P.E.R.C. NO. 2006-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF SUMMIT,

Petitioner,

-and- Docket No. SN-2006-051

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the City of Summit for a restraint of binding arbitration of grievances filed by the International Brotherhood of Teamsters, Local 469. The grievances were filed on behalf of four candidates who were not selected for a promotion to an equipment operator position. The Commission grants a restraint to the extent the grievances challenge the City's substantive decision to permanently promote an employee other than grievants and the decision to have foremen conduct interviews and make recommendations. The Commission denies a restraint over mandatorily negotiable procedural issues related to the promotion.

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, Apruzzese, McDermott, Mastro & Murphy, P.A., attorneys (Robert J. Merryman, on the brief)

For the Respondent, Timothy R. Hott, P.C., attorney on the brief

DECISION

On January 17, 2006, the City of Summit petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of four grievances filed by employees represented by the International Brotherhood of Teamsters, Local 469. The grievances were filed on behalf of four candidates who were not selected for a promotion to an equipment operator position.

The parties have filed briefs and exhibits. The City has filed the certification of its Superintendent of Public Works, Paul Calais. These facts appear.

Local 469 represents the City's non-supervisory blue collar employees. The parties' collective negotiations agreement is effective from January 1, 2005 through December 31, 2007. The grievance procedure ends in binding arbitration.

Article 14 is entitled Posting and Promotions. Section 3 provides, in part:

> The city, at its sole discretion, may determine the qualifications for promotion to a position and whether an applicant meets those qualifications. The most qualified employee, as determined by the city, who applies for a vacant position will receive a trial period. Among equally qualified applicants, preference shall be given to the applicant with the greatest seniority within the work unit where the vacancy exists, and thereafter to the most senior applicant within the bargaining unit. . . . The trial period will be for a period of not less than ten (10) working days.

On October 21, 2004, the City posted an opening in the position of Equipment Operator - Sewer/Maintenance Unit. Six candidates applied. Each candidate was interviewed by the Superintendent and the foremen for the Sewer/Maintenance Unit, Garage Unit, and Roads Unit. Each candidate was then rated in several categories including job knowledge, communication, dependability, judgment, skill development, safety, leadership and technical skills. At the conclusion of the interview and rating process, the Superintendent and the foremen determined that Salvatore Pientrantuono was the best qualified candidate.

He was recommended to the City Administrator who approved his promotion.

On January 4, 2005, four unsuccessful candidates filed grievances alleging that the City had violated Article 14 by promoting Pientrantuono. The first grievant wrote:

> I was surprised to see that I was not selected for this position because I feel that I am the most experienced and qualified candidate. I fulfilled all of the requirements posted for the Equipment Operator Position. It struck me as odd that a group of foremen were used to determine the outcome of this promotion versus promotions in the past. Could you please explain your interpretation of how this coincides with Article 14. . . ?

The second grievant wrote:

> [T]his was an improper choice due to the fact that [the promoted employee] has a very negative attitude with work ethics. I would like to know how a person can be more qualified for a position such as this when they complain about the way jobs are done and handled. This should really be looked into a little better.

The third grievant wrote:

> I'm hereby requesting a hearing on this matter, whereby [the Superintendent] can . . . state his reasoning . . . [and] present the clarification, qualifications, and justification. . . .

The fourth grievant wrote:

> I would like to have a meeting to discuss this promotion as soon as possible. I feel as if the requirements posted by the DPW were unevenly weighed. The posting has six requirements, all of which I possess. . . .

The fourth grievant also asserted that Pientrantuono had none of this grievant's knowledge and that "many of the requirements were not weighed as heavily as experience on various machines."

In denying two of the grievances, the Superintendent characterized the grievants as having detailed their disappointment in the promotion decision. He then wrote:

> This decision was based on a complete evaluation of each candidate's qualifications and past performance history.
>
> Please be advised that promotions are not subject to grievances and are at the sole discretion of the City. All applicable measures have been applied in the selection process according to article 14. . . .
>
> If I may be of assistance to you to discuss skill development that may be helpful for future promotional opportunities, please feel free to discuss with me. Additionally, I look forward to discussing your concerns in the recent promotional decision.

Local 469 demanded arbitration of the four grievances. Its demand listed this issue to be arbitrated:

> All grievances are in objection to the promotion of Sal Pientrantuono, the method the city used in making the decision as well as the arbitrary and capricious manner in which it was done.

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 mertis of the grievances or any contractual defenses the City may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable. A subject is negotiable if it is not preempted by a statute or regulation; it intimately and directly affects employee work and welfare; and a negotiated agreement would not significantly interfere with the determination of governmental policy. Local 195 adds:

> 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 alleged to preempt arbitration so we will focus on identifying and balancing the parties' interests.

Citing State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), the City asserts that it has a managerial prerogative to establish promotional qualifications and to apply them to select the best candidate for the job. Local 469 states that "the city's right to exercise, at its sole discretion, the qualifications for promotion and whether an applicant meets those qualifications is not the issue" (Letter brief at 2), and states that the grievances are instead about the procedures or methods used to determine who would be promoted. Given the parties' positions, we will restrain arbitration to the extent the grievances seek to overturn the substantive decision to permanently promote Sal Pientrantuono rather than one of the grievants.

Under State Supervisory, promotional procedures are mandatorily negotiable and legally arbitrable in general. The grievances raise and repeat a claim that management did not adequately explain its reasoning for selecting Pientrantuono and the grievances request a hearing or meeting or discussion so that a more detailed explanation can be given. Providing reasons for this decision would help employees understand the process for making promotional decisions without significantly interfering with the employer's ability to make the ultimate decision. See, e.g., Franklin Tp. Bd. of Ed., P.E.R.C. No. 90-82, 16 NJPER 181 (¶21077 1990).

We finally note that one of the grievances questions why a group of foremen was used to determine this promotion, but not previous promotions. Local 469 may arbitrate a claim seeking an explanation for that alleged change, but the City had a non-arbitrable prerogative to determine who will interview employees and recommend promotions. See, e.g., Burlington Cty. College, P.E.R.C. No. 84-84, 10 NJPER 111 (¶15058 1984). We will thus also restrain arbitration to the extent Local 469's challenge to the "method" used to make the promotional decision contests the decision to have the foremen conduct interviews and make recommendations.[1/]

ORDER

The request of the City of Summit for a restraint of binding arbitration is granted to the extent the grievances challenge the substantive decision to permanently promote Sal Pientrantuono

1/ Whether the contract requires the more detailed explanations sought by Local 469 are questions for the arbitrator, not for us.

instead of the other candidates and the decision to have foremen conduct interviews and make recommendations. The City's request is otherwise denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo and Fuller voted in favor of this decision. None opposed. Commissioner Watkins recused himself. Commissioner Katz was not present.

ISSUED: June 29, 2006

Trenton, New Jersey