

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-95-108

SUSSEX COUNTY COLLEGE FACULTY  
FEDERATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Sussex County Community College for a restraint of binding arbitration of a grievance filed by the Sussex County College Faculty Federation. The grievance asserts that the College violated its policy calling for automatic promotions from the rank of instructor to the rank of assistant professor after three years of satisfactory service when it denied an instructor an automatic promotion because her first year of service was in a grant-funded position rather than a College-funded position. On balance, the Commission concludes that since this employer has already determined that promotions are automatic after three years of satisfactory service as an instructor, a dispute over counting all years of satisfactory service with the public employer as an instructor, regardless of the funding source for a particular year, is mandatorily negotiable and legally arbitrable.

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.

P.E.R.C. NO. 96-48

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Appearances:

For the Petitioner, Jackson, Lewis, Schnitzler & Krupman,  
attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Dwyer & Canellis, attorneys  
(Barbara A. Canellis, of counsel)

DECISION AND ORDER

On June 9, 1995, Sussex County Community College petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Sussex County College Faculty Federation. The grievance asserts that the College violated its policy calling for automatic promotions from the rank of instructor to the rank of assistant professor after three years of satisfactory service when it denied an instructor an automatic promotion because her first year of service was in a grant-funded position rather than a College-funded position.

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

The Federation represents the College's full-time faculty and librarians. Article XV specifies promotional procedures, but states that "[p]romotions which, pursuant to the College's established criteria, are automatic, shall not be subject to the procedures in this Article." Article XIX specifies the minimum salary for each of these faculty ranks: lecturer, instructor, assistant professor, associate professor, and professor. For fiscal year 1995, the minimum salary for the rank of assistant professor is \$5,000 greater than the minimum salary for the rank of instructor. A side letter of agreement provides that employment conditions not covered by the contract or negotiations "shall remain status quo as established by the faculty handbook or past practice." The grievance procedure ends in binding arbitration.

In November 1994, the College's trustees adopted a policy entitled "Policy on Criteria for Promotion in Rank." The policy sets forth the requirements for applying for promotions from one faculty rank to another, but specifies that no application is necessary to advance from instructor to assistant professor because advancement "is automatic after three years of satisfactory performance confirmed by formal evaluative measures."

Barbara Bulford has been an instructor of accounting in the business administration department since the 1991-1992 school year. During her first year of employment, she held a temporary appointment in a grant-funded position; during her second and third years of employment, she held a standard appointment in a

College-funded position. There is no contention that she did not perform her duties satisfactorily during those three years or that her duties in a grant-funded position were different from her duties in a College-funded position.

On May 17, 1994, the trustees set the ranks, titles and salaries for all employees for the next fiscal year. Bulford was reappointed to the rank of instructor for the next school year, her fourth year in that rank. She remained in that rank because the College did not count her year of service in a grant-funded position.

On February 28, 1995, the Federation filed a grievance on Bulford's behalf. The grievance stated:

The Federation contends that the College should have automatically promoted Ms. Bulford from the rank of Instructor to the rank of Assistant Professor at the beginning of the 1994-1995 academic year in August 1994. As specified in the College's Policy on Criteria for Promotion in Rank ... "advancement in rank from Instructor to Assistant Professor is automatic after three years of satisfactory performance confirmed by formal evaluative measures."

Since the 1994-1995 academic year represents Ms. Bulford's fourth consecutive year of employment, the Federation feels that her promotion should be granted in accordance with approved College policy. The Federation disagrees with the College position which suggests that the grievant is not due a promotion due to the fact that her position was grant-funded during the first year of her employment. The basis for the Federation's disagreement is two-fold: (1) the Board-approved policy statement properly makes no mention of funding sources with respect to promotional criteria; and (2) the grievant has, throughout the course of employment, performed all of the same teaching functions as have other faculty employees who have been automatically promoted. The Federation maintains that funding

sources for faculty lines are an administrative concern and should not be relevant to promotional considerations.

