

P.E.R.C. NO. 2004-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SCOTCH PLAINS-FANWOOD
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-28

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Scotch Plains-Fanwood Board of Education for a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 102. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied a middle school night custodian a day shift position and instead promoted a less senior employee from another school into that position. The Commission holds, under all the circumstances of this case, that Local 102 may present to the arbitrator its argument that the contract was violated by not giving the more senior custodian a preference in considering the application and the Board may present its contractual position that it did not act arbitrarily or capriciously in appointing the less senior custodian. The Commission holds that the contract cannot be construed to give a senior employee an absolute preference for a day shift position, but it can be construed consistent with its case law to give a senior employee preference absent a demonstrated need to select a different employee.

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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INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 102,

Respondent.

Appearances:

For the Petitioner, Raymond A. Cassetta, Labor
Relations Consultant, on the brief

For the Respondent, Reinhardt & Schachter, P.C.,
attorneys (Paul Schachter, on the brief)

DECISION

On November 14, 2003, the Scotch Plains-Fanwood Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 102. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied a middle school night custodian a day shift position and instead promoted a less senior employee from another school into that position.

The parties have filed briefs and exhibits. Local 102 has submitted a certification of a union representative, Robert Sobocinski. These facts appear.

Local 102 represents head custodians, custodians, maintenance and grounds personnel, hall monitors and bus drivers. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2005. The grievance procedure ends in binding arbitration.

Article 15 is entitled Posting of Jobs. It provides, in relevant part:

1. Job vacancies shall be posted on the bulletin board in the receiving room. However, the Board reserves the right to determine the experience and qualification of each member of the unit to fill the vacant post. All internal candidates will be granted interviews for vacancies for which they formally apply.

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3. All internal candidates shall be treated on a fair basis. The Board shall not act in an arbitrary or capricious manner in the selection of a candidate. The past practice in selecting the candidate, as it existed prior to January 10, 1991, shall be continued (Preference for transfer from night to day shift).

Article 21 provides that the Board agrees to maintain existing employment conditions.

The Recognition Clause includes the titles "head custodian" and "custodian." The salary schedule contains salary guides for head custodian at secondary schools and for head custodian at elementary schools. The wage scales do not distinguish between the day and night shifts.

When a head custodian position on the day shift became available in the Park Middle School, the Board advertised the position externally and posted the position internally. Several candidates applied. One candidate was Dan O'Hara, a night head custodian at that school. The Board interviewed all internal candidates and awarded the position to Camillo Angelozzi, a custodian working on the night shift at the high school. According to the Board, Angelozzi was selected after considering criteria including prior performance as an employee, ability to work collaboratively and cooperatively in the building when staff and students are present, appearance, personality, coordination with other head custodians, ability to train employees, ability to follow through on projects, and ability to maintain inventory and preventative maintenance records.

After the previous custodian on the day shift became ill, O'Hara filled the vacant position on a temporary basis. After that custodian retired, O'Hara continued to fill that position temporarily. O'Hara had four more years of seniority than Angelozzi. According to Local 102's records, in all prior cases when a head custodian position on the day shift had become vacant, the head custodian on the night shift at that school was given the preferred day shift position. The two most recent day head custodian vacancies (prior to the one at issue) at the Park

Middle School were filled by the night head custodian at that school.

On January 13, 2003, Local 102 filed a grievance alleging that the Board violated Articles 15 and 21 by filling the vacancy with a person from another location and ignoring the "Night Head Man's request, as has been the practice throughout the district in the past." The grievance alleged that the decision also violated the "Arbitration Consent Award of 1/4/92 concerning "The Selecting of a Candidate" and "The Custodial Guidelines" developed by the Board of Education."^{1/} As a remedy, the grievance requested that O'Hara be awarded the day shift position and Angelozzi be assigned to the night shift. On March 13, the Board denied the grievance.

On March 17, 2003, Local 102 demanded arbitration. The demand listed this issue to be arbitrated: "The employer improperly filled the position of Day Head Custodian without properly considering the request of the Night Head Custodian for the position as required by the collectively negotiated agreement and prior arbitration awards." 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.

^{1/} Those documents are not in the record.

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. It states:

[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]

No statute or regulation is asserted to preempt arbitration of this grievance.

The Board argues that it has the exclusive right to compare qualifications and select the best candidate for the position. It maintains that an arbitrator cannot secondguess its determination that the applicants' qualifications are not substantially equal.

Local 102 argues that this case involves a change of hours, the contract sets forth a preference for transfer of head custodians from the night shift to day shift at the same school, and an arbitrator can determine whether the Board followed the agreement's shift selection requirements. Local 102 contends that the Board has not claimed that Angelozzi has some special skill or abilities that O'Hara lacks.

As O'Hara was already a head custodian, the grievance does not challenge the employer's prerogative to set or apply promotional criteria.^{2/} See Local 195; North Bergen Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976). The dispute is over his alleged right to bid for a change in work hours.

Provisions allowing employees to bid for work hours or specific work shifts by seniority are mandatorily negotiable,

^{2/} The effect of the decision was to grant Angelozzi, previously a night shift custodian, a promotion to a head custodian position. If Angelozzi had been rejected and had filed a grievance, then a promotional dispute would have been presented. We also note that had O'Hara been moved to the day shift, his night head custodian position would have become open.

provided management may deviate from a seniority system when necessary to accomplish a governmental policy goal. For example, seniority bidding cannot compromise management's right to assign employees with special qualifications to special tasks, determine that employees with certain abilities perform better on certain shifts, train employees, strengthen supervision, determine staffing levels, or respond to emergencies. See Somerset Cty. Sheriff, P.E.R.C. No. 2000-20, 25 NJPER 419 (¶30182 1999), recon. den. P.E.R.C. No. 2000-38, 26 NJPER 16 (¶31003 1999), aff'd 27 NJPER 356 (¶32127 App. Div. 2001); Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), aff'd 27 NJPER 357 (¶32128 App. Div. 2001). These cases also state that the interplay between seniority as a basis for choosing shift assignments and managerial needs as a basis for exceptions must be assessed case-by-case. The assessment in each case must focus on the specific wording of a contract proposal or the specific nature of an arbitration dispute given the specific facts in the record and the specific arguments presented to us. City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994).

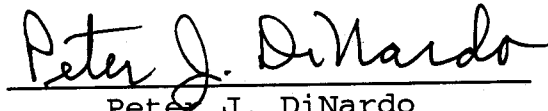
Under all the circumstances of this case, we hold that the grievance may legally be submitted to binding arbitration. Local 102 may present its contractual assertion that Article 15 was violated by not giving O'Hara a preference over Angelozzi in considering their applications and the Board may present its

contractual position that it did not act arbitrarily or capriciously in appointing Angelozzi. The contract cannot be construed to give a senior employee an absolute preference for the day shift position, but it can be construed consistent with our case law to give a senior employee a preference absent a demonstrated need to select a different employee.

ORDER

The request of the Scotch Plains-Fanwood Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Peter J. DiNardo
Acting Chairman

Acting Chairman DiNardo, Commissioners Buchanan, Katz, Mastriani, Sandman voted in favor of this decision. None opposed. Chairman Henderson abstained from consideration.

DATED: February 26, 2004
Trenton, New Jersey
ISSUED: February 27, 2004