

P.E.R.C. NO. 2015-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ALMALGAMATED TRANSIT UNION,
LOCAL 820,

Petitioner,

-and-

Docket No. SN-2014-054

NEW JERSEY TRANSIT BUS
OPERATIONS, INC.

Respondent.

SYNOPSIS

The Public Employment Relations Commission exercises its scope of negotiations jurisdiction pursuant to referral from a Superior Court judge regarding an issue sought to be arbitrated by the Amalgamated Transit Union, Local 820 (ATU). The grievance contests the decision by New Jersey Transit Bus Operations, Inc. (NJTBO) to install DriveCam videos on buses and use information gathered from such surveillance equipment to discipline bus operators working out of the Meadowlands Garage. Finding that negotiations over ATU privacy or job security interests implicated by the use of DriveCam evidence for discipline would substantially impair NJTBO's significant interests in implementing its statutory mission of efficiently and effectively operating a safe, responsive public transportation system, the Commission holds that the issue is not mandatorily negotiable and not legally arbitrable.

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, Kroll Heineman Carton, LLC (Raymond
G. Heineman, of counsel)

For the Respondent, John J. Hoffman, Acting Attorney
General (Michael S. Rubin, Deputy Attorney General)

DECISION

On January 9, 2014, the Amalgamated Transit Union, Local 820 (ATU) filed a scope of negotiations petition concerning a demand for arbitration it filed. The ATU requests that the Commission determine that a grievance it filed against New Jersey Bus Operations, Inc. (NJTBO) is mandatorily negotiable and can be submitted to binding grievance arbitration. The dispute involves NJTBO's decision to use DriveCam videos that have been installed on NJT buses, to discipline bus drivers working out of the Meadowlands Garage.

On November 13, 2013, after the ATU had filed for arbitration of its grievance, NJTBO applied to the Superior

Court, Chancery Division for an Order restraining arbitration. On December 17, 2013, the parties engaged in oral argument before the Honorable Thomas M. Moore, J.S.C. Judge Moore issued a preliminary injunction restraining arbitration, referred the matter to PERC, and retained jurisdiction. A January 2, 2014 Order followed.

Based on its conclusion that PERC has exclusive jurisdiction regarding the ATU's assertions, the court permanently enjoined the arbitration. Although the court cited the unfair practice portion of the Act, N.J.S.A. 34:13A-5.4c, its decree did not direct the commencement of any specific type of administrative proceeding, but instead directed:

"IT IS FURTHER ORDERED that the Union's claim challenging NJTBO's use of DriveCam evidence to support employee discipline be and is hereby referred to PERC for an appropriate action on that claim, if any;"

In response to Judge Moore's Order, the ATU filed this scope of negotiations petition.

N.J.S.A. 34:13A-5.4d empowers the Commission to determine whether a matter in dispute is within the scope of negotiations. The Commission's function in such disputes is limited. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.
[Id. at 154]

Even if the effect of the court's order is that there is no active grievance arbitration, the initiation of a scope of negotiations proceeding is consistent with the court's direction that this agency should address the dispute. However, in accordance with Ridgefield Park we confine ourselves to determining whether the grievance is legally arbitrable.

On March 21, 2014, the parties each filed an initial brief along with supporting exhibits and certifications of their respective counsel (Heineman certification for the ATU; Rubin certification for NJTBO). NJTBO filed a reply brief on April 7, 2014.

NJ Transit and ATU are parties to a collective negotiations agreement (CNA) with a term of July 1, 2008 through June 30, 2010. The grievance procedure ends in binding arbitration.