The dean and the president denied the grievance, finding that Bulford's first year as an instructor in a grant-funded position did not count towards automatic promotion. The dean and president asserted that the College had followed past practice and had preserved the "status quo." The president also identified "a serious question" about the grievance's timeliness.

The Federation demanded arbitration. The demand asserted that the College's promotion policy contained no provision denying credit for years of grant-funded service and the College had never denied an instructor an automatic promotion after three years of full-time satisfactory service. This petition ensued.

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 cannot consider the contractual merits of this grievance or any contractual defenses the employer may have. We specifically do not consider whether the denial of an automatic promotion accorded with past practice or whether the grievance was timely.

The narrow negotiability issue is whether the College, having decided that instructors will be automatically promoted to assistant professors after three years of satisfactory service, has a non-negotiable prerogative to exclude years of service in grant-funded positions in counting the years of service required for an automatic promotion. Local 195, IFPTE v. State, 88 N.J. 393, (1982), states the tests for analyzing a negotiability issue:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

No statute or regulation preempts negotiations or arbitration.

We first examine the employees' interests. An employee in Bulford's position naturally wants to receive the higher salary paid to an assistant professor and the prestige of holding a higher position. Also, an employee in Bulford's position who has performed the same duties for as long and as well other instructors wants to be treated the same way as those instructors. From the employee's perspective, it is irrelevant that other instructors doing the same work were initially paid through different salary accounts. The

employees' interests are significant and are comparable to the mandatorily negotiable interests of employees seeking salary upgrades, salary guide placements based on crediting years of experience, and reclassifications for salary purposes. See, e.g., Village of Ridgewood, P.E.R.C. No. 93-87, 19 NJPER 216 (¶24104 1993); Wall Tp., P.E.R.C. No. 92-95, 18 NJPER 165 (¶23079 1992); East Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd NJPER Supp.2d 285 (¶229 App. Div. 1992); Stanhope Bor. Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990).

We now examine the employer's interests. As a rule, an employer has a prerogative to determine promotional qualifications and criteria, but must negotiate over promotional procedures. See, e.g., State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978); Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993); State v. State Troopers NCO Ass'n, 179 N.J. Super. 80, 90-91 (App. Div. 1981). The purpose of recognizing this prerogative is to ensure that employers are free to promote the employees who can best do the duties that need to be done in higher-ranked positions. That purpose is not implicated by the facts of this case: this employer has unilaterally determined that promotions from the rank of instructor to assistant professor will be "automatic" after three years of satisfactory service and it is undisputed that Bulford has rendered three years of satisfactory service as an instructor and that she has performed the same duties as other instructors.

Further, on this record, it does not appear that the source of funding for Bulford's salary during her first year as an instructor bears upon her fitness to perform the duties of an assistant professor or that those duties are significantly different from the duties of an instructor.<sup>1/</sup> The employer has a budgetary interest in delaying automatic promotions of employees in Bulford's position, but the employees' interests in negotiating over the opportunity to receive a higher salary as a result of an automatic promotion policy outweigh that budgetary interest. See Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980).

On balance, we conclude that since this employer has already determined that promotions are automatic after three years of satisfactory service as an instructor, a dispute over counting all years of satisfactory service with the public employer as an instructor, regardless of the funding source for a particular year, is mandatorily negotiable and legally arbitrable. We repeat that we do not consider the contractual merits -- that issue is for the arbitrator.

Accordingly, we will not restrain arbitration.

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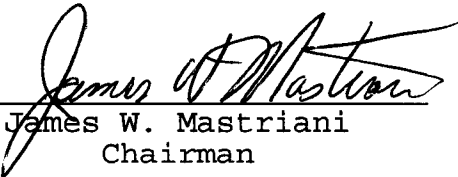
<sup>1/</sup> The employer remains free to assign an assistant professor whatever duties and courses it believes best. We view this case as centering on Bulford's pay status and rank after three years of satisfactory service rather than on the skills needed to perform new duties. Village of Ridgewood.



ORDER

The request of Sussex County Community College for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Boose voted against this decision. Commissioner Wenzler was not present.

DATED: December 21, 1995  
Trenton, New Jersey  
ISSUED: December 21, 1995