

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS
OPERATIONS, INC.,

Petitioner,

-and-

Docket No. SN-2005-030

AMALGAMATED TRANSIT UNION,
NEW JERSEY STATE COUNCIL.

Respondent.

DECISION

The Public Employment Relations Commission denies the request of New Jersey Transit Bus Operations, Inc. for a restraint of binding arbitration of grievances filed by the Amalgamated Transit Union, New Jersey State Council. One grievance contends that two garage clerks should be paid in accordance with the senior garage clerk salary schedule. Another is a "class action" grievance on the same issue. NJT also seeks a restraint or stay of arbitration of two other grievances pending resolution of this scope petition and a related unfair practice charges. The Commission holds that grievances claiming that given certain clerks current duties and employment conditions, they are entitled under the parties' agreement to be placed at a higher salary classification would be legally arbitrable in the private sector and enforcement of the ATU's claims would not substantially impair NJT's ability to carry out its statutory mission. Absent any negotiability arguments about the other two grievances (garage clerk job description and the \$10 per week bonus for garage clerks), the Commission declines to restrain arbitration of those grievances as well.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Peter C. Harvey, Attorney General
(Sharon Price-Cates, Deputy Attorney General, on the
brief)

For the Respondent, Kroll, Heineman & Giblin, LLC,
attorneys (Raymond G. Heineman, on the brief)

DECISION

On November 23, 2004, New Jersey Transit Bus Operations, Inc. ("NJT") petitioned for a scope of negotiations determination. NJT seeks a restraint of binding arbitration of grievances filed by the Amalgamated Transit Union, New Jersey State Council ("ATU"). One grievance contends that two garage clerks should be paid in accordance with the senior garage clerk salary schedule. Another is a "class action" grievance on the same issue. NJT also asks us to restrain or stay arbitration of two other grievances pending resolution of its scope petition and a related unfair practice charge. On February 8, 2005, the

Director of Unfair Practices notified that parties that the charges would be held in abeyance pending our final scope determination. On March 24, NJT sought temporary restraints of binding arbitration. On April 12, a Commission Designee denied the request with respect to all four grievances. I.R. No. 2005-12, 31 NJPER 113 (¶47 2005).

Both parties have filed briefs and exhibits. NJT has submitted the certifications of Bus Operations Manager James J. Caltabiano and Director of Labor Relations Virginia Class-Matthews. ATU has submitted the certification of its Chairman, Vito Forlenza. These facts appear.

ATU represents NJT field salaried employees. The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2005 and includes a grievance procedure that ends in binding arbitration. The agreement also contains an appendix listing weekly salary rates for various job classifications. Among the itemized job categories are "District & Garage Clerk Senior 3302," "District and Garage Clerk 3304," and "District & Garage Clerk (Trained) 3344." The maximum salary for the 3302 "senior" classification is higher than the 3304 and 3344 categories by \$108 and \$98 per week, respectively.

ATU has represented garage clerks and senior garage clerks since at least 1971. A 1971 job description or classification for Garage Clerks and Garage Clerks, Senior, provides:

District - Garage Clerks
District - Garage Clerks, Senior

Qualifications

Applicant must meet the Company's general requirements and in addition:

- (1) must understand the principles of filing;
- (2) must be able to accurately compile and maintain records;
- (3) must be familiar with payroll work;
- (4) must work cooperatively with others in the best interests of the Company

Duties

- (1) preparing maintenance payrolls, road failures, fuel and oil consumption, and other reports;
- (2) doing limited typing;
- (3) filing any personnel records;
- (4) must have tact in dealing with employees in the Mechanical and other Department[s].
- (5) must be able to understand orders and relay instructions to the various garages in the District;
- (6) performing other similar work, and assisting other employees in the department as required

In a Memorandum of Agreement dated April 16, 2003, NJT and ATU agreed to establish a joint committee to revise the job description, duties, qualifications and training for the garage clerk title. The agreement was incorporated into the parties' contract at Section 5 - Classification and Salaries. Section 5 provides:

Garage Clerks: Effective February 27, 2003, all employees in the title of Garage Clerk shall receive a \$5.00 per week wage increase. The parties agree to meet to establish a committee that will determine revised job duties and qualifications for the Garage Clerks, and will further establish a training Program for Garage Clerks. All those in the title of Garage Clerk as of February 27, 2003 will be grandfathered in the position. Upon completion of the training program and the

assumption of the revised duties, Garage Clerks shall receive an additional \$10.00 per week wage increase.