Rubin's certification enclosed a copy of his Verified Complaint for Injunctive Relief initiating NJTBO's Superior Court action to restrain arbitration. Rubin's Complaint states the following:

- ATU Local 820 is one of ATU State Council's eight divisions.
- NJTBO employees in ATU Local 820 work out of the Meadowlands Garage in North Bergen, or at terminal operations at the George Washington Bridge or Port Authority Bus Terminal.
- DriveCam is a camera system purchased by NJTBO in 2007 and now utilized on most of its buses.
- DriveCam consists of a front windshield-mounted camera and microphone housed in a single unit, and records video and audio footage of the operator and passenger area in addition to video footage of the road in front of the bus.
- There is a camera and microphone in the back of the bus that records video and audio footage down the middle aisle.
- DriveCam records continuously, but the system only preserves ten seconds of footage before and after an event that occurs on the bus which exceeds a specific G-force threshold, referred to as a "triggering event."
- Preservation of DriveCam recordings can also be initiated by a bus operator, which might be used when the driver believes a passenger is engaging in dangerous or unlawful conduct.
- Events preserved on DriveCam cameras are uploaded and sent to DriveCam, Inc. each day, and the company then summarizes the event and assigns it a score based on matrix of criteria for behavioral characteristics that DriveCam, Inc. and NJTBO decide are worthy of NJTBO review.
- DriveCam, Inc. then notifies NJTBO's supervisory and safety personnel via e-mail of specific triggering events it has asked to be alerted of on an expedited basis (e.g., accidents, egregious operating behaviors).
- NJTBO personnel also access DriveCam Inc.'s website to review events that are deemed coachable and may result in discipline. DriveCam, Inc. stores video/audio data for 90 days, but the authorized NJTBO employee can save video/audio of triggering events onto a CD or other storage device.
- DriveCam evidence may be forwarded to NJTBO's risk management department if material to an accident or injury, and may support employee discipline if it provides evidence that the operator violated NJTBO rules or standards.

- NJTBO first introduced DriveCam as a pilot program at Big Tree Garage in Nutley in 2007.
- DriveCam, and its use for discipline and other purposes was the subject of discussion between NJTBO and the ATU State Council since the 2007 introduction of DriveCam.

On behalf of NJTBO, Rubin submitted as exhibits a series of letters exchanged amongst NJTBO safety officials and representatives of ATU Local 819 and State Council in 2007 regarding installation of the DriveCams. A January 8, 2007 from ATU Local 819 President Costa to NJTBO Director of Bus Safety Sulpy and copied to other ATU and NJTBO officials stated:

I have received your letter dated December 4, 2006 regarding NJ Transit's pilot bus camera project at Big Tree Garage.

While we welcome the enhanced security and safety measures that the DriveCam System will bring to our members and the riding public we want to be assured that these cameras will not be utilized as a means of applying disciplinary action.

In response, a January 16, 2007 letter from Sulpy to Costa stated, in pertinent part:

Please be advised that the cameras in question will be used as a tool to collect information in order to bring about better NJ Transit mass transit services, more reliable operations, lower liability and enhance the safety of our operation. As such, the cameras will provide information about how employees are performing their duties, both positively as well as negatively. In the event that the cameras provide information that may assist in investigating incidents or events involving NJT Bus employees, such information cannot be disregarded and will be used for any and all purposes.

* * *
Finally, the information from the cameras will be made available to the union as part of the disciplinary process should such an occasion arise where camera data is relevant to a proceeding.

A June 6, 2007 letter from NJTBO Vice President and General Manager Gigantino to ATU New Jersey State Council Chairman Forlenza stated:

Let me reiterate the overall objectives of the camera program. They are:

1. To provide passengers and operators protection and deterrence of crime through video taping of incidents on buses. In the case of South Jersey, technology records everything that goes on in the bus. No one has a need or desire to review a film unless a specific incident has occurred on a bus that has been reported. These may be passenger assaults, serious accidents, or allegations of crimes that may have occurred while on board a bus. In those cases and only those cases would film be looked at to correlate between the event and what occurred on the bus. It is not the intent of NJT to monitor on any basis the video tape to see if operators are adhering to rules or not.

