

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2004-40

TEAMSTERS INDUSTRIAL AND ALLIED  
WORKERS UNION, AFL-CIO, LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the New Jersey Turnpike Authority for a restraint of binding arbitration of a grievance filed by Teamsters Industrial and Allied Workers Union, AFL-CIO, Local 97. The grievance contests the promotion of a less senior employee to a senior secretary position. The Commission concludes that the Authority has a managerial prerogative to determine which employee is best qualified for a permanent promotion and restrains binding arbitration to the extent Local 97 asserts that the senior employee should have been granted the promotion. The Commission denies a restraint of arbitration to the extent Local 97 asserts that the senior employee should have been granted a trial period.

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, Genova, Burns & Vernoia, attorneys  
(Debra Shannon, on the brief)

For the Respondent, Mets & Schiro, LLP, attorneys  
(James M. Mets, on the brief)

DECISION

On February 3, 2004, the New Jersey Turnpike Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of a grievance filed by Teamsters Industrial and Allied Workers Union, AFL-CIO, Local 97. The grievance contests the promotion of a less senior employee to a senior secretary position.

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

Local 97 represents all office, clerical and technical employees. The parties' collective negotiations agreement is

effective from November 1, 1999 through October 31, 2003. The grievance procedure ends in binding arbitration.

Article X is entitled Seniority. It provides, in part:

2. Continuous service is defined as the employee's continuous regular employment with the Authority (date of hire). Continuous service shall be used to determine an employee's benefits entitlement.

Seniority will be used as a factor in all cases of promotion, transfers, layoffs, recalls or demotions due to an increase or decrease in workforce. Seniority is a tie-breaker if the candidates are equally qualified.

3. Posted open classifications within the work unit that are created by an increase in the work force, termination, resignation, promotion, transfer or any other reason will be filled by the qualified employee within the affected division or section. Open positions will be posted for a period of three (3) business days within the affected work unit first and then if there is no successful bidder, the posting will be made throughout the bargaining unit for five (5) business days. . . .
4. If the Authority feels that an employee does not meet the job requirements within ninety (90) days of a promotion, the matter will first be discussed with that employee and his/her designated representative of the Union before a decision is made. The Authority will notify the employee and the Union representative, in writing, of the time and place of such discussion.
5. In cases of promotion, the probationary period may be extended for additional days and the Union and employee shall be notified of such, if the notification request is made in writing prior to the end of the initial probationary period.

6. Should the Authority feel that an employee does not meet the requirements of the job the employee was promoted to, the employee shall be returned to the prior position.

On March 19, 2003, the former New Jersey Highway Authority (now part of the New Jersey Turnpike Authority) posted a notice of a vacancy for the position of Senior Secretary in the Operations/Tolls Division. Two employees applied. One was a Tolls Division secretary who has been employed by the Authority for six years. The other was Maria Warade, a Tolls Field Coordinator who has been employed by the Authority for 18 years and has held a Senior Secretary position for 11 years.

Both candidates were interviewed. The Director of Tolls, Clifford J. Miller, chose to promote the employee with less seniority.

On April 10, 2003, Local 97 filed a grievance asserting that the promotion of the junior employee violated Article X, Section 2. On May 16, the Manager of Labor Relations denied the grievance. His report stated, in part:

Clifford J. Miller responded that you are in fact qualified to perform the duties and responsibilities of the Senior Secretary position. However, he indicated that this in and of itself does not constitute automatic entree into the position. Mr. Miller stated that the candidate selected is most familiar with the division's clerical operation because she worked in the same office as the previous incumbent. Also, he added that the selected candidate had actually filled-in intermittently for the previous incumbent for approximately a three (3)-year period.

Finally, Mr. Miller stated that the determining factor in his decision to select the most qualified candidate for the position centers around the fact that she (his selection) was most familiar with his office's day to day operation coupled with his first hand knowledge of her work ethic.

The Manager of Labor Relations added that Miller knew of the successful candidate's ability and believed that her qualifications were superior to all other candidates. He also wrote that the seniority provision did not automatically base promotions on seniority.

On May 29, 2003, Local 97 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 Authority may have.

The Authority asserts that it has a non-negotiable managerial prerogative to promote the candidate it believes is the most qualified. Local 97 responds that Article X entitles Warade, as a qualified employee, to "try out" for the promotional position, subject to the Authority's right not to retain her in that position at the end of the trial period. The Authority concedes that a union may negotiate for such a trial period, but asserts that this contract does not provide for one and that it exercised its contractual right to promote the most qualified candidate.

We agree with the Authority that it has a managerial prerogative to determine which employee is best qualified for a permanent promotion. See, e.g., Bethlehem Tp. Ed. Ass'n. v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982); Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-120, 23 NJPER 291 (¶28132 1997); New Jersey Highway Auth., P.E.R.C. No. 98-92, 24 NJPER 110 (¶29054 1998). We will therefore restrain binding arbitration to the extent Local 97 asserts that Warade should have been granted such a promotion. However, we agree with the parties that a trial period claim may be legally arbitrable so long as a senior employee is qualified for a position and the employer retains the right to choose another employee at the end of the period. See, e.g., Howell Tp. Bd. of Ed., P.E.R.C. No. 92-101, 18 NJPER 174 (¶23085 1992); City of Vineland, P.E.R.C. No. 91-57, 17 NJPER 58

(¶22025 1990). We will therefore decline to restrain binding arbitration to the extent Local 97 asserts that Warade had a contractual right to a trial period. The Authority's argument that this contract, unlike the ones in Howell and Vineland, does not call for a trial period under the circumstances presented goes to the contractual merits rather than the legal arbitrability of this dispute. We repeat that we express no opinion on the contractual merits.

ORDER

The request of the New Jersey Turnpike Authority for a restraint of binding arbitration is granted to the extent Local 97 asserts that Warade should have been granted a permanent promotion. The request is denied to the extent Local 97 asserts that Warade should have been granted a trial period.

BY ORDER OF THE COMMISSION



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Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani and Sandman voted in favor of this decision. None opposed.

DATED: April 29, 2004  
Trenton, New Jersey  
ISSUED: April 30, 2004