

P.E.R.C. NO. 86-134

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-75

JERSEY CITY EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines a request by the Jersey City Board of Education to restrain binding arbitration of a grievance which the Jersey City Education Association filed. The grievance alleges the Board violated the collective negotiations agreement when it appointed one employee instead of another to the position of Chief Administrator of the Bureau of Pupil Personnel Services. The Commission holds that the issues of whether the Board was required to follow the procedural provisions of its promotional policy and if so, whether it did may be submitted to binding arbitration. The Commission further holds, however, that the arbitrator may not determine whether an employee was entitled to be promoted under the promotional standards.

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Appearances:

For the Petitioner, John A. O'Shaughnessy, Esq.

For the Respondent, Philip Feintuch, Esq.

DECISION AND ORDER

On March 14, 1985, the Jersey City Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Jersey City Education Association ("Association") filed. The grievance alleges that the Board violated the collective negotiations agreement when it appointed one employee instead of another to the position of Chief Administrator of the Bureau of Pupil Personnel Services.

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

In the spring of 1982, the Board administered a promotional examination for the position of Director of the Bureau of Pupil

Personnel Services. The Board alleges that it complied with the following provisions in its collective negotiations agreement with the Administrators and Supervisors Association of the Jersey City School System ("Administrators Association"):

A. The administrative and supervisory positions listed in Section C below, shall be filled, by Board appointment in order of numerical ranking from appropriate eligibility lists.

B. Numerical ranking shall be determined through competitive examinations conducted by the Board of Personnel Practices. The examinations shall consist of a written section which shall have a weight of 40%. No person shall be allowed to take the oral section of the examination unless he has passed the written part. The oral interview shall have a weight of 60%. The Board of Personnel Practices conducting the oral interview shall include professional educators not regularly employed by the Board of Education. All applicants shall be eligible for proper certification before they are allowed to take the written section of the examination.

C. Positions covered by this Article are: Director, Assistant Director, High School Principal, High School Vice Principal, Supervisor, Primary Principal, Grammar School Assistant, Assistant Supervisor, Chief School Psychologist, and any newly created positions of a supervisory or administrative nature requiring State Certification as listed in the Recognition clause.

The Administrators Association represents the Board's administrators, including directors and assistant directors. The Association represents the Board's teachers.

Jennifer Figurelli finished first on the promotional examination, Patricia Haggett finished second. Haggett is a school psychologist within the Association's unit.

The Board promoted Figurelli pursuant to its contract with the Administrators Association. On August 24, 1983, however, the Board terminated Figurelli. At the same time, it abolished the Board of Personnel Practices that had administered the previous promotional examination.

The Board then allegedly created a new position, Chief Administrator of the Bureau of Pupil Personnel Services. It appointed Dr. Henry Przystup to this position.

On December 15, 1983, Haggett filed a grievance. The grievance alleged that she was improperly denied the promotion Przystup received. The grievance specifically alleged that Haggett had the second highest score on the promotional examination; that the person with the highest score was removed from the directorship in September 1983 and that Przystup had not been qualified to take the promotional examination.

The Board denied this grievance. The Association demanded binding arbitration. During arbitration, a dispute arose concerning the grievance's arbitrability, and the arbitrator postponed further proceedings pending the filing and determination of a scope petition.

The Board then filed this petition. Simultaneously, it requested an interim restraint against further arbitration proceedings. On June 11, 1985, Commission designee Edmund G. Gerber denied interim relief, although he emphasized that the arbitrator could not require the Board to make any particular promotion. I.R. No. 85-13, 11 NJPER 415 (¶16144 1985).

The Board contends that this dispute predominantly involves its managerial prerogative to promote the employee of its choice and that, in any event, it had no obligation to follow previous promotional policies when it created and filled the position of Chief Administrator of the Bureau of Pupil Personnel Services.

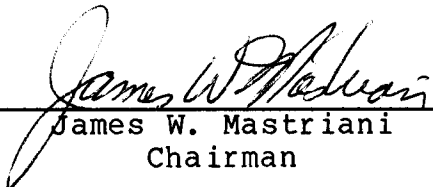
The Association contends that the Board violated its own promotional policy and that such violations may be remedied through binding arbitration. It is not asserting a violation of the collective negotiations agreement covering administrators, although that agreement's provisions appear to provide the basis for the Board's promotional policy.

In Administrators and Supervisors Association of Jersey City and Jersey City Board of Education, P.E.R.C. No. 82-110, 8 NJPER 318 (¶13144 1982), we analyzed the negotiability of the quoted portions of the Board's collective negotiations agreement with the Administrators Association. Our designee has correctly set forth our holdings in that case and applied these holdings to this case. The issues of whether the Board was required to follow the procedural provisions of its promotional policy and, if so, whether it did, may be submitted to binding arbitration. The arbitrator, however, may not determine whether Haggett was entitled to be promoted under the promotional standards.

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Reid abstained. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986