2. In the case of the cameras installed at Big Tree Garage, the video only records when there is an incident such as an accident or the camera is energized by the operator who feels the need to record an incident that has occurred on the bus. Those incidents are reviewed by an outside vendor. Incidents that the vendor believes are material to NIT are transmitted back to us for review and action. Typically, these reported events are from incidents where the operator triggered the camera or in an incident where the camera triggered itself. In some instances, it appears to be the result of poor driving of the operator. In such cases the information is used to counsel the operator on improving job performance. Again, in this instance it is not ongoing observation of the

operator to see if he is committing any rules violations. While cameras are not specifically aimed at the farebox, they generally pick up the entry door area where the farebox is located; however, it is virtually impossible to see if the operator is ringing up the appropriate fares since it does not have adequate clarity for that purpose.

As discussed over the telephone, NJT has no problem in providing at a first step hearing, copies of a video which the company has determined should be used nor does the company have a problem extracting video footage at the request of the operator or union if the operator believes it will exonerate him from any action against him.

Cameras have been in service on fifty buses in South Jersey for over a year. I am only aware of one incident involving an operator whose actions needed to be verified by checking the film. In this case the film indicated that the operator had purposely lied and filed a false report. There have been no instances to my knowledge on the cameras installed at the Big Tree Garage.

In a November 30, 2007 letter to Costa, Sulpy stated:

I want to thank you and Ben Evans for meeting with myself, Steve Greiner and Chur Dhansew on November 29, 2007 to review the status of the DriveCam pilot project at Big Tree Garage. As a result, the following items were discussed at the meeting:

- Camera Lens Position - Based on our discussion, we agreed to develop a template that will be used to verify proper lens position and uniformity for all existing cameras and when a camera is replaced.
- Counseling/Reporting Activities - We jointly agreed that several driving behaviors that typically lead to potential accidents will be used to trigger counseling activities. These behaviors are more objective in nature and will help isolate more relevant accident causes. Depending upon the Offense(s), the company will determine if additional training or other actions are required. In addition, a report highlighting the major

events and categories will be shared with the entire garage at regular intervals to help promote safe driving behaviors and identify areas that require a greater focus.

As per our original agreement, the information from the cameras will be made available to the union as part of any counseling or disciplinary process should such an occasion arise where camera data is relevant to a proceeding.

On March 15, 2012, when DriveCam installation was completed at the Wayne Garage, NJTBO Deputy General Manager Kilcoyne wrote the following to ATU Local 822 President Ariel:

Pursuant to our discussion today, please accept this written notification that the Wayne Garage DriveCam installation is now complete. The 90 day training period will now officially commence, and will conclude on June 15, 2012. Effective Saturday, June 16, 2012, normal operation of DriveCam will commence and infractions observed through the DriveCam review process will be subject to the Grievance procedure.

Rubin's Verified Complaint states that every time DriveCam was introduced at one of NJTBO's garages, NJTBO management met with union officials to discuss the DriveCam program and provide training to bus operators and maintenance employees. He states that at each garage location, NJTBO implemented a 90-day grace period during which evidence of rule violations obtained through DriveCam would not be used to support discipline against operators unless the evidence pertained to an accident.

Heineman certifies that the ATU is unaware of any agreements between NJTBO and the ATU New Jersey State Council concerning the

use of video cameras or DriveCam for discipline, and the CNA does not specifically provide for such use of DriveCam videos. He certifies that NJTBO has introduced the use of DriveCam videos by dealing with individual local divisions of ATU. He certifies that NJTBO dealt with ATU Local 819 in 2007 about a DriveCam pilot program, and dealt with ATU Local 822 in 2012 regarding Drive Cam installation, but did not similarly correspond with ATU Local 820 about installing DriveCam at the Meadowlands Garage.

On May 28, 2012, ATU Local 820 filed the following grievance against NJTBO:

We the Officers of The Amalgamated Transit Union Local 820 are hereby filing a grievance against New Jersey Transit for the manner in which DriveCam recordings are being handled. It is our opinion by researching, that many DriveCam downloads are supposed to be used to council[sic] Bus Operators to correct their driving habits, and not to invoke discipline as has been being done.

