

P.E.R.C. NO. 83-141

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY REDEVELOPMENT AGENCY,

Petitioner,

-and-

Docket No. SN-83-11

INTERNATIONAL SERVICE WORKERS OF
AMERICA, LOCAL 124,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, restrains arbitration of three grievances filed by the International Service Workers of America, Local 124 against the Jersey City Redevelopment Agency. The grievances challenged the Agency's decision to appoint someone outside the Agency to the position of Director of Rehabilitation.

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Appearances:

For the Petitioner, Martin R. Pachman, Esq.
(William G. Wallen, on the Brief)

For the Respondent, Schneider, Cohen, Solomon,
and DiMarzio, Esqs.
(Paul A. Friedman, on the Brief)

DECISION AND ORDER

On August 2, 1982, the Jersey City Redevelopment Agency ("Agency") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Agency sought a permanent restraint of binding arbitration of three grievances the International Service Workers of America, Local 124 ("Local 124") had filed. All three grievances challenged the Agency's decision to appoint someone outside the Agency to the position of Director of Rehabilitation.

Both parties have filed briefs. The Agency has filed a reply brief.

When a scope of negotiations petition raises an issue which has previously been determined by the Commission or the

courts, the undersigned has been delegated the authority to issue a decision on behalf of the full Commission. The issue raised in this case has been the subject of numerous prior court and Commission decisions and accordingly, the undersigned will issue the Commission decision in this matter.

The position of Director of Rehabilitation became vacant in November of 1981. At that time, Salvatore Reina, who held the position of Assistant Director of the Housing Rehabilitation Division, was named Acting Director of Rehabilitation. Reina applied for the position of Director of Rehabilitation as did Frederick A. Reif, Maurice J. Epstein, and Donald LaSalle, all employees in the Agency's rehabilitation department. On February 8, 1982, the Agency, after considering applications from interested individuals, appointed someone from outside the Agency to fill the position.

Reina, Reif, Epstein, and LaSalle filed grievances, each claiming entitlement to the position and asking by way of relief that either they or someone within the Agency be given the job.^{1/} The grievances relied upon the following contractual provision:

^{1/} In their grievances, Epstein, LaSalle, and Reif also stated that they had not been afforded the "courtesy" of an interview for the vacant position. There is no claim, however, that these employees had a contractual right to an interview as part of the procedures for filling vacancies nor is there anything in the contract concerning such an interview. Instead, the grievances center on the alleged right of Agency employees to a preference in promotion to vacant positions.

Article 10, Section A

1. The term promotion means the advancement of a qualified employee to a higher title [or] the reassignment of a qualified employee to a higher paid position in the agency.

2. When an opening occurs, whether through the creation of a new position or through an existing position having become vacant; such opening shall be filled to the extent possible, by the promotion of existing Agency employees. Promotions from within the Agency shall occur only to the extent that such promotion is consistent with the efficient operation of the Agency.

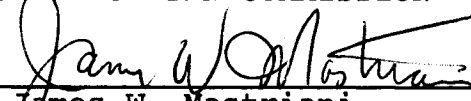
In addition, Article 17 provided that current qualified Agency employees would be given preference in the filling of new or vacant positions.

Established case law acknowledges that an employer's decision to fill a position by either promoting a current employee or hiring a new employee is totally within management's discretion. See, No. Bergen Bd. of Ed. v. No. Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976) and In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977). More recently, our Supreme Court has held that the decision as to whether to fill a vacancy at all is also a non-negotiable management prerogative. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1982). Accordingly, the instant grievances relate to a non-negotiable subject.

ORDER

The Agency's request for a permanent restraint of arbitration of the grievances of Maurice J. Epstein, Frederick A. Reif, Salvatore Reina, and Donald LaSalle is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 26, 1983