P.E.R.C. NO. 97-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MARLBORO TOWNSHIP,

Petitioner,

-and- Docket No. SN-97-13

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1044,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Marlboro for a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1044. The grievance seeks additional compensation on behalf of unit members who were required to remain at work when other employees were dismissed early without loss of pay. The Commission finds that this grievance is legally arbitrable because it does not claim a contractual right to a benefit negotiated by other units, but instead seeks compensation for employees required to work when other employees were dismissed early.

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, McLaughlin, Bennett, Gelson & Cramer, attorneys (Richard H. Shaklee, of counsel)

For the Respondent, Weissman & Mintz, attorneys (Steven P. Weissman, of counsel)

DECISION AND ORDER

On August 20, 1996, Marlboro Township 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 1044. The grievance seeks additional compensation on behalf of unit members who were required to remain at work when other employees were dismissed early without loss of pay.

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

Local 1044 represents employees in the Public Works and Traffic and Safety departments. The parties' grievance procedure ends in binding arbitration.

On February 16, 1996, the Township closed its administrative offices about noon due to inclement weather. Clerical workers, represented by CWA in a "white collar" unit, were dismissed. The clerical workers suffered no loss of pay in accordance with Article X, Section F of their agreement which states: "[i]f an employee is released from work for inclement weather, he/she shall suffer no loss in pay."

Some employees represented by Local 1044 were required to remain at work to clear snow, a traditional assignment. These employees worked their regular shift.

On February 16, 1996, Local 1044 filed a grievance on behalf of these employees. It sought "some type of compensation" because these employees were required to work while other employees were dismissed early without being required to use vacation, personal, sick or compensatory time.

The Township denied the grievance, stating that the parties' agreement provided no basis for the requested relief. Local 1044 demanded arbitration, asserting a violation of Article III. That clause protects employees against discrimination on the grounds of race, creed, color, religion, sex, national origin or political affiliation. This petition ensued.

The Township asserts that if Article III is read to entitle employees represented by Local 1044 to additional compensation, it would be an illegal parity agreement because it would result in those employees automatically receiving a benefit negotiated for employees in another unit. Local 1044 responds

that there is no question of an illegal parity clause because it is seeking additional compensation as a result of the Township's unilateral decision to grant clerical employees time off.

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.

Illegal parity clauses automatically extend increases in salary or benefits to a unit of employees based upon future or as yet uncompleted negotiations between the same employer and other employee units. City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978); see also South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); Rutherford Bor., P.E.R.C. No. 89-31, 14 NJPER 642 (¶19269 1988); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Montville Tp., P.E.R.C. No. 84-143, 10 NJPER 364 (¶15168 1984). Such clauses interfere with the right of an employee organization to negotiate fully and freely over its own economic proposals because the public employer must inevitably consider that if it agrees to those proposals, it will be contractually required to extend the same economic

benefits to all other employee groups protected by a parity clause. Plainfield. However, clauses extending to unit employees benefits unilaterally conferred upon other employees are mandatorily negotiable because they do not inhibit negotiations. Montclair Tp., P.E.R.C.. No. 90-9, 15 NJPER 499 (¶20206 1989); Branchburg Tp., P.E.R.C. No. 90-25, 15 NJPER 600 (¶20247 1989); Woodbridge Tp., P.E.R.C. No. 88-88, 14 NJPER 250 (¶19093 1988); Wanague 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).

Woodbridge involved a virtually identical factual scenario. In Woodbridge, office, clerical and engineering employees were directed not to report to work because of a snowstorm. They were paid pursuant to a clause in their agreement stating that "any employee who is unable to report to work will be paid for the day." Road department employees, however, were directed to remove snow, and they filed a grievance seeking compensation for the day off given other employees. We held that the grievance was legally arbitrable because it did not claim an automatic contractual right to a benefit negotiated by other units: it instead sought compensation for being required to work when the employer had unilaterally directed other employees to remain at home. Woodbridge governs this case.

Given the abstract and limited nature of our jurisdiction, we do not consider the Township's claim that, unlike the employee organizations in Woodbridge and Weehawken, Local

1044's agreement does not have a provision related to the rights of unit employees when employees in other units receive a benefit. That contention goes to the contractual merits and falls within the arbitrator's jurisdiction.

ORDER

The request of the Township of Marlboro for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: February 27, 1997
Trenton, New Jersey
ISSUED: February 28, 1997