

P.E.R.C. NO. 95-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-95-22

TEAMSTERS LOCAL UNION NO. 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Teamsters Local No. 97 against the University of Medicine and Dentistry of New Jersey to the extent the grievance contests the employer's right to subcontract computer services and transfer employees to other positions. The Commission declines to restrain arbitration to the extent the grievance claims that the employer violated a contractual obligation to discuss proposed subcontracting.

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, Deborah T. Poritz, Attorney General
(Barbara A. Harned and Anne Marie Kelly, Deputy Attorneys
General, on the briefs)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys (James M. Mets, of
counsel)

DECISION AND ORDER

On September 12, 1994, the University of Medicine and Dentistry of New Jersey petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Teamsters Local Union No. 97 and a declaration that a related unfair practice charge (CO-94-54) filed by Local No. 97 does not involve a mandatorily negotiable subject. The charge alleges that the employer violated a contractual obligation to discuss a proposed subcontract and the grievance alleges that the employer violated that contractual obligation and other contractual provisions when it involuntarily transferred eight employees after subcontracting their work.

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

Local No. 97 represents certain UMDNJ employees. The parties entered into a collective negotiations agreement effective from July 1, 1992 through June 30, 1995. Article XI is entitled Seniority and Transfers. Section C is entitled Contracting Services. It provides:

If the University contemplates contracting for work normally performed by employees covered by this Agreement, the University agrees to, prior to the execution of such contract, meet with the Union for discussion of the proposed contract. If such a contract is executed, the University agrees to make every effort to arrange that displaced employees be given other jobs with the University for which they are qualified.

If such jobs are not available within the University, every reasonable effort will be made to secure suitable employment with other employers in the area. If such contracting necessitates the lay-off of personnel, employees so affected shall be given at least 45 days notice prior to being laid off and will be given the opportunity to fill vacancies for which they are qualified before new employees are hired for such vacancies.

According to the employer's labor relations director and its labor relations manager, Local No. 97 did not seek to negotiate over the concept of "sufficient notification" in connection with Section C. The contract's grievance procedure ends in binding arbitration of grievances alleging contractual violations.

On July 22, 1993, the employer's labor relations director met with two representatives of Local No. 97 in connection with the employer's plan to subcontract its computer services. Those

services had previously been performed by employees in the employer's Information Systems Department. Later that same day, UMDNJ trustees approved the subcontract. The subcontract was executed the next day.

As a result of this subcontract, the employer eliminated its Information Systems Department and abolished positions held by eight employees who had provided computer services. By the date these positions were actually eliminated, the employer had placed the eight employees in other positions at UMDNJ. According to Local No. 97, those positions entailed reductions in salary for all employees and changes in work schedules and increases in work hours for some employees.

Local No. 97 filed an unfair practice charge. The charge alleges that the employer violated subsections 5.4(a)(2), (3) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by not giving it "sufficient notification" of the subcontracting plan as guaranteed by the collective negotiations agreement. It specifically alleges that the meeting was held only six hours before the trustees approved the subcontract and that this short notice permitted only a brief overview of what was taking place rather than a meaningful discussion.

Local No. 97 also filed a grievance. The grievance asserts that the employer violated several contractual articles by involuntarily transferring the eight employees. It cites the quoted contractual article as well as other provisions maintaining existing

practices, specifying work hours and overtime rights, providing probationary periods, and prohibiting involuntary transfers absent "just, fair and equitable cause."

The grievance was denied and Local No. 97 demanded arbitration. This petition ensued. Our Director of Unfair Practices has decided to defer the unfair practice charge to arbitration if we hold that the grievance involves a negotiable dispute.

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 No. 97's claims or any contractual defenses the employer may have.

The charge and the grievance allege that the employer violated a contractual obligation to discuss the proposed subcontract before it was executed. The employer does not dispute that a contractual provision requiring discussion of subcontracting proposals is mandatorily negotiable in general and that a claim arising under such a provision is legally arbitrable. Local 195,

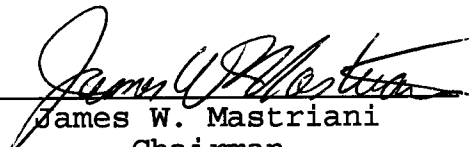
IFPTE v. State, 88 N.J. 393, 409 (1982); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-143, 14 NJPER 465 (¶19194 1988). Its only contention is that the contractual obligation to discuss a proposed subcontract does not encompass an obligation to give "sufficient notification" of the proposed subcontracting. It bases this assertion on the contractual language and negotiations history. Because this contention addresses the contractual merits and not the underlying negotiability of Local No. 97's claim, we decline to restrain arbitration on that issue.

The grievance also alleges that the employer violated the parties' contract by involuntarily transferring several employees. It is undisputed that the transfers stemmed from the employer's non-negotiable decision to subcontract its computer services and to eliminate its Information Systems Department. It is further undisputed that the employer, in general, has a prerogative to transfer employees and need not show cause for doing so. Local 195; Ridgefield Park. Contrast State of New Jersey (Dept. of Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (¶25116 1994), app. pending App. Div. Dkt. No. A-5987-93T5 (employer may agree to use seniority as a tie breaker in deciding which employee to transfer if all other qualifications are equal). Local No. 97 suggests that procedural issues attendant to the involuntary transfers may be mandatorily negotiable, but it does not specify and the record does not disclose any such procedural issues. We will accordingly restrain arbitration over the involuntary transfers.

ORDER

The request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration of the grievance is granted to the extent the grievance contests the employer's right to subcontract computer services and transfer employees to other positions. The request is denied to the extent the grievance claims that the employer violated a contractual obligation to discuss proposed subcontracting.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: February 28, 1995
Trenton, New Jersey
ISSUED: March 1, 1995