

L.D. NO. 96-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Public Employer,

-and-

Docket No. CO-L-96-94

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 3527,

Charging Party.

Appearances:

For the Public Employer,
Apruzzese, McDermott, Mastro &
Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Charging Party,
Paul Mercatanti, Staff Rep.

DECISION

On October 10, 1995, AFSCME Local 3527 filed an unfair practice charge against the Borough of Sayreville alleging that the Borough violated the New Jersey Employer-Employee Relations Act by refusing to negotiate job posting procedures for temporary assignments. On November 29, 1995, I conducted an exploratory conference at which Local 3527 and the Borough jointly requested that the charge be submitted to the Commission's Litigation Alternative Program. The parties requested that I issue the LAP decision, which would be based upon the parties' presentations and submissions at the exploratory conference. The parties agreed that

this decision is binding and resolves the above-captioned unfair practice charge.

In the Spring of 1995, the Borough appointed Sanitation Driver Richard Standowski (CP-10)^{1/} to the position of temporary foreman in the Parks Department. Local 3527 grieved the temporary promotion (CP-1, CP-2).

A Step 3 grievance hearing was conducted on May 9, 1995 (CP-3). The grievance was denied (CP-5). The grievance hearing officer found that the Borough had the right under both Department of Personnel regulations and the contract to appoint Standowski to the temporary foreman position.

Local 3527 moved the grievance to Step 4 (CP-6). The Mayor and Council heard the grievance in June 1995 and also denied it (CP-7, CP-8). Local 3527 has moved the grievance to arbitration (Docket No. AR-96-265) but has agreed to withdraw the grievance upon the issuance of this decision.

The Department of Public Works includes sub-departments of Road & Sanitation, Parks and Buildings and Grounds and the Recycling Coordinator (CP-9). Local 3527 contends that promotional opportunities for supervisory positions within a sub-department should first be offered to employees on the basis of seniority and qualifications within each sub-department in the Department of Public Works before such opportunities are given to employees

^{1/} Local 3527's submissions are designated "CP", the Borough's submissions are designated "R".

outside of the specific sub-department. Local 3527 states that there are qualified personnel in each sub-department, and that Parks employees Mike Mihalik and Gary Aich have performed well while serving as acting foremen in the Parks Department. Standowski never worked in the Parks Department prior to his promotion to temporary Parks Foremen.

The Borough contends that its appointment of Standowski was in accordance with the collective negotiations agreement and Department of Personnel regulations. It believes Standowski is the most qualified candidate for the position based upon his completion of the State's Certified Public Works Manager Program (CP-4). The Borough also states that posting temporary supervising vacancies is neither a practice nor policy.

Article XI of the parties collective negotiations agreement (R-2) governs seniority. Section A, Promotions, states in pertinent part that:

...For purposes of promotions only, seniority shall be defined as an employees continuous length of service within present job titles within the department. Where qualifications, skills and abilities are relatively equal, seniority shall govern promotions. Such promotions shall be subject to Paragraph B of this section.

Section B, Provisional Appointments states in pertinent part that:

Provisional appointments within the bargaining unit shall be based upon qualifications, skills and abilities of applicants and seniority within the department or division.

Section C, Temporary Assignment provides in pertinent part that:

Employees shall be assigned to fill higher level positions by qualifications and seniority within the department or division. In the event of emergency conditions or the unavailability of qualified manpower from such divisional or department seniority list, appointments may be made at the sole discretion of the Borough.

Article XI, Section A states that seniority shall govern promotions where qualifications, skills and abilities are relatively equal. Section B states that provisional appointments shall be based upon qualifications, skills and abilities of applicants and seniority within the department or division. Section C states that higher level positions shall be filled by qualifications and seniority within the department or division.

These articles do not establish seniority as the sole, or even predominant criterion for promotions, provisional appointments or temporary assignments. Seniority only governs promotions when qualifications, skills and abilities are relatively equal. Those sections of the contract do not strip the employer of its managerial prerogative to assess the qualifications, skills and abilities of each candidate and to determine if they are relatively equal. Provisional appointments and temporary assignments are governed by qualifications and seniority. This language is conjunctive, and therefore the employer must consider both criteria, and cannot exclude one in favor of the other. An employer retains the managerial prerogative to determine employees' qualifications.

Woodbridge Tp., P.E.R.C. No. 96-8, 21 NJPER 282 (¶26180 1995). The record demonstrates that it did so in making the decision to promote Standowski. Local 3527 cannot contest the Borough's evaluation of his qualifications absent an allegation that anti-union animus motivated its decision or that it otherwise acted in bad faith. Local 3527 does not contend that the Borough's actions were so motivated.

Local 3527 contends that the contract language stating that seniority for promotions "shall be defined as an employees continuous length of service within present job titles within the department" and language stating that provisional appointments and temporary assignments are governed by seniority "within the department or division" mandates that the Parks Foreman position be filled by a Parks Department employee. However, the ordinance creating the Department of Public Works subdivides that department into four sub-departments, not divisions. The contract language is unclear as to whether department refers to sub-departments or the Department of Public Works as a whole. Therefore, the contract language governing promotions, provisional appointments and temporary assignments does not mandate defining seniority on the basis of experience in a sub-department, nor does it preclude the use of department-wide seniority when seniority is used as a factor in promotions. However, this argument also fails because it presupposes that seniority is the sole criterion for promotions, provisional appointments and temporary assignments. As stated

above, the contract language is clear that seniority and qualifications will govern such assignments.

Finally, Local 3527 contends that the temporary supervisor vacancy should have been posted. However, the agreement is silent regarding posting and does not contain a past practices clause. Therefore, there is no contractual requirement for the Borough to post this vacancy.^{2/} I also note that supervisors are specifically excluded from the recognition clause of the parties' agreement. Therefore, Local 3527 does not have standing to contest the Borough's filling of a non-unit supervisory position.

Conclusion

The Borough of Sayreville did not commit an unfair practice or violate the parties' contract by promoting Richard Standowski to the position of temporary foreman in the parks department and by failing to post the vacancy.


Margaret A. Cotoia
LAP Umpire

DATED: January 10, 1996
Trenton, NJ

^{2/} However, the parties are not precluded from negotiating posting procedures for unit titles in a successor agreement.