

P.E.R.C. NO. 97-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-96-127

CITY ASSOCIATION OF SUPERVISORS
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the State-Operated School District of Newark for a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators. The grievance alleges that the District appointed a unit member to a vacant position without complying with contractual posting procedures and established the terms and conditions of employment of that position through negotiations with the appointee rather than with CASA. The Commission finds that the employer could legally agree to post announcements of interim as well as permanent vacancies. The Commission further finds that the record does not establish how complying with any posting requirements would have prevented the District from meeting its educational policy needs.

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, Sills, Cummmis, Zuckerman, Radin
Tischman, Epstein & Gross, attorneys (Derlys Maria
Guitierrez, of counsel)

For the Respondent, Anthony P. Sciarillo, attorney

DECISION AND ORDER

On May 8, 1996, the State-Operated School District of the City of Newark petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators. The grievance alleges that the District appointed a unit member to a vacant position without complying with contractual posting procedures and established the terms and conditions of employment of that position through negotiations with the appointee rather than with CASA.

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

CASA represents the District's administrators and supervisors. The parties' grievance procedure ends in binding arbitration. Article XVIII defines promotional positions and requires that notices of vacancies for such positions be posted on bulletin boards in schools and at the central office for one month or more before the closing date for applications. The notice must list the qualifications, description, requirements, duties and salaries for a posted position.

On or shortly before March 1, 1996, Diamond Navarro, an assistant director represented by CASA, and Beatrice Collymore, the Acting State Deputy Superintendent, discussed Navarro's possible reassignment to fill an assistant principal vacancy at the Horton Street School. On March 1, Collymore wrote to Navarro confirming Navarro's reassignment as the Interim Acting Assistant Principal at the school effective March 6, 1996 through the end of the school year. The letter stated that Navarro would retain her salary and status as an Assistant Director during the assignment.

On March 20 and 22, 1996, the reassignment was approved in turn by Dr. John Nolan, the Human Resource Director, and Dr. Beverly Hall, the State District Superintendent. The document recited Navarro's salary while in the post.

On March 26, 1996, CASA filed a Step 2 grievance asserting that the District had violated the collective negotiations agreement by appointing Navarro to the vice-principal position without complying with the posting requirements and by negotiating directly

with her rather than CASA over the position. The grievance sought a directive that the District negotiate with CASA, that the position be posted and that the District stop negotiating with unit employees. The grievance was denied and CASA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we cannot consider the merits of the grievance or any of the District's contractual defenses.

The District asserts that the promotion provisions in the agreement do not apply to its filling of this vacancy on an interim basis for the rest of the 1995-1996 academic year. It characterizes its action as a temporary solution to an immediate staffing problem, saying it had to act on an "emergency basis."

CASA characterizes its grievance as asserting two separate violations: the District's direct dealing with a unit member which interfered with its exclusive representational rights and the District's disregard of posting requirements for a promotional

vacancy. It asserts that the District has not set forth any facts establishing an urgency to act.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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]

The District does not assert that any statute or regulation preempts arbitration of the grievance. CASA notes that N.J.S.A. 18A:7A-40 expressly preserves the rights of employees in a State-operated school district under collectively negotiated agreements.

Applying Local 195's standards for determining negotiability, the Commission and the courts have held, in general, that criteria to be used in determining whether to promote an employee are not negotiable while the procedures to be followed in filling such positions are. See, e.g., North Bergen Tp. Bd. of Ed.

v. North Bergen Fed. Teachers, 141 N.J. Super. 97 (App. Div. 1976).

In making promotions, public employers have a prerogative to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park; Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990).

However, the opportunity to apply for a promotion intimately and directly affects the work and welfare of employees. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90-91 (1978). Accordingly, a wide range of promotional procedures which do not significantly interfere with an employer's ability to set and assess qualifications for promotional candidates have been held to be mandatorily negotiable and legally arbitrable. These procedures include posting requirements, notice of promotional criteria, and a statement of the reasons why an employee was not chosen for a promotion. See Department of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981); Howell Tp., P.E.R.C. No. 96-59, 22 NJPER 101 (¶27052 1996); Fair Lawn Bor., P.E.R.C. No. 90-93, 16 NJPER 263 (¶21111 1990) Franklin Tp. Bd. of Ed., P.E.R.C. No. 90-82, 16 NJPER 181 (¶21077 1990).


While posting requirements are generally negotiable, we have held that an employer may fill a position temporarily while it complies with a posting obligation. Newark Bd. of Ed., P.E.R.C. No. 83-85, 9 NJPER 64 (¶14035 1982). However, the employer could legally agree to post announcements of interim as well as permanent

vacancies and we do not have jurisdiction to determine whether it did so in this case. Further, the record does not establish how complying with any posting requirements would have prevented the District from meeting its educational policy needs. The parties may therefore legally arbitrate this posting dispute. The District's contention that the contract's promotional procedures do not apply to interim vacancies raises a contractual defense that must be addressed to the arbitrator.

ORDER

The request of the State-Operated School District of Newark for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997