

P.E.R.C. NO. 94-28

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

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 102 against the Scotch Plains-Fanwood Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement when it subcontracted work formally performed by negotiations unit members. Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Commission holds that this subcontracting decision is not mandatorily negotiable or legally arbitrable.

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Docket No. SN-93-92

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 102,

Respondent.

Appearances:

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

For the Respondent, Richard A. Weinmann, attorney

DECISION AND ORDER

On April 15, 1993, the Scotch Plains-Fanwood Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance brought by the International Brotherhood of Teamsters, Local 102. The grievance alleges that the Board violated the parties' collective negotiations agreement when it subcontracted work formerly performed by negotiations unit members.

The Board sought an interim restraint of arbitration. On May 14, 1993, a Commission designee granted that request. I.R. No. 93-16, 19 NJPER 287 (¶24147 1993).

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

Local 102 is the majority representative of the Board's head custodians, custodians, maintenance personnel, grounds personnel, hall monitors and bus drivers. The parties entered into a collective negotiations agreement effective from January 1, 1990 through December 31, 1992. The grievance procedure ends in binding arbitration.

In the summer of 1992, the Board contracted out the refurbishment of 54 heater ventilator units. The specifications included replacing valve actuators, coil control valves, low limit controls and damper actuators and calibrating and adjusting the units for proper operation. They also included cleaning, sanding, priming, and painting each unit. No employees were laid off or had their regular work hours reduced as a result of the subcontracting decision. However, Local 102 alleges that one employee resigned to avoid a layoff and other employees lost overtime opportunities.

The Board contends that its maintenance employees had not properly repaired these units in the past; they were busy with other work orders in the summer of 1992; and they lacked the necessary licenses, training, equipment, and mechanical knowledge to do this work. Local 102 contends that these employees had done these repairs capably for 13 years and had received satisfactory evaluations; they did not have that many work orders; they had the mechanical knowledge needed to refurbish the units; and they did not need special licenses to do this work.

Local 102 filed a grievance asserting that this

subcontracting decision irrationally and in bad faith substituted private workers for negotiations unit employees. The Board denied the grievance and Local 102 demanded arbitration. This petition ensued.

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.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), held that subcontracting decisions are not mandatorily negotiable. The Court added, however:

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.... [Id. at 411]

See also Middlesex Cty. College, P.E.R.C. No. 91-65, 17 NJPER 86

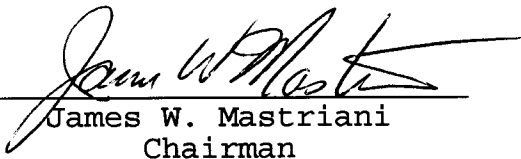
(¶22040 1991); Lower Camden Cty. Reg. H.S. Dist. No. 1 Bd. of Ed.,
P.E.R.C. No. 93-65, 19 NJPER 119 (¶24057 1993).

Under Local 195, we must hold that this subcontracting decision is not mandatorily negotiable or legally arbitrable. While Local 102 alleges that the decision was arbitrary and made in bad faith, that allegation does not make this subcontracting decision arbitrable and must be presented in another forum. See New Jersey Sports & Exposition Auth., P.E.R.C. No. 90-63, 16 NJPER 48, 49 (¶21023 1989). We therefore restrain binding arbitration of Local 102's grievance.

ORDER

The request of the Scotch Plains-Fanwood Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. Commissioner Bertolino voted against this decision. Commissioner Regan abstained from consideration.

DATED: September 24, 1993
Trenton, New Jersey
ISSUED: September 24, 1993