On April 20, 2003, the committee met for the first time and drafted revised duties and qualifications. Changes were made over the next 17 months and NJ Transit and ATU corresponded concerning the changes. At some point during the deliberations, ATU requested that the revised job description also include the title "District - Garage Clerks - Senior," consistent with the 1971 classification.^{1/} ATU maintained that the garage clerk and senior garage clerk titles had the same duties.

On September 24, 2004, NJT notified ATU that it would not add the job title of senior garage clerk to the job description, maintaining that the memorandum of agreement pertained only to the garage clerk position. The revised job description for garage clerk now provides:

Job Title: Garage Clerk
Department Bus Maintenance

1. Researches using various tools and information (computers and internet where available) a wide variety of information requested by location maintenance management
2. Maintains information on location road failure, fuel and oil consumption and other reports.

^{1/} ATU maintains that this issue was raised in connection with each of the changes discussed between April 20, 2003 and April 2004. NJT asserts that it was not mentioned until April 2004. This factual disagreement is not pertinent to our negotiability analysis.

3. Prepares reports using various techniques as directed by location maintenance management.
4. Types letters, reports, other documents and memoranda. Routes or answers routine correspondence not requiring supervisor's attention mostly dealing with agreement employee issues (i.e. payroll, medical, benefits etc).
5. Maintains confidential department records and files (personnel, attendance, benefits, return to work notes, doctor notes, etc.)
6. Maintains and prepares maintenance payroll (i.e. Kronos). Reviews payroll on a daily basis. Makes necessary corrections and deletions for approval by maintenance management.
7. Assists in the analysis of attendance records and overtime reports and prepare[s] correlated data for Superintendent and General Foreman review.
8. Contacts suppliers or company employees as directed that support the location operations.
9. Assists and makes travel arrangements for training classes for employees and prepares reimbursement documents for travel and expenses.
10. Works in a professional and courteous manner with other personnel and the public to resolve any related issues.
11. Answers phone calls, gives accurate information concerning facility and department related issues.
12. Has knowledge of and an ability to communicate information related to position responsibilities, duties and work procedures.
13. Works cooperatively with other departments in the best interest of NJ Transit.
14. Performs other similar work and assist other employees in the department as required.

KNOWLEDGE & SKILLS REQUIRED/QUALIFICATIONS

- Type 25 wpm.
- The ability to read and write English clearly.
- The ability to learn and use the following Microsoft software: WORD, Access, PowerPoint and Excel.
- Must be able to learn and use properly: Kronos, Outlook and VMIS.
- Understand management expectations
- Have knowledge of Company rules and regulations.

On March 22, 2004, while the garage clerk job description was being revised, ATU filed a grievance on behalf of Linda Deinarowicz and Mary Figueroa alleging that, given their years of service, they should be paid at the senior clerk level. This grievance was denied at steps one through four. While the step three and four documents included in the record do not state the basis for NJT's decision, a May 26 memorandum by the step two hearing officer states that he has no authority to upgrade the individuals to senior, despite ATU's position that garage clerk duties had substantially changed and increased over the years.

ATU also filed a class action grievance alleging that certain employees currently paid as "district and garage clerks" should be paid as "district and garage clerks - senior." In addition, ATU filed grievances involving the garage clerk job description and the \$10 per week bonus for garage clerks.

On July 7 and October 25, 2004, ATU demanded arbitration of all four garage clerk grievances. NJT has made negotiability

arguments about the two grievances seeking payment at the level of senior garage clerk and the class action grievance.

NJT argues it has a managerial prerogative to decide whether to promote, hire, or maintain a certain staff level in the senior garage clerk title and, therefore, the grievances are not legally arbitrable because they seek to have employees promoted. NJT states that there are no vacancy notices posted in the employees' respective divisions and adds that, over the years, the number of senior garage clerk positions has decreased due to attrition and efficiencies resulting from computerization. It argues that there are no senior garage clerks in any locations under the jurisdiction of ATU and that ATU is seeking to modify a job description to include the senior garage clerk.

