

P.E.R.C. NO. 2019-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF COLLINGSWOOD,

Petitioner,

-and-

Docket No. SN-2018-045

TEAMSTERS LOCAL 830,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Borough's request for restraint of binding arbitration of a grievance filed by Teamsters Local 830 contesting the Borough's entrance into a shared services agreement with the Merchantville-Pennsauken Water Commission without obtaining Local 830's consent. Finding that a restriction on the Borough's right to enter into a shared services agreement regarding its water utility plant would substantially limit its governmental policy powers to determine how it will deliver services to the public and outweighs Local 830's interest in preserving unit work, the Commission restrains arbitration.

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.

P.E.R.C. NO. 2019-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF COLLINGSWOOD,

Petitioner,

-and-

Docket No. SN-2018-045

TEAMSTERS LOCAL 830,

Respondent.

Appearances:

For the Petitioner, Parker McCay, P.A., attorneys  
(Elizabeth M. Garcia, on the brief; Sarah E. Tornetta,  
on the brief)

For the Respondent, Cleary, Josem & Trigiani, LLP,  
attorneys (Jeremy E. Meyer, on the brief)

DECISION

On May 17, 2018, the Borough of Collingswood (Borough) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 830 (Local 830). The grievance asserts that the Borough violated the parties' collective negotiations agreement (CNA) when it entered into a shared services agreement without obtaining Local 830's consent.

The Borough filed a brief, exhibits, and the certification of its Chief Financial Officer, Elizabeth Pigliacelli

(Pigliacelli). Local 830 filed a brief.<sup>1/</sup> The Borough also filed a reply brief. These facts appear.

Local 830 represents all blue collar employees in the Borough's highway, sewer, and water departments excluding all craft and professional employees, managerial executives, department heads, deputy department heads, and supervisors. The Borough and Local 830 are parties to a CNA in effect from January 1, 2016 through December 31, 2018. The grievance procedure ends in binding arbitration.

Article XIII of the parties' CNA, entitled "Subcontracting," provides in pertinent part:

The employer shall not, except with the consent of the UNION, subcontract any work ordinarily performed by employees covered by this Agreement, except in the event of emergencies. This clause shall not be deemed to preclude the hiring of part-time and/or temporary and/or seasonal employees.

The Borough employs four individuals in its water utility plant - T.C., J.J., J.T., and S.D. T.C., the plant supervisor, is the only employee that holds the T3 and W3<sup>2/</sup> licenses

---

1/ Local 830 did not submit a certification. N.J.A.C. 19:13-3.6(f)<sup>1</sup> requires that all pertinent facts be supported by certifications based upon personal knowledge.

2/ According to Pigliacelli, public water treatment systems (T) are classified from 1-4 based upon size, water supply source, and treatment in use; public water distribution systems (W) are classified from 1-4 based upon population served. The Borough's water utility plant is classified as T3 and W3.

necessary to operate the plant.<sup>3/4/</sup> In February 2018, T.C. notified the Borough that he would be retiring effective July 1, 2018.

Pigliacelli certifies that after T.C. announced his retirement, the Borough explored its options. In particular, the Borough considered hiring a former superintendent with the requisite licenses to operate the water utility plant. According to Pigliacelli, the Borough ultimately decided that the entire system needed to be modernized/improved on a scale beyond what could be managed by one individual for the following reasons:

- over the last six months, three of the Borough's seven wells failed; and

- the Water Quality Accountability Act (WQAA), N.J.S.A. 58:31-1 et seq., was enacted on July 21, 2017 and establishes new requirements to improve the safety, reliability, and administrative oversight of water infrastructure.

The Borough also reached out to the Merchantville-Pennsauken Water Commission (MPWC) to discuss sharing services given that the MPWC has extensive expertise in operating and managing water

---

3/ N.J.A.C. 7:10A-1.10, entitled "Licensed operator required; exemptions," requires "every owner of a system [to] employ a licensed operator holding the license prescribed by the Department for that classification of system . . . ."

4/ N.J.A.C. 7:10A-1.2 defines "system" to mean "any . . . public water distribution system [or] public water treatment system," among other types of systems.

supply systems and currently employs at least three individuals that hold T3 and W3 licenses.

In May 2018, the Borough and MPWC entered into a five-year shared services agreement effective June 1, 2018.<sup>5/</sup> Pigliacelli certifies that as part of the agreement, MPWC will operate and maintain the Borough's water treatment systems as well as associated tanks and pumps, and will introduce modernized technology to upgrade the Borough's water utility plant. According to Pigliacelli, the shared services agreement with MPWC will benefit the Borough economically in the long-term for the following reasons:

- the new technologies that will be introduced will modernize the Borough's water plant, reduce the number of individuals needed to operate the plant from approximately four to two people, and the plant will operate more efficiently; and

- the pre-existing contracts that MPWC has with other entities to perform plant maintenance work and purchase supplies will benefit the Borough.

