

I.R. NO. 88-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-52

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Old Bridge Township Board of Education filed a Petition for Scope of Negotiations Determination and an Order to Show Cause seeking to restrain arbitration of a grievance over denial of overtime by certain unit members. The Association claimed the Board has subcontracted work in violation of the contract. Subcontracting is a non-negotiable managerial prerogative and is not arbitrable. The arbitration was restrained pending a final Commission decision.

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Appearances:

For the Petitioner
Wilentz, Goldman & Spitzer, Esqs.
(Steven J. Tripp, of counsel)

For the Respondent
Oxfeld, Cohen, Blunda, Friedman,
LeVine and Brooks, Esqs.
(Arnold S. Cohen, of counsel)

DECISION

On January 22, 1988, the Old Bridge Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination and an Order to Show Cause seeking to restrain binding arbitration of a grievance filed by the Old Bridge Education Association ("Association") pending a decision by the full Commission on the arbitrability of the grievance. The Order to Show Cause was executed and made returnable for March 23, 1988. On that date, I conducted a Show Cause hearing by telephone.

The standards developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts.

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/}

The Association's grievance states: "The board has in violation of the contract subcontracted certain painting responsibilities thus violating Article I. The subcontracting, in addition to the above, has impacted on the ability of employees represented by the [Association] to earn overtime pursuant to an arbitrator's award."

The Association filed with the Commission a Request for Submission of a Panel of Arbitrators. The Association described the substance of the grievance as "maintenance employees painting by outside personnel".

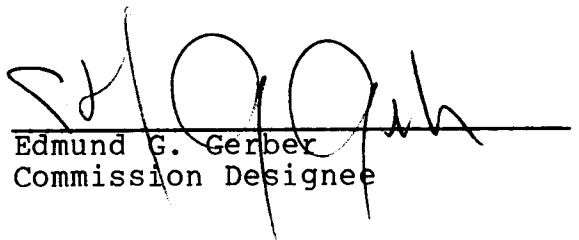
In Local 195, IFPTE v. State, 88 N.J. 393 (1982), the New Jersey Supreme Court held that a substantive decision to subcontract is a "non-negotiable matter of managerial prerogative." Brick Tp. Bd. of Ed., P.E.R.C. No. 86-40, 12 NJPER 153 (¶17058 1985) and New Jersey Highway Authority, P.E.R.C. No. 85-111, 11 NJPER 309 (¶16110 1985).

^{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).

The Association argues that Local 195 obligates the Board to meet with the Association and discuss the issue before it subcontracts. The Association argues that it should be permitted to arbitrate the issue of whether the Board violated the parties' contract by failing to discuss the issue of subcontracting. It seeks monetary damages for the failure to discuss the subcontracting.

The Board's restraint and scope petition were filed on the basis of the issues raised in the grievance and demand for arbitration. There is nothing in either document which raises the issue of the obligation to discuss. My determination cannot be based on issues first raised in briefs and affidavits and must be decided on the grievance and demand for arbitration as originally filed by the Association.

Accordingly, the arbitration in this matter is restrained pending a final Commission decision.



Edmund G. Gerber
Commission Designee

DATED: March 23, 1988
Trenton, New Jersey