

P.E.R.C. NO. 85-53

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Petitioner,

-and-

Docket No. SN-84-54

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that the International Brotherhood of Teamsters, Local 97 filed against the Township of Dover. The grievance alleged that the Township violated the parties' collective negotiations agreement when it failed to appoint a certain employee to the vacant position of golf course groundsman. The Commission rules that the gravamen of the grievance challenges the Township's non-negotiable decisions to appoint someone it believed more qualified than the grievant and to consider applicants from outside the negotiations unit.

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Appearances:

For the Petitioner, Murray & Granello, Esqs.  
(Robert Emmet Murray, of Counsel; Robert T. Clarke,  
on the Brief)

For the Respondent, Goldberger & Finn, Esqs.  
(Howard A. Goldberger, of Counsel)

DECISION AND ORDER

On February 15, 1984, the Township of Dover ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a permanent restraint of arbitration of a grievance which the International Brotherhood of Teamsters, Local 97 ("Local 97") filed against the Township. The grievance alleges that the Township violated the parties' collective negotiations agreement when it failed to appoint Daniel Dolan to the vacant position of golf course groundsman.

The Township has filed a brief and exhibits. The following facts appear.

Local 97 represents the Township's permanent blue collar employees. The parties have entered a collective negotiations agreement effective from January 1, 1983 through December 31, 1985. The agreement contains a grievance procedure ending in

binding arbitration. The contract also contains the following provisions relevant to this dispute:

#### Article VII

A. It is hereby agreed that the parties hereto recognize and accept the principle of seniority in all cases of transfer, promotions, assignment of schedules, lay-offs and recalls. In all cases, however, ability to perform the work in a satisfactory manner will be a factor in determining the employees to be affected.

E. When promotions to a higher labor grade or transfers to another grade are in order, the Township shall make such promotions or transfers from among its regular employees; consideration for such promotions or transfers shall be based on seniority and ability to perform the work, and if an employee so promoted or transferred is not deemed qualified after a thirty (30) day trial period, the Township may remove him and retransfer him to his former position.

#### Article VIII

A. The Township shall post in each department vacancies, except laborer vacancies, occurring within each respective department, providing that the employees in that department are or might be eligible and qualified to apply for such vacancy. Thereafter all new and vacant positions shall be posted on the Union Bulletin Boards for a period of one (1) week. Employees applying for such vacancies shall make a request in writing to the Head of the Department in which such vacancies exist. Efforts will be made to fill vacancies from within the bargaining unit; with seniority employees given preference.

On September 26, 1983, the Township posted a notice of a vacancy in the position of golf course groundsman. Daniel Dolan, a blue collar employee in the Township's Parks, Recreation, and Public Lands department, was one of approximately 12 applicants for this position. On October 18, 1983, the department superintendent submitted his recommendations to the department director.

He listed seven employees as qualified, but strongly recommended against hiring any of the other employees, including Dolan. He based his negative recommendation on Dolan's job performance and attendance record. On October 28, 1983, the Township denied Dolan's application and hired an applicant from outside the negotiations unit.

That same day, Dolan filed a grievance which he later amended. The grievance, as amended, alleges that the failure to appoint Dolan violated the contract provisions set forth above.<sup>1/</sup> The Township denied the grievance; Local 97 demanded binding arbitration; and the instant petition ensued.<sup>2/</sup>

In Bd. of Ed. of Twp. of North Bergen v. No. Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976), the Court held that a public employer has a non-negotiable right to establish the criteria for promotion and that the employer cannot be restricted in its search for appropriate candidates to the negotiations unit in question. The gravamen of this grievance challenges the Township's non-negotiable decisions to appoint someone it believed more qualified than the grievant and to consider applicants from

<sup>1/</sup> At a November 10, 1983 grievance hearing, Local 97 narrowed the grievance by stating that only the last sentence of Article VIII (A) was in dispute. Thus, there is no dispute about posting.

<sup>2/</sup> The demand for arbitration states:

The reason for this dispute is the arbitrary appointment and disregard for seniority and ability to perform, when the Township appointed other employees over Thomas Eccles and Daniel Dolan, who should have rightfully received the appointments.

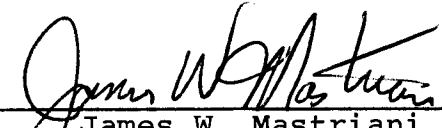
The instant petition does not oppose the submission of Eccles' claim to binding arbitration. The parties have agreed to stay arbitration of Dolan's claim pending this determination.

outside the negotiations unit. See also Teaneck Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 9 (1983). Accordingly, we must restrain binding arbitration.

ORDER

The request of the Township of Dover for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed.

DATED: Trenton, New Jersey  
November 1, 1984  
ISSUED: November 2, 1984