

I.R. NO. 85-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

JERSEY CITY BOARD OF EDUCATION,

Public Employer/Petitioner

-and-

DOCKET NO. SN-85-75

JERSEY CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Jersey City Board of Education filed a Scope of Negotiations Petition seeking to restrain an arbitration proceeding between it and the Jersey City Education Association. An Order to Show Cause was also filed which sought temporary restraint pending the issuance of a final Commission decision.

A Commission Designee declined to issue the temporary restraints. The arbitration concerned the Board's alleged failure to comply with the contract procedures for promotions. Procedures for promotions are mandatorily negotiable. The Designee did restrain the arbitrator from entering an order which would require the Board to make a specific promotion.

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Appearances:

For the Public Employer/Petitioner
John A. O'Shaughnessy, Esq.

For the Respondent
Philip Feintuch, Esq.

DECISION

On March 14, 1985 the Jersey City Board of Education ("Board") filed a Scope of Negotiations Petition with the Public Employment Relations Commission ("Commission") in which it seeks a determination that it is not under any obligation to promote a particular employee, Patricia Hagett, and in addition seeks a restraint of an arbitration proceeding in which the Jersey City Education Association ("Association") is seeking to compel the Board to make such a promotion.

The Board also filed a request for a temporary restraint of said arbitration pending a final determination by the Commission. An Order to Show Cause was executed and a hearing on the order was

held on April 19, 1985 at which time both parties made oral argument. Both parties were allowed to submit additional materials and post-hearing briefs. All of these materials were received by April 30, 1985.

The facts in this matter are undisputed. The Association, a public employee representative, and the Board, a public employer, are parties to a collective negotiations agreement which provides for promotions into certain enumerated administrative and supervisory positions within the school district. Specifically, Article VII, "Promotions" provides:

A. The administrative and supervisory positions listed in Section C below, shall be filled, by Board appointment in order of numerical ranking from appropriate eligibility lists.

B. Numerical ranking shall be determined through competitive examinations conducted by the Board of Personnel Practices. The examinations shall consist of a written section which shall have a weight of 40%. No person shall be allowed to take the oral section of the examination unless he has passed the written part. The oral interview shall have a weight of 60%. The Board of Personnel Practices conducting the oral interview shall include professional educators not regularly employed by the Board of Education. All applicants shall be eligible for proper certification before they are allowed to take the written section of the examination.

C. Positions covered by this Article are: Director, Assistant Director, High School Principal, High School Vice Principal, Supervisor, Primary Principal, Grammar School Assistant, Assistant Supervisor, Chief School Psychologist, and any newly created positions of a supervisory or administrative nature requiring State Certification as listed in the Recognition clause.

On May 22, 1982 the Board administered a promotional exam for the position of Director of the Bureau of Pupil Personnel

Services. A Jennifer Figurelli ranked first and Patricia Haggett ranked second on the exam. Pursuant to the contract, Figurelli was promoted to the position.

On August 23, 1983, the Board removed Figurelli from the position, and announced that it was both abolishing the position of Director of the Bureau of Pupil Personnel Services and creating a new position, Chief Administrator of the Bureau of Personnel Services. The Board then appointed Dr. Henry Przystup to this new position.

Haggett thereupon filed a grievance through the Association claiming the Board violated Article VII of the contract when it failed to promote her from the promotional list. The Association took the position that the Board simply changed the title of the Director position but the position's duties remain unchanged. Accordingly Haggett should have been promoted to the position which is effectively still the Director's position. The Board initially argued that it created a new position which was not governed by Article VII C. This matter proceeded to an arbitration hearing at which time the arbitrator adjourned the hearing to permit the Board to bring the instant action.

In the matter of In re Administrators and Supervisors Association of Jersey City and Jersey City Board of Education P.E.R.C. No. 82-110, 8 NJPER 318 (¶13144 1982) the Commission analyzed the identical Article in this same Board's contract covering a different unit, the Administrator's and Supervisors unit.

The Commission's findings are worth repeating here.^{1/}

In Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1982) ("Jersey City"), we recently decided the negotiability of many of the identical provisions now in dispute. We distinguished between procedural aspects of promotions, which are negotiable, and qualifications, criteria, and methods of selection for promotion, which are not. State v. State Supervisory Employees Ass'n., 78 N.J. 283 (¶10156 1979). We will apply the same distinctions in the following provision-by-provision review.

