

P.E.R.C. NO. 2003-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2003-26

MIDDLESEX COUNTY COLLEGE
FACULTY UNION, LOCAL 1940, AFT,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of Middlesex County College for a restraint of binding arbitration of a grievance filed by the Middlesex County College Faculty Union, Local 1940, AFT. The grievance contests the College's failure to recommend an associate professor for promotion to full professor. The Commission restrains binding arbitration to the extent, if any, the AFT seeks to challenge the employer's right to set promotional criteria or to apply those criteria to the application for promotion. The request for a restraint is otherwise denied.

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.

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Appearances:

For the Petitioner, Jackson Lewis, LLP, attorneys
(James J. Gillespie, on the brief)

For the Respondent, Dwyer, Canellis & Adams, P.A.,
attorneys (Brian Miller Adams, on the brief)

DECISION

On October 21, 2002, Middlesex County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by the Middlesex County College Faculty Union, Local 1940, AFT. The grievance contests the College's failure to recommend an associate professor for promotion to full professor.

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

AFT represents full-time negotiations unit members, including instructors, assistant professors, associate professors, and professors. The parties' collective negotiations

agreement is effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration.

Article IV is entitled Conditions of Employment. Section A.(1)d sets forth the eligibility requirements for the academic rank of professor. It states:

Professor: Doctorate; plus ten (10) years collegiate teaching experience,^{4/} or twenty (20) years secondary school experience, or twenty (20) years business or industrial experience. Graduate work or business or industrial experience must be in areas relevant to teaching responsibility.

The word "Doctorate," as used herein, shall be construed to include completion of all requirements for a doctorate except the dissertation.

^{4/} Two (2) years of high school teaching or two (2) years of relevant business or industrial experience may be considered equivalent to one (1) year of college teaching.

Section B is entitled Promotion and sets forth the procedures to be followed to be considered for promotion and the process for the College's consideration of promotional applications.

James Brackenridge is an associate professor. He sought a promotion to full professor. On April 29, 2002, Dean Ronald Goldfarb notified Brackenridge that he would not recommend him for promotion because his credentials did not meet the minimum criteria as he did not hold a doctorate degree from an accredited United States educational institution.

On May 7, 2002, AFT grieved the denial of the promotion. On May 24, Goldfarb denied the grievance. He stated that the College's history and past practice is to recognize only those credentials awarded by a regionally accredited institution and that Brackenridge's credentials do not meet that standard.

A grievance meeting was held on July 23, 2002. AFT presented two issues: whether the College violated Article IV, A. and B by denying Brackenridge the promotion and whether the College acted in bad faith by not informing Brackenridge of the requirements it used as the basis for the rejection of promotion to full professor? The presidential designee denied the grievance. On August 28, AFT demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

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

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405]

The College argues that AFT is attempting to arbitrate its non-negotiable determination that Brackenridge's qualifications do not meet its minimum criteria for promotion. In addition, the College argues that Brackenridge does not hold a doctorate degree as defined by N.J.S.A. 18A:3-15.3, and that therefore this issue is preempted by State law. That statute provides:

A person shall not append to his name any letters in the same form designated by the Commission on Higher Education as entitled to the protection accorded to an academic degree unless the person has received from a duly authorized institution of higher education the degree or certificate for which the letters are registered. For the purposes of this section, a duly authorized institution of higher education means an in-State

institution licensed by the Commission on Higher Education or an out-of-State institution licensed by the appropriate state agency and regionally accredited or seeking accreditation by the appropriate accrediting body recognized by the Council on Postsecondary Education or the United States Department of Education.

AFT argues that this dispute centers on whether the College followed its announced promotional criteria or changed them without notice. It asserts that the criteria do not state that a doctorate from an institute of higher learning must be a from a regionally accredited institution.

The College replies that it had no contractual obligation to announce promotional criteria or changes.

In a similar case involving these same parties, Middlesex Cty. College, P.E.R.C. No. 2003-6, 28 NJPER 336 (¶33117 2002), we stated:

Substantive decisions of public employers to promote employees are not mandatorily negotiable or reviewable in binding arbitration. Local 195, IFPTE v. State, 88 N.J. 393 (1982); North Bergen Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976); see also Snitow v. Rutgers Univ., 103 N.J. 116 (1986). Promotional procedures, including the requirement that an employer announce in advance promotional criteria, are mandatorily negotiable. Local 195 at 417; Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 95-2, 20 NJPER 315 (¶25159 1994). Thus, if an employer had a contractual obligation to announce criteria in advance, an arbitrator could review a claim that promotions were based on unannounced criteria. The arbitrator would not be reviewing the employer's assessment of

relative qualifications, but rather whether employees were misled as to the requirements for the job. Ibid.

In this case, AFT is not challenging the employer's right to set promotional criteria, in particular the criterion that doctoral degrees be from accredited institutions. Instead, AFT argues that the employer breached the contract by either failing to follow its announced promotional criteria or by changing criteria without notice. Neither of these claims would significantly interfere with the College's right to set promotional criteria or to apply those criteria in making a promotion decision. AFT could have legally negotiated for a right to notice of the criteria upon which promotion decisions would be based. State of New Jersey, Dept. of Law and Public Safety, Div. of State Police v. State Troopers NCO Ass'n, 179 N.J. Super. 80, 91 (App. Div. 1981). It may therefore arbitrate an alleged breach of such an obligation.^{1/} The arbitrator may not, of course, second-guess the employer's right to set promotional criteria or to apply those criteria to Brackenridge's application for promotion.

As for the employer's preemption argument, the cited statute governs the use of academic degree designations after a name. It does not require that those promoted to full professor have a


^{1/} We express no opinion on whether the employer has such a contractual obligation.

doctoral degree from an accredited institution. The statute neither enhances nor diminishes the employer's prerogative to set or apply promotional criteria or the union's right to negotiate for notice of such criteria.

ORDER

The request of Middlesex County College for a restraint of binding arbitration is granted to the extent, if any, the AFT seeks to challenge the employer's right to set promotional criteria or to apply those criteria to James Brackenridge's application for promotion. The request is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003
Trenton, New Jersey
ISSUED: March 28, 2003