MCIA"), it refused to commence negotiations with NJT Mercer pursuant to N.J.S.A. 27:25-14, the statute that allegedly governs N.J. Transit's labor relations, and instead insisted on proceeding pursuant to N.J.S.A.

1/ This subsection prohibits 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."

40:37A-92 through 96, the statute that governs MCIA's labor relations. Simultaneous with filing its charge, NJT Mercer applied for interim relief directing Division 540 to commence negotiations with NJT Mercer pursuant to N.J.S.A. 27:25-14 et seq. and enjoining an interest arbitration initiated by Division 540 pursuant to N.J.S.A. 40:37A-96.

On September 10, 1984, Chairman Mastriani executed an Order to Show Cause returnable before the full Commission on September 19, 1984. At that time, oral argument was held on the application for interim relief. In addition, the parties have filed briefs and supporting affidavits and documentation. This opinion considers whether interim relief should be granted.

The parties agree on the essential facts. NJT Mercer is a wholly-owned subsidiary of N.J. Transit. It came into existence on July 1, 1984 when N.J. Transit purchased MCIA's assets, hired its employees and assumed the operation of the Mercer County Improvement Authority-Metro Division. Division 540 was and continues to be the majority representative of these employees.

Division 540 and MCIA entered a collective negotiations agreement with an expiration date of March 31, 1984. Division 540 advised MCIA of its intention to commence negotiations for a successor agreement by letter dated December 27, 1983. Subsequently, negotiations were conducted. However, no agreement was reached. On March 21, 1984, Division 540 advised MCIA that it believed

an impasse had been reached and that it would proceed to interest arbitration pursuant to N.J.S.A. 40:37A-96. On March 28, 1984, MCIA responded that it believed impasse had not been reached and that future correspondence concerning arbitration should be addressed to N.J. Transit. On March 30, 1984, Division 540 reiterated its intention to proceed to interest arbitration.

On April 13, 1984, N.J. Transit advised Division 540 that it was "presently discussing with the Mercer County Improvement Authority (MCIA) a possible change in the subsidy relationship between the two entities." Therefore, it requested that negotiations be delayed until that question was resolved. Division 540 nevertheless initiated arbitration proceedings. The New Jersey State Board of Mediation appointed an arbitrator.

On July 1, 1984, N.J. Transit assumed MCIA's assets and operation. N.J. Transit was established pursuant to the New Jersey Public Transportation Act of 1979 "for the operation and improvement of a coherent public transportation system." N.J.S.A. 27:25-2(b). Pursuant to this statutory mandate, it has the power to acquire public or private entities providing public transportation service. N.J.S.A. 27:25-13. N.J. Transit's employer-employee relations are governed by N.J.S.A. 27:25-14.

Subsequent to the takeover, Division 540 continued to demand that interest arbitration proceed pursuant to N.J.S.A. 40:37A-96. NJT Mercer demanded that the parties negotiate pursuant to N.J.S.A. 27:25-14. The parties were unable to reach

agreement as to which statutory scheme applied. On September 7, 1984, NJT Mercer filed the instant unfair practice charge.^{2/}

NJT Mercer asserts that N.J.S.A. 27:25-14 governs negotiations between it and Division 540 and therefore Division 540's refusal to negotiate according to that statute's procedures violates subsection 5.4(b)(3) of the Act. Division 540 asserts that this Commission lacks jurisdiction to enjoin the interest arbitration proceedings it initiated before NJT Mercer assumed MCIA's operations and that NJT Mercer is obligated to continue these proceedings. It also asserts that an agreement to resolve contract disputes continues beyond a contract's expiration date. Moreover, it argues that there is no prospect of immediate and irreparable harm to warrant interim relief.

To obtain interim relief, the charging party must establish that it has a substantial likelihood of success on the merits and that it will probably suffer immediate and irreparable harm if the requested relief is not granted. See In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975) and In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975). We believe NJT Mercer has met these standards.

