

I.R. NO. 93-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SCOTCH PLAINS-FANWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-92

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 102,

Respondent.

SYNOPSIS

In an action brought by the Scotch Plains-Fanwood Board of Education, a Commission Designee restrains arbitration pending a final Commission decision. The International Brotherhood of Teamsters, Local 102 filed a grievance and sought to arbitrate the Board's alleged bad faith and irrational conduct in subcontracting work formerly done by board employees. Subcontracting work performed by public employees is neither negotiable nor arbitrable. IFPTE v. State, 88 N.J. 393 (1982). Although Local 102 alleges the Board's conduct is arbitrary, Local 102 did not proffer any evidence of improper motivation or actual bad faith by the Board.

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LOCAL 102,

Respondent.

Appearances:

For the Petitioner
Casper P. Boehm, Jr., attorney

For the Respondent
Richard A. Weinmann, attorney

INTERLOCUTORY DECISION

On April 15, 1993, the Scotch Plains-Fanwood Board of Education filed a Petition for Scope of Negotiations Determination along with an Application to restrain arbitration on a grievance brought by the International Brotherhood of Teamsters Local 102. The grievance alleged bad faith in the irrational substitution of private workers for public workers. Specifically, outside contractors were doing work formerly done by bargaining unit members.

The Board contends that the grievance concerns a non-negotiable, non-arbitrable matter, namely, the right of a Public Employer to make and effectuate a decision to subcontract.

An Order to Show Cause was executed and made returnable for May 12, 1993 at which time both parties were given an opportunity to present evidence and argue orally.

The work which is the subject of the grievance was funded by a bond referendum adopted by the Board of Education. This work consists of the refurbishing of approximately 325 unit heater ventilators in the District, the Board contracted out the refurbishing of 54 units in the summer of 1992. The specifications of the refurbishing of the units include the replacement of valve actuators, coil control valves, low limit controls and damper actuators and the calibration and adjustment for proper operation.

The Board contends that the maintenance men represented by Local 102 have not always been able to properly repair these units and they lack specific mechanical knowledge to properly perform some of the repairs. The unit members do not have the proper licenses or training to do the required electrical and plumbing work. Accordingly, it hired licensed contractors to repair these units.

Local 102's contends that unit members did this work in the past and are capable of doing it now. This loss of work violates the collective negotiations agreement between it and the School Board. The Association argues that the subcontracting was arbitrary and good cause was not shown by the employer to subcontract this work.

The Board relied on IFPTE v. State, 88 N.J. 393 (1982) which holds that subcontracting all or part of the work performed by employees is neither negotiable nor arbitrable.

Local 102 argues that such an interpretation is a gross misreading of that case and cites the Court at page 411:

We emphasize that our holding today does not grant the public employer limitless freedom to subcontract for any reason. The State could not subcontract in bad faith for the sole purpose of laying off public workers or substituting private workers for public workers. State action must be rationally related to a legitimate governmental purpose. Our decision today does not leave public employees vulnerable to arbitrary or capricious substitutions of private workers for public employees.

Although Local 102 has alleged that the Board's conduct is arbitrary and factual allegations of the Board are misleading, Local 102 has not produced any specific evidence of improper motivation or actual bad faith by the Board.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{1/}

1/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Here, the expressed rationale of the Board, that it wanted licensed contractors to do this rather technical work is a valid rationale to subcontract, IFPTE Local 195 v. State. See also, Lower Camden County Regional High School District Number One Board of Education, P.E.R.C. No. 93-65, 19 NJPER 119 (124057 1993) where the Commission held that a school board had a non-negotiable, non-arbitrable outside contractor to paint fuel tanks and storage tanks.

I believe there is a substantial likelihood that the Commission will find this grievance non-arbitrable and I restrain the scheduled arbitration pending a final Commission decision in this matter.



Edmund G. Gerber
Commission Designee

DATED: May 14, 1993
Trenton, New Jersey