It has been told to all involved that the main purpose of DriveCam are[sic] to protect the safety of Bus Operators and Bus Passengers, but the fact of the matter is, by a far majority that these DriveCam downloads are being used to discipline the Operators of these vehicles.

It should also be known that the use of DriveCams are causing some negative safety concerns in the way of causing unwanted stress to our Operators. There are also many situations in that Bus Operators are taking their eyes off of the road to look at the DriveCam if they think it may have been triggered to record. This is a totally normal reaction when someone thinks that they are suddenly being recorded.

On June 1, 2012, NJTBO denied the ATU's grievance following a first step hearing. On April 18, 2013, the ATU submitted the grievance to arbitration before the State Board of Mediation. It was later transferred to the American Arbitration Association. As discussed in detail in the procedural history at pages 1-3 above, NJTBO responded by seeking to enjoin arbitration in Superior Court, and pursuant to Judge Moore's Order the ATU filed this scope of negotiations petition.

NJTBO asserts that the Commission is without authority to decide the negotiability of DriveCam issue because Judge Moore's Order already enjoined arbitration. It argues that collateral estoppel applies because the claims at issue are identical to those raised and decided in the Superior Court, Chancery Division decision. NJTBO asserts that Judge Moore's referral of the matter to the Commission for an "appropriate action" was intended to mean our unfair practice jurisdiction, not our scope of negotiations jurisdiction. It argues that this dispute should not go before an arbitrator because there is no specific contract provision dealing with DriveCam evidence for an arbitrator to interpret. The State did not present any arguments regarding whether NJTBO's use of DriveCam evidence for disciplinary actions is mandatorily negotiable and legally arbitrable.

The ATU responds that Judge Moore's order restrained arbitration but explicitly reserved a decision on contractual

arbitrability until PERC determines the threshold issue of whether the subject matter of the grievance is within the scope of negotiations. It notes that its grievance did not claim NJTBO committed an unfair practice by failing to negotiate in good faith over the use of cameras, and contends that PERC has developed a policy of deferring to grievance arbitration procedures when a charge alleges a breach of a term and condition of employment, even when the alleged breach involved a refusal to negotiate impacts of a unilateral change. The ATU asserts that its grievance is contractually based on the "proper cause" disciplinary provision which it contends is violated by NJTBO's use of DriveCam videos for disciplinary purposes rather than just to correct drivers' bad habits. Citing Linden Bd. of Ed. v. Linden Ed. Ass'n, 202 N.J. 268 (2010), the ATU argues that contractual just cause agreements are broad in scope, including their function to provide arbitral standards to assess discipline, including procedural and substantive due process protections. Citing City of Paterson, H.E. No. 2007-3, 33 NJPER 9 (¶7 2007), the ATU asserts PERC has recognized that the impact of using overt cameras in the disciplinary process is arbitrable.

The issue referred to the Commission by the Superior Court is whether the ATU's grievance is legally negotiable. That issue could be answered in either a scope of negotiations or unfair practice proceeding. However, in the latter type of case, the

issue is not only whether the matter in dispute is mandatorily negotiable, but also whether or not the statutory duty to negotiate was satisfied. As the court cited Ridgefield Park in its analysis, the filing of a scope of negotiations petition seeking only a ruling limited to the legal arbitrability of the grievance was appropriate.

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). That case established the tests for determining mandatorily negotiable topics 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. N.J.S.A. 27:25-2 states the NJT's purpose as follows (emphasis added):

a. **The provision of efficient, coordinated, safe and responsive public transportation is an essential public purpose** which promotes mobility, serves the needs of the transit dependent, fosters commerce, conserves limited energy resources, protects the environment and promotes sound land use and the revitalization of our urban centers.

b. As a matter of public policy, it is the responsibility of the State to establish and **provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner.**

In deciding what scope of negotiations the NJPTA authorized, we and the Supreme Court 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, this approach was endorsed: 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."

