

P.E.R.C. NO. 89-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-89-45

AFSCME, LOCAL 3044, COUNCIL 73,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by AFSCME, Local 3044, Council 73 against the Township of Woodbridge. The grievance alleges that the Township violated the parties' collective negotiations agreement when it allegedly disciplined employees without cause by contracting out their jobs and demoting them. The Department of Personnel has jurisdiction to resolve disputes over demotional rights and appeals alleging that the Township lacked just cause to take major disciplinary action. Further, the contract's prohibition against subcontracting is not mandatorily negotiable.

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Appearances:

For the Petitioner, James P. Granello, Esq.

For the Respondent, Don DiLeo, Staff Representative

DECISION AND ORDER

On January 5, 1989, the Township of Woodbridge filed a Petition for Scope of Negotiations Determination. The Township seeks a restraint of binding arbitration of a grievance filed by AFSCME, Local 3044, Council 73 ("AFSCME"). The grievance alleges that the Township violated the parties' collective negotiations agreement when it allegedly disciplined employees without cause by contracting out their jobs and demoting them.

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

The Township is a civil service municipality. Its employees enjoy the protection of Department of Personnel ("DOP") statutes and regulations. AFSCME is the majority representative of the Township's clerical, custodial and engineering employees. The parties entered a collective negotiations agreement effective from

January 1, 1988 through December 31, 1989. Its grievance procedure ends in binding arbitration. Article 22 provides:

There shall be no contracting out of any services performed by employees in the bargaining unit during the life of this Agreement, subject, however to those services that are presently being contracted out in various departments of the bargaining unit.

On October 1, 1988, the Township sent notices to several members of the engineering department that layoffs would occur for reasons of efficiency. The effective date was set for November 7, 1988 and was extended to December 30, 1988. The notices advised employees of their rights to contest the layoffs before the Merit System Board on grounds that the layoffs were not made in good faith or that the employees' demotional, seniority or reemployment rights had been improperly determined. On October 19, 1988, DOP notified the employees of their demotional rights.

On November 23, 1988, three engineering department employees filed grievances asserting that the employer had not shown that the holder of the position or the position itself was inefficient and that the contracting out of duties performed by the in-house engineering department violated Article 22. The employees also filed appeals with DOP asserting that the layoffs were made in bad faith. The Township denied the grievances and AFSCME demanded arbitration. This petition ensued.

The Township asserts that DOP statutes and regulations regulate demotional rights and appeals, thus preempting this grievance, and that it had a non-arbitrable right to subcontract services.

AFSCME contends that the grievances challenge the layoffs as discipline imposed without just cause and that the DOP hearing is limited to whether the layoffs were made for efficiency.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. 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]

We do not pass on whether there was just cause for the demotions or whether the contracting out violated the agreement.

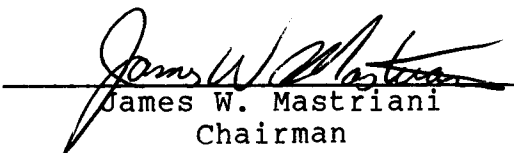
Arbitration must be restrained. DOP has jurisdiction to resolve disputes over demotional rights of laid off Woodbridge employees. Woodbridge Tp., P.E.R.C. No. 89-63, 15 NJPER 25 (¶20010 1988); see N.J.S.A. 11A:8-4; N.J.A.C. 4:3-16.2. DOP also has jurisdiction over appeals alleging that the Township lacked just cause to take major disciplinary action. Woodbridge Tp., P.E.R.C. No. 86-39, 11 NJPER 626 (¶16219 1985). N.J.S.A. 11A:2-6, 11A:2-13, and 11A:2-15 provide an alternate statutory appeal procedure which preempts arbitration. See N.J.S.A. 34:13A-5.3; N.J.A.C. 4A:2-2.1 et

seq. Further, Article 22's prohibition against subcontracting is not mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982).

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained. Commissioner Smith was not present.

DATED: Trenton, New Jersey
May 15, 1989
ISSUED: May 16, 1989