Pigliacelli certifies that as of June 1, 2018, although no employees were terminated or laid off as a result of the shared services agreement with MPWC, the Borough eliminated all but one position in the water utility plant. According to Pigliacelli,

---

<sup>5/</sup> The Uniform Shared Services and Consolidation Act (Shared Services Act), N.J.S.A. 40A:65-1 et seq., "can be used to effectuate agreements between local units for any service or circumstance intended to reduce property taxes through the reduction of local expenses." N.J.S.A. 40A:65-2.

- T.C. retired effective July 1, 2018;
- J.J. was offered a transfer to another position but opted to retire effective July 1, 2018;
- J.T. accepted a transfer to the sewer department; and
- S.C. was retained and promoted to assistant water superintendent.

On April 24, 2018, Local 830 filed a grievance asserting the following:

I fail to see how your Manager's rights permits you to take [bona fide] Union labor jobs and give the work to a neighboring township. Not only have you told the members that they are going backwards, and their current positions will be done by non-union outside labor, but you are forcing the Local Union 830 members effected to train their replacements. One of our Local Union 830 members has put in his retirement over fear of the potential loss of position.

The Borough denied the grievance at each step of the process. On April 25, Local 830 filed a demand for binding arbitration with the American Arbitration Association (Case No. 01-18-0001-6701). 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.

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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Borough argues that it has a managerial prerogative to enter into a shared services agreement and that Article XIII of the parties' CNA is unenforceable because it interferes with that

prerogative by requiring Local 830's consent. The Borough maintains that the shared services agreement with MPWC does not result in terminations, layoffs, or reduced hours; and that even if unit members are affected, the Borough's interest in subcontracting with MPWC to economically and efficiently operate its water utility plant prevails.

Local 830 argues that the Shared Services Act makes clear that the Legislature intended CNAs to survive the transfer of services and cannot be read as creating a managerial prerogative outside the scope of negotiations. Local 830 asserts that pursuant to Article XIII, the Borough had the option of hiring a replacement; promoting another employee and helping that individual obtain the necessary licenses; or sharing services with MPWC after obtaining Local 830's consent. Even if the decision to transfer services is deemed a managerial prerogative, Local 830 maintains that the impact on unit members (i.e., one unit member felt pressured into retiring; unit work will be eliminated; the parties' CNA will be abrogated) is mandatorily negotiable and legally arbitrable.

In reply, the Borough reiterates that the decision to subcontract is a managerial prerogative; that the prerogative to subcontract is not negated by the Shared Services Act; and that language in a CNA that interferes with a managerial prerogative is unenforceable. The Borough argues that the provisions of the



Shared Services Act cited by Local 830 are inapplicable to this matter. The Borough also maintains that Local 830's assertion that arbitration should be available to adjudicate the impact of the shared services agreement "falls outside the narrow jurisdiction of the petition and is disingenuous" given that Local 830 never made a related demand to negotiate.

The Commission has "distinguished [shared] service agreements from other subcontracting<sup>6/</sup> and unit work cases because [shared] service agreements are neither an assignment of work to a private employer nor the assignment of unit work to non-unit employees of the same public employer." Union Cty., P.E.R.C. No. 2010-82, 36 NJPER 183 (¶67 2010). Instead, "we apply the traditional negotiability balancing test to the circumstances of the case." Id.

---

<sup>6/</sup> New Jersey courts and the Commission have held that "to the extent [a] contractual provision . . . includes negotiation on the ultimate substantive decision to subcontract, it is a non-negotiable matter of managerial prerogative." Local 195, 88 N.J. at 408; accord Helmetta Bor., P.E.R.C. No. 2016-16, 42 NJPER 184 (¶47 2015) ("a public employer's decision to subcontract is not mandatorily negotiable"). However, "in cases where the subcontracting would result in layoffs, a public employer may agree to engage in pre-subcontracting discussions with the majority representative." Atlantic Cty. Sheriff's Office, P.E.R.C. No. 2017-36, 43 NJPER 243 (¶75 2016); accord Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2015-71, 41 NJPER 482 (¶149 2015); see also Local 195, 88 N.J. at 409 ("a public employment contract may include a provision reciting an agreement by [the employer] to discuss decisions to contract or subcontract whenever it becomes apparent that a layoff or job displacement will result, if the proposed subcontracting is based on solely fiscal considerations").