^{2/} On September 17, 1984, Division 540 filed a charge against NJT Mercer. The charge alleges that NJT Mercer violated subsections 5.4(a)(1) and (5) of the Act when it conspired to stall the collective negotiations between Division 540 and representatives of MCIA in an effort to preclude a contract agreement between these parties prior to 'takeover' of MCIA by NJTM." The charge further alleges that NJT Mercer has violated the Act by refusing to engage in interest arbitration with Division 540 pursuant to N.J.S.A. 40:37A-96(f).

A review of the two statutory schemes for resolving labor disputes is necessary to resolve the issue presented here. N.J.S.A. 40:37A-92 et seq. governs labor relations concerning employees of a public transportation facility operated by a county improvement authority. It provides, at N.J.S.A. 40:37A-96, for submission of unresolved contractual disputes to binding interest arbitration. In pertinent part, it provides:

In the case of any labor dispute between a county improvement authority operating a public transportation facility and its employees where collective bargaining does not result in agreement, irrespective of whether such dispute relates to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of any grievance or any difference or any question that may arise between the authority and the labor organization representing its employees concerning wages, salaries, hours, working conditions or benefits including health and welfare, sick leave, insurance, or pension or retirement provisions, the authority shall offer to submit such dispute to final and binding arbitration by a single arbitrator or by a tripartite board of arbitrators.... The arbitration proceeding shall take place in the manner provided by the rules of the New Jersey State Board of Mediation applicable to arbitration of labor disputes and the decision of the arbitrator or board of arbitrators shall be final and binding upon the parties.

N.J.S.A. 27:25-14 governs labor relations concerning employees of N.J. Transit. This statutory scheme, like that governing county improvement authorities, contemplates the submissions of unresolved negotiations disputes to binding interest arbitration.^{3/} Subsection (c) provides:

^{3/} The issue we decide today is which statute governs labor relations between the parties. Although both statutes provide for binding arbitration as a last resort to resolve contract negotiations disputes, it is apparent that differences exist between the two statutes. For instance, the State Board of Mediation has jurisdiction over labor disputes arising under N.J.S.A. 40A:27-96 and we have jurisdiction over New Jersey Transit disputes under N.J.S.A. 27:25-14. Other differences may exist, but we need not address them here.

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, 1974" 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 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; provided however, that the cost to the State of the first year portion of any arbitration award shall not exceed the appropriations permitted within the provisions of the "State Expenditures Limitation Act", P.L. 1976, c. 67 (C. 52:9H-5 et seq.) and the arbitrator, in determining such award, should consider pending supplemental appropriation bills, any pending salary negotiations for State employees and any sums which have not yet been appropriated, which would be necessary to fund any recently concluded agreements.

In addition, N.J.S.A. 27:25-14 sets forth certain rights of employees of any public or private entity acquired by New Jersey Transit. In pertinent part, the Act provides, at subsections (e) and (f), that:

e. In acquiring, operating, or contracting for the operation of public transportation services, the corporation shall make provision to assure continuing representation for collective negotiations on behalf of employees, giving due consideration to preserving established bargaining relationships to the extent consistent with the purposes of this act. Such relationships may be changed only in accordance with the principles established under the "Labor Management Relations Act, 1947" and the "Railway Labor Act."

f. Upon acquisition by the corporation of a public entity which provides public transportation of services, the corporation shall assume and observe all existing labor contracts of such entity for their remaining term. All of the employees of the acquired entity, as defined in subsection a., shall be transferred to the employment of the employer and appointed to comparable positions without examination subject to all the rights and benefits of this act, and these employees shall be given sick leave, seniority, vacation, and pension credits in accordance with the records and labor agreements of the acquired entity.
(Emphasis added).