ATU responds that all four grievances seek to enforce agreements concerning the appropriate compensation to be paid employees based upon their duties and job classifications. It asserts that where an individual is the only clerk in a particular garage, it has been the parties' practice to designate him or her as a senior garage clerk and pay that worker accordingly.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the

arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of the grievances or any contractual defenses the employer may have. Therefore, we specifically do not address NJT's contention that a garage clerk's payroll records from 1959 through 1972 show that the senior garage clerk title was a separate position, not one to which garage clerks were automatically upgraded.

This case is governed by the scope of negotiations standard set forth in New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-74, 14 NJPER 169 (¶19070 1988), rev'd 233 N.J. Super. 173 (App. Div. 1989), rev'd and rem'd 125 N.J. 41 (1991). In that case, we established the tests for determining whether a contract proposal is mandatorily negotiable under the New Jersey Public Transportation Act, N.J.S.A. 27:25-1 et seq. ("NJPTA"), the legislation that established NJT and authorized the conversion of New Jersey's mass transit system from one of private ownership to one owned and operated by the State. 125 N.J. at 43. In deciding what scope of negotiations the Legislature authorized in the NJPTA, we rejected both the employer's argument that public sector negotiability tests exclusively applied and the unions'

argument that private sector negotiability tests exclusively applied. Instead, we adopted this approach: an issue that settles an aspect of the employment relationship is mandatorily negotiable unless negotiations over that issue would prevent NJT from fulfilling its statutory mission to provide a "coherent public transportation system in the most efficient and effective manner." N.J.S.A. 27:25-2. N.J. Transit, 14 NJPER at 174. The Supreme Court approved this test and elaborated on it as follows:

[A]bstract notions of the need for absolute governmental power in labor relations with its employees have no place in the consideration of what is negotiable between government and its employees in mass transit. There must be more than some abstract principle involved; the negotiations must have the realistic possibility of preventing government from carrying out its task, from accomplishing its goals, from implementing its mission. All of the various rulings of PERC . . . have that theme. They look to the actual consequences of allowing negotiations on the ability of NJT to operate and manage mass transit efficiently and effectively in New Jersey. If negotiations might lead to a resolution that would substantially impair that ability, negotiations are not permitted. But, if there is no such likelihood, they are mandatory. It is the effect on the ability to operate mass transit that is the touchstone of the test, rather than someone's notion of what government generally should be allowed to unilaterally determine and what it should not. [125 N.J. at 61]

In N.J. Transit, we applied the "employment relationship" and "statutory mission" tests to several contract proposals. In general, we first addressed whether a given proposal was

mandatorily negotiable under the federal Labor-Management Relations Act, 29 U.S.C. §141 et seq. ("LMRA"), and if so, next discussed whether the statutory mission test required a different result for NJT. We follow that model here.

Job classifications and descriptions, compensation, work assignments, and promotions within the bargaining unit are all mandatorily negotiable in the private sector. U.S. Gypsum Co., 94 NLRB 112, 28 LRRM 1015, 1016 (1951); N.J. Transit, 14 NJPER at 181-182; Hardin and Higgins, The Developing Labor Law at 1171-1172, 1202 (4th ed. 2001). However, supervisors are excluded from coverage under the LMRA so that Act does not require that an employer negotiate over the creation of supervisory positions or the selection of supervisors. Health Care & Retirement Corp. of America, 317 NLRB 1005, 149 LRRM 1227, 1228 (1995). Nor is an employer generally required to negotiate over matters, such as hiring practices, that do not involve unit employees. See NLRB v. U.S. Postal Service, 18 F.3d 1089, 1098-1100 (3d Cir. 1994) (hiring practices not mandatorily negotiable unless union has made a demand and shown the employer an objective basis for its belief that hiring practices are discriminatory).

