

P.E.R.C. NO. 94-56

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-94-14

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains arbitration of a grievance filed by the Old Bridge Education Association against the Old Bridge Township Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it had an outside contractor rather than unit employees check buildings on Saturdays. The Commission finds that the Supreme Court has held that public employers have a managerial prerogative to subcontract operations.

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Appearances:

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

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On August 9, 1993, the Old Bridge Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Old Bridge Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it had an outside contractor rather than unit employees check buildings on Saturdays.

The Board has filed exhibits and a brief. These facts appear.

The Association represents a broad-based unit of Board employees including custodians. The parties entered into a collective negotiations agreement effective from July 1, 1991

through June 30, 1994. Article XXXIV covers the custodial staff. Section K is entitled Building Check. It sets forth a "paid time allotment for building checks" at different schools -- e.g., 1 hour at the Carl Sandburg Middle School. The grievance procedure ends in binding arbitration of contractual disputes.

Building checks involve a routine maintenance check of operational systems including lights, plumbing, and heating. There is no need for such checks on weekdays because any problems are readily apparent. Weekend building checks have traditionally been done by the Board's custodians.

The Board recently entered into a contract permitting a religious group to conduct Sunday church services in the Carl Sandburg Middle School. Given this weekend building use, the Board has retained an outside contractor to perform weekend cleaning and maintenance duties, including checking the building. The Board thus no longer assigns its custodians to do building checks at the middle school, although they continue to do them elsewhere.

The Association grieved the use of outside contractors rather than custodians to check the middle school on weekends. The Board denied this grievance and the Association demanded binding arbitration, asserting that the contract guarantees custodians the right to do building checks. 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.

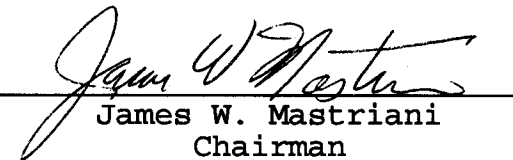
Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

In Local 195, IFPTE v. State, 88 N.J. 393 (1982), our Supreme Court held that public employers have a managerial prerogative to subcontract operations. We are thus compelled to restrain arbitration. Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-143, 14 NJPER 465 (¶19194 1988); Brick Tp. Bd. of Ed., P.E.R.C. No. 86-40, 12 NJPER 153 (¶17058 1985).

ORDER

The request of the Old Bridge Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: November 15, 1993
Trenton, New Jersey
ISSUED: November 16, 1993