

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

AMALGAMATED TRANSIT UNION,  
LOCAL 819, AFL-CIO,

Petitioner,

-and-

Docket No. SN-99-44

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission consolidates a scope of negotiations petition filed by the Amalgamated Transit Union, Local 819, AFL-CIO with an unfair practice charge filed by Local 819 against the New Jersey Transit Bus Operations, Inc. Local 819 seeks a determination that NJ Transit is required to negotiate before implementing a maintenance department attendance policy. Local 819's charge alleges that NJ Transit violated the New Jersey Employer-Employee Relations Act when it unilaterally implemented the maintenance attendance policy. The Commission concludes that the parties have a dispute over whether the maintenance attendance policy changed employment conditions and may have a dispute over the negotiability of some of those employment conditions. Because the Commission cannot resolve the initial factual issue in a scope proceeding, it consolidates the scope petition with the pending unfair practice charge and any scope of negotiations issues can be resolved through the consolidated proceeding.

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. 99-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

AMALGAMATED TRANSIT UNION,  
LOCAL 819, AFL-CIO,

Petitioner,

-and-

Docket No. SN-99-44

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC.,

Respondent.

Appearances:

For the Petitioner, Craner, Nelson, Satkin & Scheer,  
P.C., attorneys (John A. Craner, on the brief)

For the Respondent, Peter Verniero, Attorney General  
(David S. Griffiths, on the brief)

DECISION

On December 23, 1998, the Amalgamated Transit Union, Local 819, AFL-CIO petitioned for a scope of negotiations determination. The petition seeks a determination that New Jersey Transit Bus Operations, Inc. is required to negotiate before implementing a maintenance department attendance policy.

The parties have filed briefs and exhibits. These facts appear.

Local 819 represents all bus drivers, mechanics, maintenance employees, field salaried employees and general office clerical employees of NJ Transit Bus. NJ Transit Bus and Local 819 are parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 1999. The grievance procedure ends in binding arbitration.

On July 1, 1998, NJ Transit implemented a maintenance department attendance policy. The policy states that its purpose is to set forth NJ Transit's expectations concerning attendance and to establish procedures and guidelines to monitor absences and to encourage the development of positive incentives to reduce tardiness and excessive absenteeism. The policy sets forth guidelines concerning what will be considered excessive absenteeism or tardiness; what action will be taken in the event of excessive absenteeism or tardiness, or a combination of both; guidelines for providing documentation of a physician, and the types of disciplinary action which may be taken. The policy also includes a section entitled "Employee Responsibilities."

On July 13, 1998, Local 819 filed an unfair practice charge (CO-99-14) alleging that NJ Transit violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (a)(5), when it unilaterally implemented the attendance policy. Local 819 alleges that the policy is contrary to the parties' long-standing practices and collective negotiations agreement. The processing of that charge has been held in abeyance pending this scope of negotiations determination.

NJ Transit seeks dismissal of this petition. It asserts that it does not oppose arbitration of any dispute under the attendance policy. It further asserts that the petition does not satisfy the Commission's criteria for a scope of negotiations determination, since this dispute did not arise during

negotiations for a new contract or during grievance arbitration. It contends that it must first be determined, through an evidentiary hearing, whether the policy caused a change in any established attendance requirements.

ATU responds that, through this scope of negotiations proceeding, the Commission can order NJ Transit to negotiate over the policy and find that NJ Transit committed an unfair practice by unilaterally implementing the policy. ATU also responds that the grievance procedure in the parties' contract does not allow arbitration since the policy does not involve a contractual matter and was imposed outside the contract.

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.

These parties have a dispute over whether the new attendance policy changed employment conditions and may have a dispute over the negotiability of some of those employment conditions. Because we cannot resolve the initial factual issue in this proceeding, we will consolidate this petition with the pending

unfair practice charge. Any scope of negotiations issues can be presented and resolved through the consolidated proceeding.

ORDER

The scope of negotiations petition is consolidated with CO-99-14. The consolidated matter is remanded to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: February 25, 1999  
Trenton, New Jersey  
ISSUED: February 26, 1999