P.E.R.C. NO. 2004-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Petitioner,

-and- Docket No. SN-2003-71

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1034, BRANCH 4,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Middletown for a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1034, Branch 4, formerly designated as IUE Local 417. The grievance alleges that the Township has not honored a portion of the contract's wage provision. The Commission grants a restraint of arbitration to the extent, if any, the grievance seeks to pursue an illegal parity claim. The union's claim that the contract requires the reopening of the wage provision because another unit received greater salary increases is legally arbitrable, but should an arbitrator interpret the contract to find that the disputed provision is a parity clause, he or she may not enforce its terms.

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, Dowd & Reilly, attorneys (Bernard M. Reilly, on the brief)

For the Respondent, Barry D. Isanuk, attorney, on the brief

DECISION

On June 19, 2003, the Township of Middletown petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1034, Branch 4, formerly designated as IUE Local 417. The grievance alleges that the Township has not honored a portion of the contract's wage provision.

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

CWA represents a unit of blue and white collar supervisors. The parties' collective negotiations agreement is effective from

January 1, 2001 through December 31, 2003. The grievance procedure ends in binding arbitration.

Article 15 deals with wages. It provides that effective January 1, 2001, January 1, 2002 and January 1, 2003, all unit employees shall receive a pay increase of 3.25% applied to their base salaries. Section 4 provides:

> The Union retains the right to any additional increase over 3.25% for each year of this contract should it be negotiated and agreed to between the Township and the Blue and White collar civilian union.

Subsequent to negotiations and agreement on the supervisors contract, the Township negotiated and executed contracts with the blue collar (Parks and Public Works) unit and the white collar (Clerical) unit, both represented by CWA Local 1034.

On February 8, 2002, the union filed a grievance asserting that the employer was not honoring Section 4 of Article 15. On February 14, the grievance was denied as untimely. On March 4, the union demanded arbitration over the grievance it described as involving Article 15 - Employee Wages. On July 11, 2002, an arbitrator was appointed. At an arbitration hearing, it was agreed that a scope petition would be filed. 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 omission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

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

> [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.

The Township argues that Section 4 is an illegal parity clause. The Township also asserts that the supervisors received larger increases (by percentage) than the other units, but contends that the increases were weighted toward certain positions to address alleged salary inequities.

The union responds that the clause is a mandatorily negotiable reopener provision. The union also asserts that the Township's attorney drafted Section 4, the administration assured the union that no unit would get more than 3.25%, and there is a factual dispute as to whether the supervisors were given a higher percentage increase.

The Township replies that the clause was presented by the union and inserted into the contract at the union's insistence.

We have long held that clauses that automatically extend to one unit any increases in salary or benefits negotiated by other units are not mandatorily negotiable. City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978); see also South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Montville Tp., P.E.R.C. No. 83-143, 10 NJPER 364 (¶15168 1984). However, clauses extending to unit employees benefits unilaterally conferred upon non-unit employees are mandatorily negotiable. So are clauses permitting the reopening of negotiations in the event of increases in salaries or other benefits negotiated by other units. See Montclair Tp., P.E.R.C. No. 90-9, 15 NJPER 499 (¶20206 1989); Rutherford Bor., P.E.R.C. No. 89-31, 14 NJPER 642 (¶19268 1988); Woodbridge Tp., P.E.R.C. No. 88-88, 14 NJPER 250 (¶19093 1988); Wanaque Bor., P.E.R.C. No. 82-42, 7 NJPER 613 (¶12273 1981); Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981); Watchung Bor., P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981).

Both parties agree that parity provisions are not enforceable. To the extent, if any, the union seeks to enforce such a provision, we restrain arbitration. To the extent the union seeks to arbitrate a claim that the contract requires the reopening of the wage provision because another unit received greater salary increases, that claim is legally arbitrable. The employer's defenses that the contract does not contain a reopener clause and that the other unit did not negotiate greater increases must be presented to the arbitrator. Should the arbitrator interpret the contract to find that the disputed provision is such a parity clause, he or she may not enforce its terms.

ORDER

The request of the Township of Middletown for a restraint of binding arbitration is granted to the extent, if any, the Communications Workers of America, Local 1034, Branch 4 seeks to enforce an illegal parity claim. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: November 17, 2003
Trenton, New Jersey
ISSUED: November 18, 2003