

P.E.R.C. No. 84-130

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY PUBLIC LIBRARY,

Petitioner,

- and -

Docket No. SN-84-57

AFSCME COUNCIL 52, Local 2265,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, restrains binding arbitration of a grievance that AFSCME Council 52, Local 2265 had filed against the Jersey City Public Library. The grievance had challenged the Library's decision to promote one employee instead of another to the position of principal librarian.

P.E.R.C. No. 84-130

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY PUBLIC LIBRARY,

Petitioner,

and

Docket No. SN-84-57

AFSCME COUNCIL 52, Local 2265,

Respondent.

Appearances:

For the Jersey City Public Library, Aron & Salsberg, Esqs.
(Ellen S. Bass, Esq., of counsel and on the brief)

For AFSCME Council 52, Local 2265, Rothbard, Harris &
Oxford, Esqs. (Nancy Iris Oxford, Esq., of counsel
and on the brief)

DECISION AND ORDER

On February 17, 1984, the Jersey City Public Library ("Library") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Library seeks to restrain binding arbitration of a grievance that AFSCME Council 52, Local 2265 ("Local 2265") has filed on behalf of senior librarian Carol Menza. The grievance challenges the Library's decision to promote another employee besides Menza to the position of principal librarian in charge of the audio visual department.

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

Local 2265 is the majority representative of the Library's professional and non-professional employees, with certain exceptions. The Library and Local 2265 have entered a collective negotiations agreement effective between January 1, 1983 and

June 30, 1985. That agreement's grievance procedure culminates in binding arbitration. Article XVI (G), entitled Promotional Opportunities, provides:

1. When a promotional opportunity is available, a notice of such opening shall be posted prominently for a period of not less than ten (10) days. All interested employees shall, within fifteen (15) days from the date of posting, indicate their desire for the promotion, in writing, to the Library Director. Promotions shall be made in accordance with seniority among qualified employees. In the event there are no qualified applicants among the next lower title, then the Library may seek qualified applicants from among the next lower title, or resort to outside hiring in order to acquire a qualified employee for the job.

Article XIX, entitled Non-Discrimination, provides:

A. The parties agree that there shall be no discrimination or favoritism for reason of sex, age, nationality, race, religion, marital status or political affiliation, Union membership or non-membership, or Union activities.

On November 2, 1983, the Library posted an opening in the position of principal librarian in charge of the audio visual department. Menza, a senior librarian, and another employee, a junior librarian, applied. The Library determined that Menza was not qualified for the position of principal librarian, but that the junior librarian was. It promoted the junior librarian. On December 20, 1983, it notified Menza of the decision.

On January 10, 1983, Local 2265 filed a grievance on Menza's behalf. It alleged that the refusal to promote her violated Articles XVI (G) and XIX.^{1/} On January 17, 1984, the

^{1/} None of the documents submitted indicate what type of discrimination is allegedly involved.

Library Director denied this grievance because he found that it was out of time and concerned a non-arbitrable matter of employee qualifications.

On January 30, 1984, Local 2265 filed a demand for binding arbitration. The demand reasserts that Articles XVI (G) and XIX were violated and further states:

Library employee Carol Menza has not been given promotion clearly guaranteed by qualifications and seniority language in agreement.

The instant petition ensued.^{2/}

The Library contends that the instant dispute predominantly concerns its non-arbitrable managerial prerogative to judge employee qualifications. It cites Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) ("Teaneck"); In re Willingboro Bd. of Ed., P.E.R.C. No. 8267, 8 NJPER 104 (¶13042 1982) ("Willingboro"); and In re Easthampton Township Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983). Local 2265 contends that the grievance should be allowed to go to arbitration so that an arbitrator can review the legitimacy of the Library's determination that the employee was not qualified.

It is clear that the gravamen of the grievance is the public employer's determination that the grievant is not qualified to receive the promotion. It is well settled that the substantive issue as to the assessment of relative employee qualifications

^{2/} The Library has requested a temporary restraint of a scheduled May 24, 1984 arbitration pending the completion of litigation before the Commission.

for a promotion is beyond the scope of mandatory negotiations. Thus, the grievance cannot be submitted to binding arbitration. Teaneck; Willingboro.

ORDER

Accordingly, acting under authority delegated to the Chairman by the full Commission, I hereby grant the request of the Jersey City Public Library to restrain binding arbitration of Local 2265's grievance.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 15, 1984