

P.E.R.C. NO. 2000-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-97

PASCACK VALLEY REGIONAL SUPPORT
STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Pascack Valley Regional High School District Board of Education for a restraint of binding arbitration over its decision to appoint a secretary with less service in the district than another candidate to the position of executive secretary. The grievance was filed by the Pascack Valley Regional Support Staff Association. The Commission reaffirms that public employers have a non-negotiable right to fill vacancies and make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs.

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. 2000-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-97

PASCACK VALLEY REGIONAL SUPPORT
STAFF ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Fogarty & Hara, attorneys
(Rodney T. Hara, of counsel and on the brief and reply
brief; Janet L. Parmelee, on the brief)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION

On June 9, 1999, the Pascack Valley Regional High School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Pascack Valley Regional Support Staff Association. The grievance contests the appointment of a secretary with less service in the district than another candidate to the position of executive secretary.

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

The Association represents secretaries employed in the district. The Board and the Association are parties to a

collective negotiations agreement effective from July 1, 1994 through June 30, 1997. The grievance procedure ends in binding arbitration.

Article XIII provides, in part:

- A. All job openings for promotional and/or new positions shall be adequately publicized in every school and all administrative offices. An employee desiring to apply for such vacancy shall submit an application in writing to his/her supervisor prior to the closing date.
- B. Any application requesting to fill a vacancy shall not be arbitrarily or capriciously denied. Any employee filing such application shall be granted an interview by his/her immediate superior or a higher level of authority within a period of three (3) weeks of submitting the application. In filling such vacancies, preference shall be given qualified employees already employed by the Board and when all other factors are substantially equal, length of service in the Pascack Valley Regional High School District shall be the deciding factor.
- C. The employee shall be given fair and equitable consideration in filling of the vacancy based on relative fitness and ability in relation to other applicants and job requirements. The Board will have the final determination as to the fitness and ability required for the position as to which applicant is most suitable for the position or whether any applicant is suitable for the position.

On August 31, 1998, the Board appointed a general secretary who had been employed at the Pascack Hills High School for about one and one-half years to the position of executive secretary to the principal at the Pascack Hills High School.

Another applicant for the executive secretary position has been employed for approximately four years at the Pascack Valley High School. The Board determined that all factors were not substantially equal between the two candidates and appointed the candidate it deemed most qualified for the position.

On September 3, 1998, the Association filed a grievance alleging that the appointment violated Article XIII(B) of the parties' agreement. As a remedy, the grievance seeks the appointment of an employee whose length of service is longer than the candidate selected for the position.

On September 8, 1998, the superintendent denied the grievance. He concluded that no application was arbitrarily or capriciously denied, that no applicant was denied an interview, and that there is no evidence that the Board did not give preference to its employees. The superintendent further pointed out that section C of Article XIII gives the Board the final authority in determining which applicant to appoint.

On November 18, 1998, the Board denied the grievance. On December 10, the Association demanded arbitration. This petition ensued.

The Board asserts that it selected the candidate with the best qualifications. It states that she exhibited excellent capabilities, was knowledgeable about the responsibilities of the position, had a good rapport with staff and students, and demonstrated an ability to excel in the position. The Board

further asserts that her knowledge and abilities would be significant since she will be assigned to a new principal who is unfamiliar with the high school. The Board contends that the other candidate did not work at the Pascack Hills High School and is therefore not familiar with the staff or the students. It also asserts that the other candidate had expressed a desire to secure employment in another school district. The Board maintains that it had a managerial prerogative to evaluate the candidates' qualifications and to promote the individual it deemed the most qualified.

The Association concedes that the Board has a right to determine the criteria for a promotion. However, it asserts that after the Board has announced a vacancy, along with the job description and eligibility requirements for the position, an arbitrator can properly determine which applicants have met the Board's threshold eligibility requirements. It contends that permitting an arbitrator to determine whether threshold eligibility requirements have been met does not interfere with the Board's managerial prerogative to set the qualifications for the position or make the final decision as to who fills it. Further, the Association asserts that there is a factual dispute as to whether the Board complied with the procedural requirements in Article XIII and that an arbitrator may rule on that issue. In the alternative, it asserts the Commission should order an evidentiary hearing pursuant to N.J.A.C. 19:13-3.6.

The Board rejects the Association's arguments and relies on prior Commission decisions to support its contention that a board has a managerial prerogative to apply evaluative criteria and to select the candidate it deems the most qualified for the position. It further asserts that there are no material or substantial disputed factual issues requiring a hearing and that the Association has waived its right to request a hearing.

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 merits of this grievance or any contractual defenses the College may have.

Public employers have a non-negotiable right to fill vacancies and make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. An employer also has a non-negotiable right to select promotional criteria. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 95 (1981); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12

(App. Div. 1977). When an employer fills a position or a vacancy based upon a comparison of applicant qualifications, that decision is not legally arbitrable. Greenwich Tp., P.E.R.C. No. 98-20, 23 NJPER 499 (¶28241 1997); City of Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16062 1985). While contract clauses may legally give preference to senior employees when all qualifications are equal or substantially equal, the employer retains the right to determine whether or not an applicant is qualified and which, if any, candidates are equally qualified. Eastampton Tp. Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983); see also Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992) (arbitrator could not second-guess employer's determination as to whether candidates' qualifications are substantially equal); Woodbridge Tp., P.E.R.C. No. 96-8, 21 NJPER 282 (¶26180 1995) (employer had prerogative to fill vacancy with candidate it decided was more qualified than the most senior candidate). The Association's contention that an arbitrator may determine which candidates meet "threshold eligibility" requirements is contrary to these precedents. That exercise would significantly interfere with the Board's right to determine whether a candidate is qualified for a position. Greenwich; Eastampton.


Further, we see no need for an evidentiary hearing. The Association has not cited any substantial and material disputed factual issues that must be resolved to rule on this petition. Finally, neither the grievance documents nor the Association's brief

specifies any mandatorily negotiable procedural issues which the Association seeks to submit to arbitration. See Mercer Cty., P.E.R.C. No. 99-32, 24 NJPER 471 (¶29218 1998).

ORDER

We grant the request of the Pascack Valley Regional High School District Board of Education for a restraint of binding arbitration over its decision to appoint a secretary with less service in the district than another candidate to the position of executive secretary.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn and Ricci voted in favor of this decision. Commissioner Muscato was not present.

DATED: September 30, 1999
Trenton, New Jersey
ISSUED: October 1, 1999