We find that a restriction on the Borough's right to enter into a shared services agreement with MPWC regarding its water utility plant would substantially limit the Borough's governmental policymaking powers in determining what services it will provide and how it will deliver those services to the public. The Borough concluded that its water utility plant needed to be improved due to existing deficiencies and new requirements under the WQAA. It decided that the scale of these improvements was beyond what could be managed by one individual. It further determined that the MPWC's expertise in operating and managing water supply systems would provide long-term economic benefits and personnel efficiencies. Under these circumstances, we find that the Borough's interest in determining how to operate/maintain its water utility plant outweighs Local 830's interest in preserving unit work. See, e.g., Union Cty. (finding that the employer's interest in determining what services to provide and how they are provided - i.e., entering into a shared services agreement with another county regarding transportation and security for inmates - outweighed the union's interest in preserving unit work).

The provisions of the Shared Services Act cited by Local 830 (i.e., N.J.S.A. 40A:65-12,<sup>7/</sup> -18,<sup>8/</sup> and -27d<sup>9/</sup>) are inapplicable in

---

<sup>7/</sup> N.J.S.A. 40A:65-12, entitled "Provision of technical advice by Public Employment Relations Commission," provides:  
(continued...)

---

7/ (...continued)

The Public Employment Relations Commission is specifically authorized to provide technical advice, pursuant to section 12 of P.L.1968, c.303 (C.34:13A-8.3), and mediation services to integrate separate labor agreements into single agreements for the shared service agreement. The commission may order binding arbitration, pursuant to P.L.1995, c.425 (C.34:13A-14a et al.), to integrate any labor agreement.

8/ N.J.S.A. 40A:65-18, entitled "Applicability of terms of existing labor contracts," provides:

a. When a joint meeting merges bargaining units that have current contracts negotiated in accordance with the provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), the terms and conditions of the existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing, and signed by the parties as provided pursuant to law and regulation promulgated thereunder.

b. The Public Employment Relations Commission is specifically authorized to provide technical advice, pursuant to section 12 of P.L.1968, c.303 (C.34:13A-8.3), and mediation services to integrate separate labor agreements into single agreements for the joint contract. The commission may order binding arbitration, pursuant to P.L.1995, c.425 (C.34:13A-14a et al.), to integrate any labor agreement.

9/ N.J.S.A. 40A:65-27, entitled "Creation of task force to facilitate consolidation," provides in pertinent part:

d. The Public Employment Relations Commission is authorized to provide technical advice, pursuant to section 12 of P.L.1968, c.303

(continued...)

these circumstances. The Commission's authority to facilitate the integration of separate labor agreements via mediation and/or arbitration is not implicated here given that the Borough is not merging bargaining units as part of its shared services agreement with MPWC.

Accordingly, to the extent that Local 830 seeks to arbitrate the Board's decision to enter a shared services agreement with the MPWC, we grant the Board's request to restrain arbitration.

Local 830 has also raised the issue of whether the Borough's decision to share services has any severable impact on mandatorily negotiable terms and conditions of employment. The underlying grievance asserts that a unit member "put in his retirement over fear of the potential loss of position." Local 830's opposition brief also asserts that "at least one bargaining unit member felt pressured into retiring." However, there is no indication that Local 830 sought, or was refused, the opportunity to engage in impact negotiations with the Borough. Moreover, Local 830 has not submitted any evidence in support of its assertion. See N.J.A.C. 19:13-3.6(f)1. See, e.g., Vernon Tp.

---

9/ (...continued)

(C.34:13A-8.3), to assist a new municipality and existing labor unions to integrate separate labor agreements into consolidated agreements and to adjust the structure of collective negotiations units, as the commission determines appropriate for the consolidated municipality.

Bd. of Ed., P.E.R.C. No. 2016-9, 42 NJPER 115 (¶33 2015)

(granting a restraint of arbitration with respect to the alleged impact of the employer's decision to subcontract where the union failed to effectively raise an impact claim).

Finally, we note that Article XIII of the parties' CNA is unenforceable as written given that it requires Local 830's consent in order for the Borough to exercise its managerial prerogative to subcontract. The Commission has held that "[c]ontract provisions which require mutual agreement or permit union members to offer binding input regarding an employer's managerial prerogative are not mandatorily negotiable." Warren Cty. Comm. Coll., P.E.R.C. 2016-48, 42 NJPER 344 (¶98 2016).

Accordingly, we grant a restraint of arbitration.

ORDER

The request of the Borough of Collingswood for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Boudreau was not present.

ISSUED: September 27, 2018

Trenton, New Jersey