

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-036

EDISON FACILITIES, MAINTENANCE
AND MANAGEMENT ASSOCIATION, INC.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Edison Township Board of Education for a restraint of binding arbitration of a grievance filed by the Edison Facilities, Maintenance and Management Association, Inc. The grievance alleges that the Board violated the parties' collective negotiations agreement by failing to promote an employee to a facility manager position at a middle school and by not including the Association's president on the interview committee. The Commission concludes that public employers have a non-negotiable right to fill vacancies and make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs. Therefore, the decision to appoint the candidate with the highest ranking in skill and ability is not subject to binding arbitration. The Commission also holds that the composition of the interview committee is not subject to binding arbitration.

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.

P.E.R.C. NO. 2005-71

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Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, P.A.,
attorneys (Viola S. Lordi, of counsel; Mary H. Smith,
on the brief)

For the Respondent, New Jersey Principals and
Supervisors Association (Wayne J. Oppito, attorney, on
the brief)

DECISION

On December 13, 2004, the Edison Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Edison Facilities, Maintenance and Management Association, Inc. The grievance alleges that the Board violated the parties' collective negotiations agreement by failing to promote an employee to a facility manager position at a middle school and by not including the Association's president on the interview committee.

The parties have filed briefs and exhibits. The Board has submitted a certification from its superintendent. These facts appear.

The Association represents the maintenance, grounds, garage and school facility managers. The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

During the 2002-2003 school year, a facility manager vacancy occurred at a middle school. A facility manager at an elementary school applied for the position. A facility manager at a middle school has greater responsibilities than one at an elementary school because a middle school is larger and there are more employees. The salary for the middle school position is \$800 higher than for the elementary position. The middle school job starts and ends one-half hour earlier.

The interview committee included the building principal, the building assistant principal, and the supervisor of facilities. The Association states that in the past and by oral agreement, its president was part of the interview committee.

The interview committee recommended that a manager who had been hired on an interim basis be appointed to the position. Each committee member scored the interim manager as deserving nearly all fives on a five-point scale. He ranked highest among

all candidates in overall skill and ability. The superintendent recommended the interim manager for the promotion.

Article VII is entitled Job Security and Seniority.

Paragraph B.3. provides:

Whenever an EFMMA vacancy occurs due to retirement, termination etc., following an interview process, the position will be filled on the basis of the candidate's skill, ability, custodial/maintenance management experience, work record and periodic evaluations. District seniority may be considered if all other factors are equal.

Paragraph B.4. provides that "[p]romotional positions are defined as any position with an increase in pay."

On February 27, 2004, the Association filed a grievance alleging violations of the contract, including Article VII, Paragraph B.3. The grievance objects to the exclusion of the Association president from the interview committee and seeks an award of the vacant position to a more experienced elementary school manager.

On March 4, 2004, the supervisor of facilities denied the grievance. He stated that the position was given to the person whom the interview committee deemed to be the most qualified.

The Association moved the grievance to the next level, stating, in part:

We continue to feel that as Article VII, paragraph 3 states "Whenever a EFMMA vacancy occurs" ... That this is indeed an EFMMA vacant position and it should be filled with a EFMMA manager if one applies for such

position, providing he/she meets all other qualifications. Also we cannot comprehend how a custodian with ten (10) years district seniority and experience can be considered more qualified than a current Facility Manager with over six years Facility Management experience and twenty-five years district seniority/experience with certificates in Facility Management plus possessing a good work record.

On March 17, 2004, the business administrator/board secretary denied the grievance. He stated that the cited contract article does not state that the candidate must be an Association member.

On March 19, 2004, the Association moved the grievance to the next level. It asserted that the Board had an established past practice of filling positions based on Article VII, Paragraph 3; questioned the omission of the Association president as an agreed-upon member of the interview committee; and questioned the integrity of the interview process, asserting that the interim manager has 15 years less seniority and experience than another candidate.

On April 5, 2004, the superintendent denied the grievance. He stated that he recommended awarding the vacancy to the interim manager and that the building principal determines the makeup of an interview committee.

On May 10, 2004, the Association demanded arbitration. This petition ensued.

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

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

The Board argues that sustaining this grievance would restrict its managerial prerogatives to select the best qualified individual for a promotion and to designate the persons who will serve on interview committees. The Association maintains that the elementary school manager was not told that he was not equally qualified for the position and that the Board should have to demonstrate what procedure was used in determining that he was not at least equally qualified. The Association also argues that the right to have its president on the interview committee is a part of the procedure for screening candidates and that the committee does not have the power to hire.

Public employers have a non-negotiable right to fill vacancies and make promotions to meet the governmental policy

goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. While contract clauses may legally give preference to senior employees when all qualifications are substantially equal, the employer retains the right to determine which, if any, candidates are equally qualified. Eastampton Tp. Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983); see also Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992) (arbitrator could not second-guess employer's determination as to whether candidates' qualifications were substantially equal); Woodbridge Tp., P.E.R.C. No. 96-8, 21 NJPER 282 (¶26180 1995) (employer had prerogative to fill vacancy with candidate it decided was more qualified than most senior candidate). When an employer fills a position or a vacancy based on a comparison of applicant qualifications, that decision cannot be challenged through binding arbitration. Greenwich Tp., P.E.R.C. No. 98-20, 23 NJPER 499 (¶28241 1997); City of Atlantic City, P.E.R.C. No. 97-132, 23 NJPER 339 (¶28154 1997); City of Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16062 1985). Accordingly, the decision to appoint the candidate with the highest ranking in skill and ability is not subject to binding arbitration.

A public employer may elect to include an employee representative on an interview committee, but is not required to

negotiate over proposals requiring that employee representatives be part of the process involved in making personnel decisions. See, e.g., City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den. 88 N.J. 476 (1981) (provision delegating staffing decisions to joint safety committee not mandatorily negotiable); Franklin Tp. Bd. of Ed., P.E.R.C. No. 2005-18, 30 NJPER 408 (¶133 2004) (proposal that joint Board-Association committee determine voluntary reassignments or transfers when multiple candidates apply not mandatorily negotiable). Accordingly, the composition of the interview committee is not subject to binding arbitration.

ORDER

The request of the Edison Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Mastriani voted in favor of this decision. Commissioners Fuller and Watkins were not present. None opposed.

DATED: May 26, 2005
Trenton, New Jersey
ISSUED: May 26, 2005