P.E.R.C. NO. 88-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and- Docket No. SN-88-12

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines a request by the Township of Woodbridge to restrain arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 469. The grievance seeks additional compensation for snow removal. The Commission finds that the dispute pertains to the mandatorily negotiable issue of compensation.

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Appearances:

For the Petitioner, James P. Granello, Esq.

For the Respondent, Hott, Margolis & Hernandez, Esqs. (Sheldon F. Margolis, of counsel)

DECISION AND ORDER

On July 17, 1987, the Township of Woodbridge ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks to restrain binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 469 ("Local 469"). The grievance seeks additional compensation for snow removal on February 23, 1987.

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

Local 469 is the majority representative of employees of the Township's division of streets and sewers, including road department employees. The Township and Local 469 are parties to an agreement effective from January 1, 1986 to December 31, 1987. The grievance procedure ends in binding arbitration.

On February 23, 1987, a snowstorm prompted the mayor to direct non-essential employees to stay home. Office, clerical and engineering employees, represented by Local 3044, American Federation of State, County and Municipal Employees ("Local 3044"), were paid pursuant to this clause: "[I]n the event of an emergency, as determined by the Business Administrator, any employee who is unable to report to work will be paid for the day."

Sanitation workers, represented by Local 2292, American Federation of State, County and Municipal Employees ("Local 2292"), were directed to stop picking up garbage. Some sanitation crews were told to go home and others to help the road department remove snow. Local 2292's contract provides that sanitation workers may go home after finishing their designated routes and that "sanitation employees who work on snow removal shall be paid at the same rate and receive the same benefits as employees in the road department." Sanitation workers who returned home were paid for the shortened trash pickup tour, and sanitation workers who did an extra tour of snow removal received overtime pay.

On February 24, 1987, Local 469 filed a grievance alleging that pursuant to past practice and Article XXIII, §2, road department employees should be be compensated "for the day off given all employees of the Township of Woodbridge by the mayor." Article XXIII, §2 reads:

> This Agreement shall not prevent the employees of the Division of Streets and Sewers from receiving any general fringe benefits or holidays awarded the employees of the Township of Woodbridge by

> the Mayor or by legislative action of the Municipal Council during the period of this contract, or by the Business Administrator.

The Township denied the grievance and Local 469 demanded arbitration. This petition ensued.

The Township contends that Article XXIII, §2 is an illegal parity clause. It relies on City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978) and other decisions.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

> 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. [78 N.J. at 154]

Thus, we do not determine whether the emergency was a holiday within the meaning of Article XXIII, §2, whether the employees are entitled to additional benefits, or whether the employer has valid defenses to the claims.

In Plainfield, we held illegal a clause which automatically extended to one unit any increases in salary or benefits negotiated by other units. We stated:

> The parity clause has a natural and unavoidable coercive effect. When considering economic proposals of one employee organization, the public employer must inevitably reconcile such a proposal with the ultimate result of providing similar economic proposals to any other employee organization which has the protection of a parity clause in its collective negotiations agreement. This result interferes with the right to negotiate in good faith. The issue is not whether or not a public employer actually relies upon a parity clause to deny an employee organization's economic proposals. The mere existence of the clause is sufficient to chill the free exchange (between the parties) by permitting a third employee organization, not a party to the negotiations, to have impact on those negotiations. [4 NJPER at 256]

See also So. Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Montville Tp., P.E.R.C. No. 83-143, 10 NJPER 364 (¶15168 1984).

However, provisions granting benefits that are unilaterally conferred, rather than negotiated by other units, are not illegal parity clauses and are mandatorily negotiable. See Wanaque Bor., P.E.R.C. No. 82-42, 7 NJPER 613 (¶12273 1981). Examples include giving all employees a day-off upon declaring a legal holiday, Wanaque, extra pay for working employees when other employees enjoy a legal holiday, Watchung Bor., P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981), and compensatory time for employees working when other employees are excused by executive order, Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981).

Article XXIII, §2 is not a parity clause. Nor is it being used to obtain a benefit negotiated by other units of

employees.[1/] The grievance seeks extra compensation for road department employees required to work on a unilaterally declared day off for other Township employees.

Local 469 also relies on Article II, §7 which provides that road department employees will be paid the rates of sanitation workers when road department employees perform out of title, sanitation department functions. This clause concerns compensation for work in another job classification and is negotiable. Edison Tp. , P.E.R.C. No. 86-9, 11 NJPER 455 (¶16160 1985). Given our narrow jurisdiction, we cannot comment on Local 469's interpretation of this clause.

Finally, Local 469's claim that the sanitation department employees should not have received extra or overtime compensation unless road department employees were similarly compensated is not arbitrable. Local 469 cannot arbitrate grievances concerning rates of pay for employees it does not represent. See City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985). Although the grievance refers to the compensation received by sanitation workers, it seeks compensation only for Local 469 employees. Accordingly the type of issue presented in Newark is not present and we need not restrain arbitration.

1/ The Township argues that because Local 469 is seeking payment at a rate negotiated by the union representing sanitation employees it is invoking a parity agreement. However, the dispute's focus is whether the employees are entitled to the "holiday;" the rate of pay is subsidiary. Moreover, Local 469 is pointing to compensation received by sanitation employees only because both groups of employees were performing the same work, snow removal, on February 23, 1987.

ORDER

The Township's request for a permanent restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained.

DATED: Trenton, New Jersey
March 18, 1988
ISSUED: March 21, 1988