

P.E.R.C. NO. 99-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-98-75

AFSCME COUNCIL 73, LOCAL 2287,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the County of Mercer for a restraint of binding arbitration of a grievance filed by AFSCME Council 73, Local 2287. The grievance challenges certain aspects of the promotion of a senior clerk typist to the position of principal clerk typist. The Commission finds that promotional criteria to provisional positions are not mandatorily negotiable and that Local 2287 may not challenge the County's decision to promote based on its assessment of employee qualifications.

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, Alfred B. Vuocolo, Jr., County
Counsel (Angelo J. Onofri, Assistant County Counsel)

For the Respondent, James E. Sacks-Wilner, attorney

DECISION

On April 8, 1998, Mercer County petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by AFSCME Council 73, Local 2287. The grievance challenges certain aspects of the promotion of a senior clerk typist to the position of principal clerk typist.

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

Mercer County is a Civil Service jurisdiction. Local 2287 represents certain County employees. The parties entered into a collective negotiations agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration.

Article 14 is entitled "Seniority." Paragraph 14.2 provides:

Seniority shall be given preference in promotions, demotions, layoffs, recall, vacation scheduling, and work shifts as defined in Paragraph 14.3 below.

Where ability to perform work and physical fitness are considerations in application of the above paragraph, determinations shall be made by the Employer.

Paragraph 14.3 provides:

Where more than one work shift per day within a given classification is in effect, employees within such classification will be given preference of shifts on a seniority basis only when vacancies occur or changes in the number of employees per shift are being made. Where such vacancy occurs, or where there is a change in the number of employees per shift, a senior employee will not be permitted or required to wait longer than one (1) year to exercise his preference of shift over a less senior employee.

Article 20 is entitled "Equal Treatment." Paragraph 20.1 provides:

The Employer agrees that there shall be no discrimination or favoritism for reasons of sex, age, nationality, race, marital status, religion, political affiliation, Union membership, Union activities and/or any disability as defined under the Federal 1990 Americans with Disability Act (ADA) legislation.

At the time of the grievance, Cathy Lee, Delores Smith and Silma Nazario were senior clerk typists. They each have more seniority than Gail Tarangioli, who became a provisional principal clerk typist in December 1995 and who filed for the promotional examination for principal clerk typist in June 1996. Lee and

Nazario have since been appointed to principal clerk typist positions.

On August 19, 1996, Lee, Smith and Nazario filed a grievance alleging violations of paragraphs 14.2, 14.3 and 20.1 and requesting that the promotion of Tarangioli be justified. On August 21, the chief of administrative services responded. He explained that Tarangioli had served in an exemplary fashion and that the director of the human services department had requested her promotion to principal clerk typist. He further explained that Tarangioli became a provisional employee, a posting was released by Civil Service for that promotional title, a promotional announcement was posted at four sites, and Tarangioli filed for the promotional examination.

On August 26, 1996, a step 2 grievance was filed repeating the earlier allegations. The director of the department of human services responded that she concurred with the chief's findings and awaited the certification list from the New Jersey Department of Personnel.

On September 10, 1996, a step 3 grievance was filed. Citing the same contract articles, it alleged that procedures were not followed in the proper manner. The County administrator responded that a grievance contesting the provisional appointment was out of time because Civil Service had since announced a promotional examination.

Local 2287 demanded arbitration over the provisional promotion. 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 do not consider the contractual arbitrability or merits of the grievance. We specifically decline to consider whether the grievance was timely filed.

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]

Under this balancing test, promotional criteria for permanent positions are not negotiable, but promotional procedures are. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978); Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554, 558 (App. Div. 1980). Promotions to provisional positions are subject to the same managerial prerogative. Camden Cty. Municipal Utility Auth., P.E.R.C. No. 85-10, 10 NJPER 500 (¶15228 1984). Thus, Local 2287 may not challenge the County's decision to appoint Tarangioli to the provisional principal clerk typist position, based on its assessment of her qualifications for that position.^{1/}

ORDER

We grant the request of Mercer County to restrain binding arbitration over its decision to provisionally appoint Gail Tarangioli to a principal clerk typist position, based on its assessment of her qualifications for that position.

BY ORDER OF THE COMMISSION

Millicent A. Wasell

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, and Klagholz voted in favor of this decision. None opposed. Commissioner Ricci abstained from consideration. Commissioner Wenzler was not present.

DATED: September 24, 1998
Trenton, New Jersey
ISSUED: September 25, 1998

^{1/} While the grievances refer generally to alleged procedural violations, neither the grievance documents nor the parties' briefs specify any mandatorily negotiable procedures which the union seeks to submit to arbitration.