Given these principles, the subject matter of these grievances would be mandatorily negotiable under the LMRA. The salary classification in which an individual is placed intimately and directly affects employees and settles an aspect of the

employer-employee relationship, specifically, the compensation to be received by individuals who are the sole clerks in their assigned garages. Moreover, even if movement to a senior clerk salary grade is termed a promotion, the position of senior clerk is within the negotiations unit and the grievances do not implicate non-mandatorily negotiable staffing and promotional issues. For example, NJT does not allege that senior clerks supervise other clerks and, indeed, the grievances appear to pertain apply only to individuals who are the only clerks in their garages. Thus, the grievances do not ask NJT to create new supervisory positions or to place the clerks in them. Nor do the grievances ask NJT to create additional positions or hire new employees. They claim only that, given certain clerks' current duties and employment conditions, they are entitled under the parties' agreement to be placed at a higher salary classification. Indeed, similar grievances have been held to be legally arbitrable under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("EERA"). See, e.g., East Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd NJPER Supp.2d 285 (¶229 App. Div. 1992) (arbitrator's award reclassifying an employee for salary purposes given his actual job duties was mandatorily negotiable).

We next consider whether enforcement of ATU's claims would substantially impair NJT's ability to carry out its statutory

mission of providing for a coherent, effective, and efficient public transportation system. We conclude that it would not.

We note that N.J. Transit held that a clause requiring negotiations over changes in job descriptions was mandatorily negotiable. 14 NJPER at 181-182. Thus, while NJT argues in part that the grievances aim to modify the garage clerk job description, that circumstance would not render the grievances automatically not mandatorily negotiable. However, our decision added that NJT had the right to change job classifications and specifications where necessary to enable it to fulfill its statutory mission. For example, we reasoned that where new technology results in the need for employees to perform new and different assignments, NJT must have the authority to direct that such work be done. 14 NJPER at 181-182.

NJT makes no particularized arguments that enforcement of an alleged agreement to pay certain clerks in accordance with the higher, senior clerk classification would impair its ability to accomplish its mission, including its ability to require that job specifications keep pace with technology. The 2004 job description that the parties negotiated reflects that garage clerk duties have changed substantially since 1971 as a result of the computerization of many clerical functions. ATU does not protest that circumstance or seek to re-establish the senior clerk positions that NJT maintains were eliminated. The

grievances are directed only at the compensation to be received by certain clerks for performing their current duties.

Moreover, the EERA case law on which NJT relies does not weigh in favor of restraining arbitration. For example, NJT argues that staffing levels are not mandatorily negotiable but, as noted earlier, these grievances do not seek an increase in staff. Similarly, NJT emphasizes that, under the EERA, a public employer has a prerogative to determine whether or not to fill a promotional vacancy. See Paterson Police PBA v. Paterson, 87 N.J. 78, 98 (1981). However, Paterson does not govern here, even assuming for the sake of analysis that the movement from clerk to senior clerk would be a promotion. In N.J. Transit, we held to be mandatorily negotiable a proposal that required both that vacancies be filled and that they be filled with qualified department employees. We recognized that a different result pertained under the EERA but reasoned that a qualified employee had a legitimate interest in being promoted and that the proposal concerned an aspect of the employer-employee relationship that was one of the traditional subjects of bargaining under the LMRA. We reach the same result here. See also Amalgamated Transit Union Int'l, AFL-CIO, v. Donovan, 767 F.2d 939, 952, 956-957 (D.C. Cir. 1985), cert. denied sub nom. Metropolitan Atlanta Rapid Transit Auth. v. Transit Union, 475 U.S. 1046 (1986) (Secretary of Labor could not certify public transit authority's

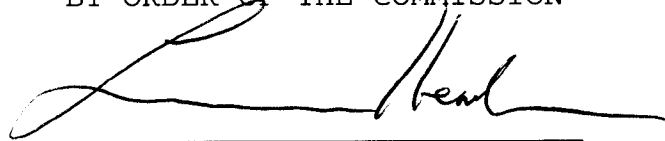
labor protective agreement - thereby allowing it to receive federal funds -- where state law did not allow for the continuation of traditional private sector collective bargaining rights, including the ability to bargain over seniority and promotions).

For the foregoing reasons, we decline to restrain binding arbitration over the grievance seeking payment at the level of senior garage clerk and the class action grievance. Absent any negotiability arguments about the other two grievances (garage clerk job description and the \$10 per week bonus for garage clerks), we also decline to restrain or stay arbitration of those grievances as well.

ORDER

The request of New Jersey Transit for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: June 30, 2005
Trenton, New Jersey
ISSUED: June 30, 2005