

P.E.R.C. NO. 88-143

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 Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Old Bridge Education Association against the Old Bridge Board of Education. The grievance claims that the Board violated the contract by subcontracting painting done before by maintenance employees represented by the Association. The Commission finds that the decision to subcontract is a managerial prerogative.

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Appearances:

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

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

DECISION AND ORDER

On January 22, 1988, the Old Bridge Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain binding arbitration of a grievance filed by the Old Bridge Education Association ("Association"). The grievance claims that the Board violated the contract by subcontracting painting done before by maintenance employees represented by the Association.

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

The Association is the majority representative of all certified personnel, including maintenance employees. The parties'

agreement is effective July 1, 1985 through June 30, 1988. The grievance procedure ends in binding arbitration.

On August 24, 1987, the Association filed a grievance for the maintenance employees. The grievance claimed that the Board violated provisions on recognition, grievance procedures, negotiations, salary guides, past practices and overtime when it subcontracted certain painting, thus reducing overtime opportunities available under an arbitration award. The Association sought back pay for lost overtime, \$1,000 damages, and an end to the subcontracting until the Board complied with contract provisions and court decisions.

On October 14, 1987, the Board denied this grievance. It stated: "The painting in question was properly bid. The concern of bidding for work services which are performed by district employees, however, will be reviewed in conjunction with the review of proposals related to custodial painting...."

On November 4, 1987, the Association's grievance chairperson wrote to the Board's grievance chairperson that the Board had said it would sit down and discuss the subcontracting. He requested a date for a meeting, saying the Association would submit the matter to arbitration absent one. No meeting was held and the Association filed for arbitration. The demand sought to arbitrate

the issue of "maintenance employees-painting by outside personnel."
This petition ensued.^{1/}

The Board asserts its decision to subcontract painting is non-negotiable under Local 195, IFPTE v. State, 88 N.J. 393 (1982). The Association concedes that subcontracting is non-negotiable, but asserts that its grievance seeks to have the Board discuss subcontracting and notify employees in advance of such decisions. It stresses Local 195's observation that public employees "may have a procedural right to present their position on the economic issue." 88 N.J. at 409.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

^{1/} The Board received a temporary restraint of binding arbitration. I.R. No. 88-15, 14 NJPER ____ (¶ ____ 1988).

The parties have accurately summarized the controlling law: under Local 195, decisions to subcontract are not mandatorily negotiable, but proposals to discuss economic subcontracting and to notify employees are mandatorily negotiable. Applying these principles, we restrain arbitration to the extent that the grievance and the demand for arbitration challenge the decision to subcontract. We do not restrain arbitration to the extent the Association claims that the Board violated an agreement to discuss subcontracting.^{2/}

ORDER

The request for a restraint of binding arbitration is granted to the extent the grievance and demand for arbitration challenge the decision to subcontract.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

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

DATED: Trenton, New Jersey
 June 23, 1988
 ISSUED: June 24, 1988

^{2/} Given our limited jurisdiction, we do not pass on whether that issue is encompassed by either the grievance or the demand. Nor will we speculate about what remedy might or might not be proper if an arbitrator were to find a violation. Old Bridge Tp. Bd. of Ed., P.E.R.C. NO. 83-60, 9 NJPER 12 (¶14004 1982), aff'd 193 N.J. Super. 182 (App. Div. 1984), aff'd 98 N.J. 523 (1985).