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]

Applying the negotiability standard applicable to non-police employees of NJTBO, we conclude that negotiations over whether NJTBO can use DriveCam video recordings as evidence for the imposition of disciplinary sanctions against ATU members would substantially impair NJTBO's ability to fulfill its statutory mission of efficiently and effectively operating a safe, responsive public transportation system.

Previous Commission cases regarding video surveillance in the workplace are instructive but not precedential because they applied the public sector negotiability standard. In both City of Paterson, P.E.R.C. No. 2011-5, 36 NJPER 300 (¶114 2010) and City of Paterson, P.E.R.C. No. 2007-62, 33 NJPER 143 (¶50 2007), the Commission dismissed unfair practice charges filed by PBA Local 1, SOA regarding the City's installation of video surveillance cameras without prior negotiations because we found that the City had a non-negotiable managerial prerogative to install the cameras under the facts of those cases. In Paterson, P.E.R.C. No. 2007-62, dealing with overt cameras in publicly accessible areas of the workplace, we held:

We conclude that the installation of overt video cameras in this public safety building for the purpose of protecting people and property is not a mandatory subject of negotiations....The employer has a significant interest in monitoring access to

its public safety complex because it is not currently capable of excluding the public from most non-private areas of the building and grounds. That interest outweighs the employees' interest in not having their actions observed and recorded in those non-private areas. The cameras are not installed in private areas such as bathrooms, break rooms, locker rooms or offices, where employee privacy interests would be greater. Given the restrictions on the City's ability to prevent the public from entering many areas of the complex, prohibiting installation of the cameras in non-private areas would significantly interfere with the City's ability to secure its public safety building.

Paterson did not directly consider whether the City's decision to use surveillance footage to discipline unit members was mandatorily negotiable, but the Commission did address the fact that even though the cameras might be used for discipline, monitoring for employee misconduct was not their chief purpose:

The unions contend that the Hearing Examiner found that the cameras were installed to address incidents of suspected police employee misconduct. We disagree. The Hearing Examiner accurately reported the police director's testimony that the cameras are not primarily used to catch employees in wrongdoing, but are part of an overall security system. If employee misconduct is captured by a camera, it will not be ignored.

A few years later, in Paterson, P.E.R.C. No. 2011-5, the Commission found that even the use of surveillance cameras in non-public areas of the workplace intended to capture or prevent employee misconduct was not mandatorily negotiable, reasoning:

The employer has a significant interest in making sure that employees are not fighting or sleeping in the Radio Room. Any delay in the delivery of services could have serious public health or safety implications. Thus, under these facts, a restriction on the employer's right to install the surveillance cameras would significantly interfere with the determination of governmental policy.

In the instant case, the DriveCam video/audio surveillance system consists of overt cameras located in publicly accessible areas - various locations on a NJTBO bus. DriveCam only records automatically when prompted by a "triggering event" or voluntarily when initiated by a bus operator. The chief purpose of DriveCam, as stated by NJTBO in letters to ATU Local 819 and ATU State Council in 2007, is to "collect information in order to bring about better NJ Transit mass transit services, more reliable operations, lower liability and enhance the safety of our operation" and "provide passengers and operators protection and deterrence of crime through video taping of incidents on buses." Additionally, as in Paterson, P.E.R.C. No. 2007-62, the NJTBO will not ignore employee misconduct captured by the cameras, as the Director of Bus Safety stated, "In the event that the cameras provide information that may assist in investigating incidents or events involving NJT Bus employees, such information cannot be disregarded and will be used for any and all purposes."

