

P.E.R.C. NO. 2006-70

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-2005-049

AMALGAMATED TRANSIT UNION,
NEW JERSEY STATE COUNCIL,

Respondent.

SYNOPSIS

_____The Public Employment Relations Commission denies the request of New Jersey Transit Bus Operations, Inc. for a restraint of binding arbitration of a grievance filed by the Amalgamated Transit Union, New Jersey State Council. The grievance asserts that NJTBO violated Section 16(R) of the parties' collective negotiations agreement when it did not meet with the State Council before contracting with Southern New Jersey Rail Group to operate and maintain the River Line rail system. The Commission notes that Section 16(R) does not prohibit NJTBO from entering a subcontract for new work, and concludes that it is simply a procedural requirement that the employer meet with ATU if it is intending to bid new work and to supply the Council with the information supplied to all interested bidders.

_____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.

P.E.R.C. NO. 2006-70

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-2005-049

AMALGAMATED TRANSIT UNION,
NEW JERSEY STATE COUNCIL,

Respondent.

Appearances:

For the Petitioner Genova, Burns & Vernioia, attorneys
(Douglas E. Solomon, on the brief)

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

DECISION

On January 27, 2005, New Jersey Transit Bus Operations, Inc. (NJTBO) petitioned for a scope of negotiations determination. NJTBO seeks a restraint of binding arbitration of a grievance filed by the Amalgamated Transit Union, New Jersey State Council. The grievance asserts that NJTBO violated Section 16(R) of the parties' collective negotiations agreement when it did not meet with the State Council before contracting with Southern New Jersey Rail Group (SNJRG) to operate and maintain the River Line rail system.

The parties have filed briefs and exhibits.^{1/} These facts appear.

NJTBO is a wholly owned subsidiary of the New Jersey Transit Corporation (NJT). Since its inception in 1982, NJTBO has employed those who operate and maintain NJTBO buses. The ATU represents these employees. The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

N.J.S.A. 27:25-6(a) provides that NJT may "enter into contacts with any public or private entity to operate rail passenger service or portions or functions therefore" and N.J.S.A. 27:25-2(d) encourages NJT to seek "to the maximum extent feasible the participation of private enterprise." In 1999, NJT entered into a \$604.5 million contract with SNJRG to design, build, operate and maintain a light rail system on the Bordentown Secondary Track in Camden, Burlington and Mercer counties. This light rail system, known as the River Line, runs on 34 miles of track between Camden and Trenton. In February 2000, NJT and Conrail entered into an agreement pursuant to which NJT obtained all right, title and interest to the Bordentown Secondary Track,

^{1/} The petition was held in abeyance for several months while the parties tried to settle their dispute. In January 2006, the parties asked us to resume processing of the petition.

along with the right to provide uninterrupted light rail passenger service.

In March 2004, NJT began running the River Line, using SNJRG employees to maintain and operate the line. This line operates over the same route as a previous trolley line operated by Public Service, a private sector predecessor of NJT, and staffed by ATU-represented employees before it ceased service in 1931. River Line and NJT operations were integrated in several respects -e.g., fare collections, security, and honoring tickets and passes. ATU currently represents employees working on two bus lines that run parallel to the River Line.

According to ATU, it was not advised before the River Line began operating that contractor employees would be used nor was a meeting held to discuss the planned operation. ATU thus filed a grievance alleging that NJTBO had violated Section 16(R) of the parties' agreement. That section is entitled "New Work." It provides:

The Company shall meet with the State Council concerning the establishment of new work under consideration or new work to be bid upon. In the event the Company contemplates bidding on new work, the Company shall provide the State Council with copies of the information which was submitted to all interested bidders. This information will be supplied to the State Council as soon as possible after the Company receives same. In the event the Company and the State Council are unable to agree upon a proposal for the bidding of new work, said Agreement will be

incorporated into the main agreement as a supplement thereto.

The grievance specifically asserted that NJTBO violated Section 16(R) by not meeting with the State Council concerning the establishment of the River Line.

The parties' contract also contains a provision (Section 15I) limiting NJTBO's ability to subcontract. However, ATU does not seek to arbitrate a claim under that section so we need not consider it further.

NJTBO's Director of Labor Relations denied the grievance. ATU demanded arbitration. This petition ensued.

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 merits of the grievance or any contractual defenses the employer may have.

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), 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 NJTBO.

Section 16(R) does not prohibit NJTBO from entering a subcontract for new work. Instead, it basically requires that the employer meet with ATU's State Council if it is intending to bid new work and to supply the Council with the information supplied to all interested bidders. Such procedural requirements are generally negotiable in both the public and private sectors. See, e.g., Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-143, 14 NJPER 465 (¶19194 1988); Walter Pope, Inc., 205 NLRB 719, 84 LRRM 1055 (1973); See also Hardin and Higgins, The Developing Labor Law at 1236-1237 (4th ed. 2001)

NJTBO has not argued that Section 16(R) is not negotiable in the abstract or given us any specifics as to how its procedural requirements would prevent NJTBO from fulfilling its statutory mission. We accordingly decline to restrain arbitration of the claim that Section 16(R) has been violated.

NJTBO asks us in the alternative to preclude the arbitrator from issuing a remedial order that would interfere with its ability to contract with SNJRG to operate and maintain the River Line. We follow our custom of declining to decide the legality of possible remedies in advance of arbitration. See, e.g., Washington Tp. Bd. of Ed., P.E.R.C. No. 2004-62, 30 NJPER 105 (¶42 2004). Should the arbitrator find a violation and issue an order that NJTBO believes would prevent it from fulfilling its statutory mission, it may refile this petition.

ORDER

The request of New Jersey Transit Bus Operations, Inc. for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: March 30, 2006

Trenton, New Jersey