

P.E.R.C. NO. 99-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF SUMMIT,

Petitioner,

-and-

Docket No. SN-99-24

SUMMIT PBA LOCAL NO. 55,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City of Summit's request for a restraint of binding arbitration of a grievance filed by Summit PBA Local No. 55. The grievance contests the City's decision to retain a private security firm to secure a City facility damaged by fire rather than have that service performed by negotiations unit members. The Commission holds that the substantive decision to have private organizations rather than public employees provide governmental services is a managerial prerogative. The PBA may not contest through binding arbitration the City's decision to retain a private security firm.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert J. Merryman, on the brief)

For the Respondent, Ross & Hirsh, attorneys (Donald B. Ross, Jr., of counsel; Steven Backfisch, on the brief)

DECISION

On October 28, 1998, the City of Summit petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Summit PBA Local No. 55. The grievance contests the City's decision to retain a private security firm to secure a City facility damaged by fire rather than have that service performed by negotiations unit members.

The parties have filed briefs and exhibits. The PBA has filed a certification of a police officer. The City has filed an affidavit of its business administrator. These facts appear.

The PBA represents all full-time regular police officers excluding captains, deputy chiefs and the chief. The City and the

PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 2000. The grievance procedure ends in binding arbitration.

Article 8 of the agreement is entitled Priority for Overtime. Paragraph 2 provides:

The Employer agrees not to assign or direct Employees not covered by this Agreement to any job or duty which would normally be performed by a member of the bargaining unit unless said job or duty has first been refused by regular Employees covered by this Agreement, pursuant to Paragraph 1 of this article.

On July 26, 1998, a transfer station owned by the City was damaged by a fire. On July 27, City officials examined the transfer station and determined it to be unsafe. To prevent the public from entering the station, the City retained a private security firm to provide security from 4:00 p.m. to 7:00 a.m. for approximately one week until a fence was erected around the facility.

On July 28, 1998, the PBA filed a grievance. The grievance states:

Please be advised that this letter represents Step 3 of the grievance procedure.

PBA Local 55 is taking issue with the City's recent practice of retaining private security services due to the fire at the transfer station.

Clearly this is an attempt to circumvent the agreement between the City and PBA Local 55, specifically Article 8, Paragraph 2. This grievance is being brought by PBA Local 55 on behalf of all its members.

This matter has been discussed with Chief Schneller and complies with all requirements in Steps 1 and 2 of the grievance procedure. The results have proved unsatisfactory to our Local's concern.

PBA Local 55 is requesting that you IMMEDIATELY DISCONTINUE the practice of retaining private security which, as per our contract, should be performed by members of this bargaining unit.

On July 31, the City administrator denied the grievance.

He stated:

I have reviewed the issues raised in your letter of July 28 concerning the use of a private security firm at the transfer station after the fire of July 26.

With respect to the contract, I do not believe there is a violation for two reasons:

The security firm is an independent contract, not an employee. The contract refers to "employees".

I do not see watchman duty as "any job or duty that would normally be performed by a member of the bargaining unit." We do not normally have watchman duty.

Therefore, I do not believe there has been any violation of the contract.

That having been said, you should also be aware that we are in the process of having temporary fencing installed across the open entrances to the building, in order to prevent people from entering when the site is closed. Once that is done, we will dispense with the watchman.

On August 19, 1998, the PBA 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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

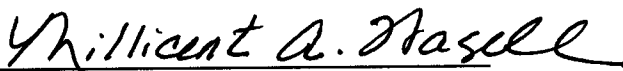
Applying that balancing test, the Court in Local 195 held that the substantive decision to have private organizations rather than public employees provide governmental services is a managerial prerogative. Id. at 405-411. Accordingly, the PBA may

not contest through binding arbitration the City's decision to retain a private security firm. We therefore restrain binding arbitration.

ORDER

The request of the City of Summit for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998