In analyzing the ATU's interests in relation to NJTBO's interests in using the DriveCam system, we consider the following

factors: 1) employer's core mission; 2) intended purpose and chief use of the cameras (e.g., public safety/investigations, specific limited employee investigation, incidental capture of employee misconduct, widespread continual general surveillance intended to evaluate employees); 3) locations viewed by cameras (e.g., public vs. semi-public areas, open work areas vs. individual offices, or semi-private areas like breakrooms vs. private areas like bathrooms); and 4) camera placement (i.e., overt or known vs. covert).

We find it significant that the purpose of the DriveCam system is to enhance the safety and security of bus passengers, drivers, and others. NJTBO's safety goals may be aided by using DriveCam recordings to investigate accidents, deter crime, apprehend suspects, or even take corrective action against employees. We also find it significant that the cameras are trained on public areas which do not require any special access for passengers or passersby to view. Next, the cameras are overt/visible and NJTBO has informed the ATU of their placement and field of view. Finally, as referenced above in relation to the DriveCam system's purpose and location, the fact that the cameras only record during triggering events or by bus operator activation further limits the impact on ATU privacy or disciplinary concerns in relation to NJTBO's goal of enhancing mass transit safety and efficiency through use of the cameras.

Under these circumstances, we find that the ATU's interest in its members not being potentially subject to discipline based on DriveCam evidence is outweighed by the NJTBO's interest in maintaining safe, secure, efficient, reliable transportation through its ability to use evidence of employee infractions or misconduct captured by the DriveCam system to discipline employees. To require the NJTBO to negotiate over whether or under what circumstances it can use evidence of employee misconduct would significantly interfere with its ability to improve the safety and efficiency of its operations through removal or other punishment of bad drivers and the resulting deterrent effects. Significant safety, efficiency, and liability implications result from a situation in which the NJTBO could not use such evidence, or was delayed or restricted in when or how to use such evidence, and therefore was prevented from effectively disciplining incompetent, dangerous, or unscrupulous drivers.

We recognize that the use of surveillance cameras to support the imposition of discipline affects conditions of employment because it provides NJTBO with an additional investigatory and observational tool. However, absent the DriveCam system, there were already myriad methods of observing possible employee misconduct, whether by passenger observations or cell phone videos, observations or videos taken from others outside of the bus, police apprehension of drivers due to driving violations or

while investigating following a bus accident, or by NJTBO supervisors riding along to observe and evaluate. Arguably the DriveCam system could potentially support more frequent and successful disciplinary charges. However, the disciplinary process and grievance procedure remain unaltered - only the character and possibly the quality of the evidence used in such proceedings has changed. In sum, we find that using DriveCam evidence in the disciplinary process does not inherently change negotiated disciplinary procedures just because the source of evidence and method of investigation or observation has changed.

A survey of non-binding, persuasive authority from other jurisdictions regarding the negotiability of using video surveillance evidence for discipline reveals some in accord with our holding, and others which have found a duty to negotiate. See, e.g., Colgate-Palmolive Co., 323 NLRB 515 (1997); National Steel Corp. v. NLRB, 324 F.3d 928 (7th Cir. 2003); Brewers and Maltsters Local 6 v. NLRB, 414 F.3d 36 (D.C. Cir. 2005); Teamsters Local 174, v. King County, 2008 WA PERC LEXIS 84; (Amalgamated Transit Union Division 757 v. Tri-County Metropolitan Transportation District of Oregon, Case No. UP-009-13; (10/2/14)); (California School Employees Association & Its Chapter 477 v. Rio Hondo Community College District, 2013 Cal. PERB LEXIS 12; Illinois Fraternal Order of Police Labor Council v. Village of Summit, 28 PERI ¶154; 2012 IL LRB LEXIS 47;

Amalgamated Transit Union, Local 241 and Pace West Division, 2012 IL LRB LEXIS 167; Nanuet Union Free School District, 43 PERB ¶4591 (2010); Roswell Park Cancer Institute, 34 PERB ¶4582 (2001), aff'd 34 PERB ¶3040 (2001); City of Syracuse, 14 PERB ¶4645 (1981); Oil City Area Education Association PSEA/NEA, 34 PPER ¶31 (2003); Pennsylvania Liquor Enforcement Association, 45 PPER ¶99 (2014); and Racine Unified School District, 2001 WI ERC LEXIS 327 (2001).