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. Conversely, it is equally clear that N.J.S.A. 40:37A-96 does not give Division 540 the right, under these circumstances, to proceed to interest arbitration pursuant to that statute. By its very terms, the Act only applies "in the case of any labor dispute between a county improvement authority operating a public transportation facility and its employees where collective bargaining does not result in an agreement." NJT Mercer and its employees, here represented by Division 540, are not governed by this statute so it does not apply in these circumstances.

Contrary to Division 540's claim, there is nothing in either N.J.S.A. 27:25-14 or the predecessor contract which requires NJT Mercer to proceed to interest arbitration under N.J.S.A. 40:37A-96. Subsection (f) merely provides that NJT Mercer is required to "assume and observe all existing labor contracts of [the acquired] entity for their remaining term." Division 540's contract with MCIA, however, expired March 31, 1984.^{4/} MCIA and Division 540 started, but did not complete successor contract negotiations before NJT Mercer assumed MCIA's operations. Thus, there was no existing contract with MCIA for NJT Mercer to assume. The mere appointment of an arbitrator pursuant to a compulsory interest arbitration statute does not constitute an existing labor contract. Further, NJT Mercer has never entered or assumed a contractual obligation to submit to interest arbitration under

^{4/} NJT Mercer has asserted, without dispute, that it is observing the terms of the expired contract between MCIA and Division 540.

the previously applicable statute. Thus, Division 540's reliance on cases^{5/} where such agreements existed is misplaced.

In sum, while N.J.S.A. 27:25-14 requires adherence to an existing contract, it also looks forward to its own procedures for reaching a new contract. This case involves a question of reaching a new contract, not adhering to an existing one.

Accordingly, NJT Mercer has established a likelihood of proving that Division 540's refusal to negotiate pursuant to N.J.S.A. 27:25-14 following the transfer of operations to NJT Mercer violated the Act. N.J.S.A. 34:13A-5.4(b)(3). We recognize that Division 540's refusal was based upon a good faith dispute concerning a first impression interpretation of two statutes. However, such refusal constitutes a technical violation of its statutory duty to negotiate with the public employer. We also have noted Division 540's filing of an unfair practice charge against NJT Mercer, but express no opinion on its merits. We do note, however, that even assuming the charge has merit it could not affect the order we enter in this case. We do not have the authority to order NJT Mercer to negotiate or engage in binding interest arbitration pursuant to a statute which no longer applies to the instant dispute.^{6/}

^{5/} Winston-Salem Printing Pressmen v. Piedmont Publishing Co., 393 F.2d 221, 67 LRRM 2939 (4th Cir. 1968) and Allendale Nursing Home, Inc. v. Joint Board Local 1115, 377 F.Supp. 1208, 87 LRRM 2498 (S.D.N.Y. 1974).

^{6/} We also express no opinion on the scope of negotiations or other issues pertaining to N.J.S.A. 27:25-14.

In addition to having established a likelihood of success on the merits, we are satisfied that NJT Mercer has established that irreparable harm may occur if injunctive relief is not granted. The parties' contract has expired and we have identified the statute which governs the procedures for negotiating a new one. To avoid labor relations instability and uncertainty that might result from a further negotiations delay, they should negotiate in accordance with our holding. Accordingly, we direct the parties to negotiate pursuant to N.J.S.A. 27:25-14 and enjoin the instant arbitration proceedings initiated by Division 540 under N.J.S.A. 40:37A-96 pending our final determination.

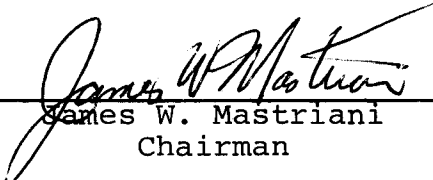
ORDER

Pending the issuance of the final determination in this matter, Division 540, Amalgamated Transit Union is ordered to:

A. Negotiate in good faith with New Jersey Transit-Mercer pursuant to N.J.S.A. 27:25-14, and

B. Cease and desist from pursuing interest arbitration under N.J.S.A. 40:37A-96.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. Commissioner Graves voted against the decision.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984