

P.E.R.C. NO. 97-150

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Petitioner,

-and-

Docket No. SN-97-38

IUE, LOCAL 417,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Belmar for a restraint of binding arbitration of a grievance filed by IUE, Local 417. The grievance asserts that the Borough violated the parties' collective negotiations agreement by subcontracting unit work and failing to properly notify Local 417 of its decision. The Commission grants the restraint with respect to that portion of the grievance challenging the Borough's decision 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, Ruderman & Glickman, attorneys (Mark S. Ruderman and Joel G. Scharff, of counsel and on the briefs)

For the Respondent, Birnbaum & Isanuk, attorneys (Barry D. Isanuk, of counsel)

DECISION AND ORDER

On November 1, 1996, the Borough of Belmar petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by IUE, Local 417. The grievance asserts that the Borough violated the parties' collective negotiations agreement by subcontracting unit work and failing to properly notify Local 417 of its decision.

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

Local 417 is the majority representative of blue collar employees in the Borough's Department of Public Works and Division of Water and Sewer.

The parties entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1996. Its grievance procedure ends in binding arbitration. Article XVII provides:

The Borough agrees to provide advance notice of this [sic] intention to subcontract work related to work that can be or may be performed by Bargaining Unit employees. It is understood that such notice will be given in an effort to allow immediate input or possible means of accomplishing such work in a more cost effective manner and does not restrict the employer's rights under the law, and violation thereof will not constitute grounds for filing a grievance.

On August 15, 1996, the Borough notified the New Jersey Department of Personnel ("DOP") of the possible layoff of two laborers and a senior account clerk in the water and sewer division. The letter indicated that the Borough had accepted bids for the privatization of water meter readings, collections, and billings "in an effort to economize and create a stable water-sewer rate for its residents."

On September 11, 1996, DOP authorized the Borough to issue individual notices of layoff or demotion on or before September 16, 1996. The letters were issued and the three employees were laid off effective October 31, 1996.

On September 11, 1996, Local 417 filed a grievance asserting that the Borough had violated the parties' agreement by subcontracting unit work and not providing advance notice of its decision to subcontract. The Borough denied the grievance. The Association demanded arbitration alleging that the subcontracting was done in bad faith and this petition ensued.

The Borough seeks a restraint of binding arbitration of that portion of the grievance protesting its decision to subcontract unit work. It does not oppose arbitration of Local 417's claim that contractual notification and consultation procedures were not followed.

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 Local 417's grievance or any contractual defenses the Borough may have.

In Local 195, IFPTE v. State, 88 N.J. 393 (1982), our Supreme Court held that subcontracting decisions are not mandatorily negotiable. The Court added, however, that an employer cannot subcontract in bad faith for the sole purpose of laying off public workers or substituting private workers for public workers. Id. at 411.


Under Local 195, we hold that this subcontracting decision is not mandatorily negotiable or legally arbitrable. While Local 417 alleges that the Borough's decision was made in

bad faith, that decision cannot be reviewed through binding arbitration. See Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 94-28, 19 NJPER 539 (¶24254 1993); N.J. Sports & Exposition Auth., P.E.R.C. No. 90-63, 16 NJPER 48 (¶21023 1989). Similarly, Local 417's claim that the Borough did not "properly layoff the correct personnel" must be resolved by DOP. See N.J.A.C. 4A:8-1.1 et seq. (setting forth DOP's regulatory authority over layoff rights of civil service employees); In re Woodbridge Tp., P.E.R.C. No. 89-122, 15 NJPER 327 (¶20145 1989) (DOP has jurisdiction over demotion rights of laid off employees).

ORDER

The request of the Borough of Belmar for a restraint of binding arbitration is granted with respect to that portion of the grievance challenging the Borough's decision to subcontract.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997  
Trenton, New Jersey  
ISSUED: June 20, 1997