

P.E.R.C. NO. 2010-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2010-042

TEAMSTERS LOCAL UNION NO. 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Middlesex County College for a restraint of binding arbitration of a grievance filed by Teamsters Local Union No. 11. The grievance challenges the subcontracting of custodial work. The Commission restrains arbitration because the College has a managerial prerogative to subcontract.

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, Jackson Lewis, attorneys (Jeffrey
J. Corradino, on the brief)

DECISION

On November 18, 2009, Middlesex County College petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Teamsters Local Union No. 11. The grievance challenges the subcontracting of custodial work.

The employer has filed a brief, exhibits and certifications. Local Union No. 11 has not filed a response. These facts appear.

Local Union No. 11 represents the employer's custodial employees. The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2010. The grievance procedure ends in binding arbitration.

The employer terminated the employee who most recently performed the custodial work at the employer's New Brunswick

location. Following the termination, the employer subcontracted the custodial work.

Local Union No. 11 filed a grievance challenging the employers' right to subcontract. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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 merits of the grievance or any contractual defenses the employer may have.

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]

Local 195 itself held that a public employer has a managerial prerogative to subcontract. Id. at 408. Therefore, Local Union No. 11 may not challenge the subcontracting decision through binding arbitration.

ORDER

The request of Middlesex County College for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller were not present.

ISSUED: May 27, 2010

Trenton, New Jersey