

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-94-103

UNION LOCAL 2292, AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO,
(SANITATION DIVISION)

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Union Local 2292, American Federation of State, County and Municipal Employees, AFL-CIO (Sanitation Division) against the Township of Woodbridge. The grievance asserts that the employer violated the parties' collective negotiations agreement when it failed to call in heavy laborers to work overtime plowing snow. The Commission restrains arbitration to the extent the grievance claims that heavy laborers without commercial driver's licenses should have been assigned to drive snow removal vehicles or should have been called in to provide extra help the employer felt was not necessary. The claim that overtime assignments were not properly distributed among qualified employees is 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.

P.E.R.C. NO. 95-89

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Appearances:

For the Petitioner, Genova, Burns, Trimboli & Vernoia,
attorneys (James J. McGovern, III, of counsel)

For the Respondent, Donald B. Dileo, Staff Representative

DECISION AND ORDER

On June 1, 1994, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Union Local 2292, American Federation of State, County and Municipal Employees, AFL-CIO (Sanitation Division). The grievance asserts that the employer violated the parties' collective negotiations agreement when it failed to call in heavy laborers to work overtime plowing snow.

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

Local 2292 represents certain employees, including heavy laborers, in the employer's Division of Sanitation. The parties

entered into a collective negotiations agreement effective from January 1, 1993 through December 31, 1995. The negotiated grievance procedure ends in binding arbitration of contractual disputes.

Snow plowing is normally the duty of employees in the Road Department. However, employees in the Sanitation Division have been used to supplement Road Department employees when the plowing was too severe to handle alone or when relief was needed for road crews who had worked long hours.

On January 27, 1994, Local 2292 filed a grievance on behalf of heavy laborers in the Sanitation Division. The grievance asserted that the employer violated various contractual provisions when it did not call in heavy laborers on overtime to remove snow on eight specified days in January. Those provisions concerned negotiations over changes in employment conditions; seniority in shift assignments and other situations; the rate of pay and benefits accorded employees removing snow; equalization of overtime opportunities; and maintenance of benefits. The grievance asserted that the Director of Public Works had ordered the use of drivers with commercial driver's licenses ("CDL"), but had declined to call in heavy laborers in the Sanitation Division when CDL lists were exhausted in that division even though it had called in laborers in other divisions when CDL lists in those divisions were exhausted. The grievance requested that heavy laborers in the Sanitation Division be used to plow snow in the future and that those heavy laborers not allowed to remove snow in January be paid 16 hours of

double time pay. The employer apparently used sanitation employees for later occasions requiring snow removal.

The General Superintendent of the Sanitation Division denied the grievance. He asserted that management had a right to assign and direct the work force and that State law required the employer to assign employees with CDL licenses to operate the employer's vehicles.

Local 2292 demanded arbitration. It identified the dispute as "[c]all in on overtime during snow removal." 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 arbitrability or merits of this grievance.

N.J.S.A. 39:3-10J requires that drivers operating vehicles weighing more than 26,000 pounds have a commercial driver's license. The employer's vehicles used to remove snow weigh more than 26,000 pounds. Thus, any claim that heavy laborers without CDL

licenses should have been called in to drive these vehicles is preempted by N.J.S.A. 39:3-10J and arbitration must be restrained to that extent.

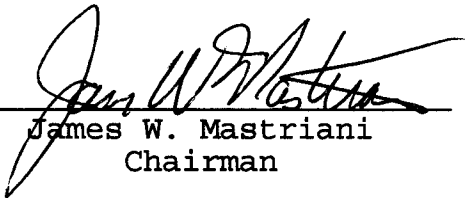
To the extent the grievance claims that the employer was obligated to call in extra personnel to assist Road Department employees (but not necessarily to drive vehicles), that claim is also not mandatorily negotiable. The employer has a prerogative to determine its staffing levels and to determine whether it needs to deploy additional personnel. Woodbridge Tp., P.E.R.C. No. 94-39, 19 NJPER 571 (¶24269 1993); City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992). We will also restrain arbitration to that extent.

The claim that overtime assignments were not properly distributed among qualified employees is mandatorily negotiable. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). Thus, for example, if, as alleged, the employer called in other employees for snow removal tasks not requiring a CDL license or other special qualifications, a claim that this work should have been allocated instead to heavy laborers is legally arbitrable.

ORDER

The request of the Township of Woodbridge for a restraint of binding arbitration is granted to the extent the grievance claims that heavy laborers without CDL licenses should have been assigned to drive snow removal vehicles or should have been called in to provide extra help the employer did not believe was necessary.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: April 10, 1995
Trenton, New Jersey
ISSUED: April 11, 1995