Article VII, section A provides:

The administrative and supervisory positions listed in Section C below, shall be filled, by Board appointment, in order of numerical ranking from appropriate eligibility lists.

For the reasons stated in Jersey City, 7 NJPER at p. 685, this provision is mandatorily negotiable and enforceable so long as it is not construed to require the Board to make a promotion after announcing a vacancy. See also State of New Jersey Dept. of Law & Pub. Safety v. State Troopers NCO Ass'n. of New Jersey, 170 N.J. Super. 80, 90 (App. Div. 1981) ("State Troopers NCO").

Article VII, section B provides:

Numerical ranking shall be determined through competitive examinations conducted by the Board of Personnel Practices. The examinations shall consist of a written section which shall have a weight of 40%. No person shall be allowed to take the oral section of the examination unless he has passed the written part. The oral interview

^{1/} The Association cited a Commissioner of Education decision concerning a promotion under Article VII which arose under the same dispute as Administrators and Supervisors. The Commissioner of Education decision is not dispositive since the Commissioner, quite properly, did not consider the scope of negotiations issues involved in the disputed promotion.

shall have a weight of 60%. The Board of Personnel Practices conducting the oral interview shall include professional educators not regularly employed by the Board of Education. All applicants shall be eligible for proper certification before they are allowed to take the written section of the examination.

In State Troopers NCO, the Court held mandatorily negotiable contractual provisions which required the employer to announce in advance the promotional criteria it planned to use and the relative weight to be attached to each criteria. Such provisions protect the reasonable need of employees to know the basis upon which they will be evaluated. The public employer however, must remain free to alter unilaterally the criteria or method of selection, provided it complies with any notice provisions. A contractual provision cannot require an employer to use a particular method of evaluation during the duration of a contract. The Court specifically approved our previous holding that whether a written examination shall be given involves a managerial function relating to the establishment of criteria and that such a determination, together with the type, administration, and scoring of the examination, is a necessary extension of managerial decision-making. For the reasons stated in State Troopers NCO, 179 N.J. Super. at pp. 90-92, and Jersey City, 7 NJPER at pp 685-686, section B is non-negotiable because it requires the Board to base promotions upon competitive examinations during the duration of the contract.^{2/}

Article VII, section C provides:

Positions covered by the Article are:
 Director, Assistant Director, High School Principal, High School Vice Principal, Supervisor, Primary Principal, Grammar School Assistant, Assistant Supervisor, Chief School Psychologist, and any newly created positions of a supervisory or administrative nature requiring State Certification as listed in the Recognition clause.

^{2/} While Jersey City did not treat the negotiability of the last sentence of section B, it is clear that this sentence establishes a substantive precondition for consideration for promotion and is hence non-negotiable.

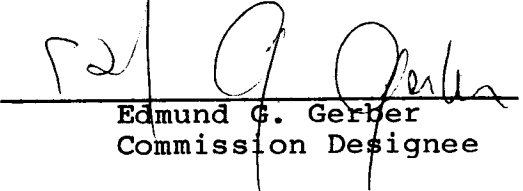
For the reasons stated in Jersey City, 7 NJPER at p. 686, provisions which state which positions are in a promotion policy are non-negotiable to the extent they might restrict the Board's ability to promote employees of its choosing or to select employees for these positions by means other than promotion. We add, however, that such provisions are negotiable to the extent they define the positions to which negotiated procedural protections will adhere, if the employer does decide to fill such positions through promotions.

Accordingly in the instant matter, contrary to the position of the Board, Article VII is not entirely non-negotiable. Those provisions which create procedural requirements for promotions into the "administrative and supervisory positions listed in Section C " are mandatorily negotiable and the grievance may be considered by the arbitrator to the extent the grievance concerns such issues.

It must be emphasized that the arbitrator as part of his remedy may not require the Board to make any particular promotion.

There is a factual dispute here as to whether the Board created a new position and therefore, had no obligation to follow the procedural provisions of Article VII, or as the Association claimed, simply altered the title of the old position and therefore must still follow the procedural provisions of Article VII. Such a fact question is an appropriate one for the arbitrator to resolve..

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

DATED: June 11, 1985
Trenton, New Jersey