

P.E.R.C. NO. 94-38

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-94-3

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO, LOCAL 3044,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the American Federation of State, County and Municipal Employees, AFL-CIO, Local 3044 against the Township of Woodbridge. The grievance asserts that the Township violated the parties' collective negotiations agreement when it denied a negotiations unit employee a promotion and hired a non-employee instead. The Commission finds that the Township had a managerial prerogative to hire someone it adjudged more qualified than the grievant.

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Appearances:

For the Petitioner, Genova Burns, attorneys  
(Joseph Licata, of counsel)

For the Respondent, Don Dileo, staff representative

DECISION AND ORDER

On July 16, 1993, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by American Federation of State, County and Municipal Employees, AFL-CIO, Local 3044. The grievance asserts that the Township violated the parties' collective negotiations agreement when it denied a negotiations unit employee a promotion and hired a non-employee instead.

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

Local 3044 represents the Township's employees in clerical and certain other classifications. The parties entered into a collective negotiations agreement effective from January 1, 1990 through December 31, 1992. Article VII is entitled Seniority. Section B provides, in part:

In matters of promotions, lateral transfers, provisional appointments, vacancies, or positions upgrades, the employee with the greatest amount of Township Seniority shall be given preference. It is the intention of the employer to fill promotions, vacancies, lateral transfers, or provisional appointments from within the union bargaining unit before hiring new employees, provided there are existing employees available with the necessary qualifications.

The grievance procedure ends in binding arbitration.

On January 27, 1993, the Township posted a notice that the position of senior word processor in the Department of Public Works was vacant and that a provisional appointment would be made, pending the issuance of an eligibility list by the Department of Personnel. The Township received six applications. The Director of Public Works hired an applicant who worked outside the Township.

On April 2, 1993, Local 3044 filed a grievance on behalf of Arlene Gulics, an employee whose application had been rejected. The grievance asserted that the Director of Public Works had told Gulics that she was qualified for the job, but he had hired someone he believed was more qualified. Local 3044 asserts that this hiring violated Article VII, Section B.

After the Township denied the grievance, Local 3044 demanded binding arbitration. It identified the dispute as "Violation of posting for job promotion and failure to appoint qualified individual to position." 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.

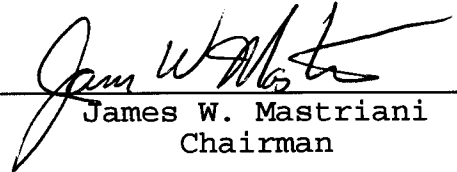
Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Township may have.

The Township asserts that it had a managerial prerogative to hire someone it adjudged more qualified than the grievant. We agree because it is well-established that the pertinent section of Article VII is not mandatorily negotiable. See, e.g., North Bergen Bd. of Ed. v. North Bergen Teacher Fed., 141 N.J. Super. 97 (App. Div. 1976); Pascack Valley Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-126, 18 NJPER 361 (¶23157 1992); Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992); Camden Cty., P.E.R.C. No. 88-115, 14 NJPER 350 (¶19135 1988); see also Willingboro Tp. Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13043 1982). We will accordingly restrain arbitration over the decision not to promote Gulics.

ORDER

The request of the Township of Woodbridge for a restraint of arbitration over the decision not to promote Gulics is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Regan voted in favor of this decision. None opposed. Commissioner Smith abstained from consideration. Commissioner Bertolino abstained. Commissioner Wenzler was not present.

DATED: October 25, 1993  
Trenton, New Jersey  
ISSUED: October 26, 1993