We find the approach of the Illinois Labor Relations Board to be most persuasive on this issue. In Amalgamated Transit Union, Local 241 and Pace Southwest Division, 2012 IL LRB LEXIS 168, the employer installed a video/audio surveillance system (G.E. Vision) on buses and began using evidence acquired from it to support discipline for employee misconduct. We find Pace Southwest Division very analogous to the instant case, and concur with the ALJ's reasoning that allowing negotiations over the use of camera footage for discipline would substantially impede the employer's ability to operate in furtherance of its statutory mission. The ALJ found:

Pace's decision to implement and use G.E. Vision is not a mandatory subject of bargaining, even though G.E. Vision materially changes the employees' terms and conditions of employment, because the burden of Pace's inherent managerial authority to bargain this change outweighs the benefits of bargaining....[A]n employer's use of similar investigatory tools is a matter of inherent managerial authority when it is tied to the

employer's statutory function....Here, the implementation and use of G.E. Vision is a matter of inherent managerial authority because its purpose is to promote safety in public transportation which is integral to achieving Pace's statutory mission. Pace concededly provides transportation and not the sort of public safety services which directly impinge on individuals' health and personal security. Nevertheless, one significant aspect of Pace's statutory mission is to "enforce and facilitate [the] achievement and maintenance of standards of safety against accidents with respect to public transportation." G.E. Vision furthers this mission because the cameras promote the safety of passengers and drivers by recording potential criminal activity on the buses and by helping police apprehend criminals. In addition, the cameras allow Pace to enforce its safety standards by identifying operators' rule violations. Thus, the cameras advance Pace's statutory mission to provide the quality of coordinated transportation which the legislature has deemed "essential to the public health, safety and welfare."

...As a preliminary matter, public safety is a matter of significant managerial concern and the burden on Pace to bargain over its chosen method to further that goal is therefore considerable. In addition, the manner in which G.E. Vision promotes public safety also illustrates the burdens of bargaining because G.E. Vision protects Pace's passengers and property through means other than the identification of driver misconduct since it helps the police apprehend criminals and deters bus crime. Indeed, the specific cameras arguably directed towards affecting employees' terms and conditions of employment are part of an overall security system that is not solely or even primarily used to catch employees in wrongdoing.

[Pace Southwest Division, internal citations omitted; emphasis added]

Accordingly, the balancing of the employer's statutory mission and related significant managerial concerns against employee interests in Pace Southwest Division complements our holding here that negotiations over ATU privacy or job security interests implicated by the use of DriveCam evidence for discipline would substantially impair NJTBO's significant interests in implementing its statutory mission of efficiently and effectively operating a safe, responsive public transportation system.

Finally, in response to the ATU's assertion that there may be negotiable impacts flowing from NJTBO's decision to use DriveCam evidence in disciplinary proceedings, that issue is not before us in this scope of negotiations proceeding in which the court has only asked us to determine the negotiability of the decision to use DriveCam for discipline.

ORDER

The subject of the ATU's grievance regarding NJTBO's use of DriveCam video/audio evidence for disciplinary purposes is not mandatorily negotiable and not legally arbitrable. As the Honorable Thomas M. Moore, J.S.C. of the Superior Court of New Jersey, Chancery Division, Essex County has retained jurisdiction, a copy of this decision and order will be served on him for further consideration of his injunction restraining arbitration in light of the Commission's Order exercising its

scope of negotiations jurisdiction. We trust that the parties will make the appropriate applications to the court.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Eskilson recused himself. Commissioner Voos was not present.

ISSUED: February 26, 2015

Trenton, New Jersey