

P.E.R.C. NO. 91-65

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Petitioner,

-and-

Docket Nos. SN-91-2  
SN-91-3

TEAMSTERS LOCAL UNION NO. 11,  
IBTWA (AFL-CIO),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants requests for restraints of binding arbitration of grievances filed by Teamsters Local Union No. 11, IBTWA (AFL-CIO) against Middlesex County College. The grievances allege that the College violated the parties' collective negotiations agreement when it subcontracted certain work. The Commission finds that decisions to subcontract are not mandatorily negotiable.

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Appearances:

For the Petitioner, Jackson, Lewis, Schnitzler & Krupman,  
attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Schneider, Cohen, Solomon, Leder &  
Montalbano, attorneys (Bruce D. Leder, of counsel)

DECISION AND ORDER

On July 13, 1990, Middlesex County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of two grievances filed by Teamsters Local Union No. 11, IBTWA (AFL-CIO). The grievances allege that the College violated the parties' collective negotiations agreement when it subcontracted certain work.

Both parties have filed briefs and documents. These facts appear.

The Union is the majority representative of a unit of the College's custodial, maintenance, grounds and warehouse employees. Article 16, Section 3 of the parties' current agreement provides

that absent an emergency, employees not in the bargaining unit shall not be permitted to perform duties of employees in the bargaining unit. The grievance procedure ends in binding arbitration.

On November 24, 1989, the College hired one contractor to supply and plant fifty shrubs around the baseball field and another contractor to install a cement sidewalk.

On November 27 and 29, 1989, the Union grieved the decisions to subcontract work and sought compensation for its members for the hours worked by the non-union subcontractors.<sup>1/</sup> The College denied the grievances and the Union demanded arbitration. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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<sup>1/</sup> The agreement provides that employees will receive overtime at time and a half, double time or triple time depending on the duration of the overtime assignment and the amount of consecutive hours or days an employee has worked. The hearing officer at Step 3 of the sidewalk grievance calculated that doing the work with employees would have cost either \$5,512.70 (overtime) or \$4,591.34 (straight time) compared with the subcontractor's price of \$4,400.00. The Step 2 response to the baseball field grievance states that the union sought overtime pay because the work was performed on a holiday and concludes that using the outside contractor was more "economical."

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]

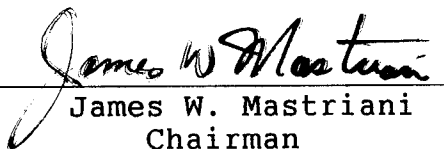
Citing Local 195, IFPTE v. State, 88 N.J. 393 (1982), the College contends that its subcontracting decisions are not mandatorily negotiable. According to the Union, Local 195 holds that decisions to subcontract are mandatorily negotiable if they are based on economic conditions.

Decisions to subcontract are not mandatorily negotiable, regardless of whether or not they are based on economic considerations. Local 195; Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-143, 14 NJPER 465 (¶19194 1988). Local 195 requires negotiations over proposals to discuss subcontracting decisions based on fiscal considerations, but not over the decisions themselves. Id. at 409; Old Bridge; N.J. Sports & Expo. Auth., P.E.R.C. No. 90-63, 16 NJPER 48 (¶21023 1990). While Article 16, Section 3 is mandatorily negotiable, it cannot be invoked to bar subcontracting of work. See Rutgers, The State Univ. v. AFSCME, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83).

ORDER

The College's requests for restraints of binding arbitration are granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey

January 17, 1991

ISSUED: January 18, 1991