

I.R. NO. 95-14

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-95-43

HOSPITAL PROFESSIONALS AND
ALLIED EMPLOYEES OF NEW JERSEY, LOCAL 5094,

Respondent.

SYNOPSIS

A Commission Designee restrains an arbitration brought by the Hospital Professionals and Allied Employees of New Jersey, Local 5094 against the University of Medicine and Dentistry of New Jersey. The University argued that the grievant, who was laid-off, was attempting to "bump" up to a higher position which is not allowed under the contract. The facts reveal that the union is attempting to arbitrate a denial of a promotion for its grievant. Promotions are non-negotiable and non-arbitrable. The arbitration was restrained pending a final Commission decision.

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Appearances:

For the Petitioner
Deborah T. Poritz, Attorney General
(Anne Marie Kelly, Deputy Attorney General)

For the Respondent
Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

INTERLOCUTORY DECISION

Pursuant to an Order to Show Cause executed on behalf of the University of Medicine and Dentistry against the Hospital Professionals and Allied Employees of New Jersey, Local 5094, I conducted a Show Cause hearing on December 21, 1994. The University sought an interim restraint of an arbitration currently scheduled for February 8, 1995. Local 5094 is seeking to arbitrate the Hospital's refusal to permit Armando Torres, a laid-off employee, to "bump" into a position Local 5094 claims is an equivalent job classification as permitted by the contract.

Article 4.07 of the contract provides in part:


Regular employees affected by a layoff may exercise bumping rights within their job classification, or to equivalent or lower rated job classifications within their respective geographic locations. Bumping rights shall be exercised in accordance with the provisions of this Article. Employees choosing not to exercise their bumping rights remain eligible for recall consistent with the provisions of this Article [emphasis supplied].

The Hospital alleges that Local 5094 is attempting to bypass the University's reorganization of its Department of Operations Unit. This involved the elimination of certain positions, including the position held by Torres of Senior Architect. The positions into which Torres is seeking to bump, are higher rated positions. In effect, Local 5094 is seeking arbitration over a promotion. Torres' position of Senior Architect has a University salary range of P24. The two positions he seeks to bump into are Space Planner with a salary range of P28 and Senior Architect, Design and Construction with a P31 salary range.

The Association argues that it is seeking an equivalent position for Torres and whether or not such a transfer is a promotion is a factual issue. While a higher salary range is evidence that a transfer would be a promotion, the higher salary alone does not prove the transfer is a promotion.

However, the Association has not raised other factual issues which could be weighed against the higher salary ranges to establish the disputed transfer is not a promotion.

Promotions are non-negotiable and non-arbitrable. It seems that Local 5094 is seeking to arbitrate the denial of a promotion. Therefore, at this stage of proceeding, I believe the arbitrator should be restrained pending a final Commission decision.



Edmund G. Gerber
Commission Designee

DATED: December 29, 1994
Trenton, New Jersey