

P.E.R.C. NO. 2016-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HELMETTA,

Petitioner,

-and-

Docket No. SN-2015-050

TEAMSTERS LOCAL 210,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract clause in an expired collective negotiations agreement between the Borough of Helmetta and Teamsters Local 210. The Commission holds that the disputed clause which limits the Borough's ability to subcontract work is not mandatorily negotiable.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Adam S. Abramson-Schneider, of counsel and on the brief; Andres Acebo, on the brief)

For the Respondent, Hoffman & Associates, attorneys (Andrew Hoffman, of counsel)

DECISION

On February 10, 2015, the Borough of Helmetta (Borough) petitioned for a scope of negotiations determination. The Borough asserts that Article 5, Section D of an expired collective negotiations agreement (CNA) with the International Brotherhood of Teamsters Local 210 (Local 210) is not mandatorily negotiable and therefore cannot be retained in a successor agreement.

The Borough filed a brief and exhibits. Local 210 has not filed opposition. These facts appear.

Local 210 represents employees of the Borough's Public Works Department and Shelter employees. The Borough and Local 210 are

parties to a CNA in effect from January 1, 2010 through December 31, 2014. The grievance procedure ends in binding arbitration.

Article 5, HOURS OF WORK, Section D of the CNA provides:

If the Employer finds it necessary to subcontract work, the employees covered by this Agreement shall not be replaced or have work taken from them. This provision will not pertain to emergency situations as determined by the Business Administrator.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). We do not consider the wisdom of the language that the parties have proposed or agreed upon; only their negotiability. Byram Tp. Bd. of Ed. v. Byram Tp. Ed. Ass'n, 152 N.J. Super. 12, 30 (App. Div. 1977).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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 Borough maintains that this subsection must be removed from the CNA because it limits the Borough's managerial prerogative to enter into subcontracting agreements.

It is well settled that a public employer's decision to subcontract is not mandatorily negotiable. Local 195 supra.

As written, Article 5, Section D of the CNA is not mandatorily negotiable.

ORDER

Article 5, Section D is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself. Commissioner Boudreau was not present.

ISSUED: September 24, 2015

Trenton, New Jersey