

P.E.R.C. NO. 94-39

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-94-2

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO, LOCAL 2292

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the American Federation of State, County and Municipal Employees, AFL-CIO, Local 2292 against the Township of Woodbridge. That grievance asserts that the employer violated the parties' collective negotiations agreement when it did not have two employees covering the Department of Public Works garage during a certain overtime situation. The Commission finds that AFSCME is seeking to enforce a minimum staffing provision that is not mandatorily negotiable. Safety concerns are not factually implicated in this case.

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Appearances:

For the Petitioner, Genova Burns, attorneys  
(Joseph Licata, of counsel)

For the Respondent, Don Dileo, staff representative

DECISION AND ORDER

On July 6, 1993, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by two diesel mechanics represented by American Federation of State, County and Municipal Employees, AFL-CIO, Local 2292. That grievance asserts that the employer violated the parties' collective negotiations agreement when it did not have two employees covering the Department of Public Works garage during a certain overtime situation.

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

Local 2292 recognizes certain employees in the Township's Division of Sanitation, Equipment Repairs, Department of Public

Works. The parties entered into a collective negotiations agreement effective from January 1, 1990 through December 31, 1992. Article XVI is entitled Distribution of Overtime. Section 2 provides.

If during an overtime situation there are three (3) or more pieces of equipment out on the road, the Employer agrees to have at least two (2) men in the garage for coverage. This provision does not apply to Streets Division sewer standby crew.

The grievance procedure ends in binding arbitration.

On March 24, 1993, two diesel mechanics filed a grievance. The grievance asserted that on March 21, the employer violated Article XVI, Section 2 when it had three pieces of road equipment (a pickup, a loader, and a sanding truck) in use and no personnel in the garage for coverage. The grievance asked that two employees be paid.

The employer denied the grievance; it asserted that three pieces of equipment were not in use on the road and that Article XVI, Section 2 was an illegal minimum staffing provision. Local 2292 demanded binding arbitration and 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 the grievance or any contractual defenses the employer may have. Nor do we consider whether this grievance is permissively negotiable since there is no such category of negotiations for these employees. Ridgefield Park.

On its face, Article XVI, Section 2 is a minimum staffing provision. Such provisions are not mandatorily negotiable. See, e.g., City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992). Local 2292 asserts that this provision protects safety interests by requiring at least two employees to be present to lift heavy trucks and snowplows for repairs, but we need not address that concern since this situation is not factually implicated in this case. We therefore restrain binding arbitration of this grievance.

ORDER

The request of the Township of Woodbridge for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained from consideration. Commissioner Bertolino abstained.

DATED: October 25, 1993  
Trenton, New Jersey  
ISSUED: October 26, 1993