

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PORT AUTHORITY TRANSIT CORPORATION

Employer

and

AMERICAN TRAIN DISPATCHERS ASSOCIATION

Petitioner

Docket No. RO-320

DECISION

A petition seeking to represent train dispatchers and power directors employed by the Port Authority Transit Corporation (PATCO) was filed by the American Train Dispatchers Association on July 15, 1971. Pursuant to Section 19:15-11 of the Commission's Rules and Regulations, the Commission has, on its own motion, transferred this case to itself for decision.

PATCO contends that it is an agency analagous to the Delaware River and Bay Authority and, therefore, exempt from PERC's jurisdiction as decided by the New Jersey State Supreme Court in Delaware River and Bay Authority v. Public Employment Relations Commission, et al, 112 N.J. Super 160 (App. Div. 1970), affirmed, 58 N.J. 338 (1971).

In P.E.R.C. No. 15, dated September 23, 1969, the Commission took jurisdiction regarding PATCO employees and ordered an election in a unit composed of hourly employees of PATCO. The election was conducted on October 20, 1969; P.E.R.C.'s jurisdiction was later affirmed by the Superior Court in Teamsters Local Union No. 676 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Port Authority Transit Corporation, 108 N.J. Super. 502, (Chan. Div. 1970).

However, in March 1970 litigation was undertaken by the Delaware River and Bay Authority (a bi-state agency) wherein it challenged the jurisdiction of PERC to process petitions for certification of public employee representative affecting the Authority's employees. While the decision rendered by the Supreme Court in Delaware River and Bay Authority, supra, does not proscribe generally the Commission's authority to act in matters involving employees of bi-state agencies, it does cast doubt upon the Commission's jurisdiction to proceed in this matter and requires examination by the Commission of its authority to entertain the subject petition before consideration on the merits of the issues presented thereby.

The compact which created the Delaware River Port Authority states as one of the purposes of the Authority the establishment and maintenance of a rapid transit transportation system between the Camden area and various points in Pennsylvania. It further gives the Authority the ability to effectuate any of its purposes through a wholly owned subsidiary corporation, thus making possible the creation of PATCO.

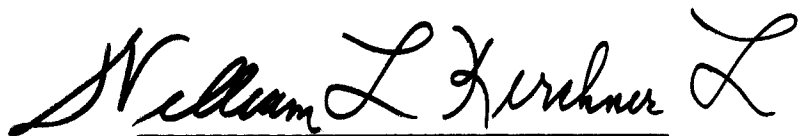
It is evident that PATCO is a creature of the Delaware River Port Authority and subject to its limitations. The Authority as defined in N.J.S.A. 32:3-2 is a "public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey." Clearly, it is a bi-state agency. Further, N.J.S.A. 32:3-5 which lists the general powers of the Authority states that while additional powers may be delegated to it, this shall be done by the action of either state concurring in by legislation of the other. The language cited above appears to crystallize the intent of the compact, i.e., to be sure that any action taken with regard to the Authority be compatible with the wishes of both states. An example of the need for joint action concerning employees of the Authority is found in N.J.S.A. 32:3A-2 regarding payment for employees injured on duty, wherein is stated:

This act shall take effect upon the enactment of substantially similar legislation by the Commonwealth of Pennsylvania or, if such legislation shall already have been enacted, this act shall take effect immediately.

The compacts which created the Delaware River Port Authority and Delaware River Bay Authority are similar in that each requires specific agreement by the other state to any action affecting the Authority taken by one state. In Delaware River and Bay Authority, Supra, the New Jersey Supreme Court held that such a relationship precluded the application of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13-A et seq.) absent Delaware's concurrence in such application. Without the expressed agreement by Pennsylvania that N.J.S.A. 34:13A-1 et seq. apply to the Delaware River Port Authority, such legislation is not applicable. The Commonwealth of Pennsylvania has made no such expression. Therefore, the Commission, as in the case of Delaware River Bay Authority, lacks jurisdiction over Delaware River Port Authority and cannot entertain the petition filed in the instant case. The Commission concludes that the earlier Superior Court decision Teamsters Local No. 676 v. P.A.T.C.O. supra has been overruled sub silentio by the New Jersey Supreme Court.

Accordingly, the petition filed herein is dismissed for lack of jurisdiction.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.  
Acting Chairman

DATED: October 22, 1971  
Trenton, New Jersey