

P.E.R.C. NO. 2012-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2011-042

UNION OF RUTGERS ADMINISTRATORS-
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rutgers, The State University of New Jersey for a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators- American Federation of Teachers, Local 1766, AFL-CIO. The grievance alleges that the University violated the parties' collective negotiations agreement when it did not select the grievant for a vacant position. The Commission holds that the University has a managerial prerogative to match the most qualified employee to position.

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. 2012-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY
of NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2011-042

UNION OF RUTGERS ADMINISTRATORS-
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO,

Respondent.

Appearances:

For the Petitioner, Office of the Senior Vice President
and General Counsel (Sarah A. Luke, of counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Marcia J. Tapia, of counsel)

DECISION

On November 22, 2010, Rutgers, The State University of New Jersey petitioned for a scope of negotiations determination. The University seeks a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators - American Federation of Teachers, Local 1766, AFL-CIO ("Local 1766"). The grievance alleges that the University violated the parties' collective negotiations agreement when it did not select the grievant for the position of Community Coordinator in the Department of Nutritional Sciences. We grant the University's request for a restraint.

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

Local 1766 represents a negotiations unit of the University's regularly-employed administrative employees at four campuses and all field and other locations. The parties entered into a collective negotiations agreement effective from July 1, 2007 through June 30, 2011. The contractual grievance procedure ends in binding arbitration. Article 1 is a Recognition clause, Article 25 prohibits specified forms of discrimination and Article 49 addresses University policies and procedures.

The grievant is employed as a Community Assistant in the Cooperative Extension Service at the University's Camden campus. The Cooperative Extension Service runs community outreach programs that deliver nutrition education to audiences with limited financial resources. The programs are funded by grants from the United States Department of Agriculture, the Expanded Food Nutrition Program and the Supplemental Nutrition Assistance Program ("SNAP").

In 2010, the University sought to hire a Community Coordinator for outreach programming. The Coordinator would provide educational outreach and administrative support for the Camden County project including planning and teaching SNAP education lessons, generating and maintaining paperwork to comply with program grants and marketing the program.

The grievant applied for the position. Pursuant to the parties' collective negotiations agreement, during the first five business days from the time the position was posted, the department only reviewed unit members. The grievant was the only internal candidate to apply. A search committee reviewed the applications and interviewed the grievant and other applicants. After considering the entire applicant pool, an external candidate was hired in January 2010.

The recommendation submitted by the search committee states that 44 applications were received for the position and five were interviewed. The selected candidate was recommended because she had experience working within the community and with community agencies; experience working with the target population; demonstrated ability to work on a team; teaching experience with various age groups; administrative experience; demonstrated knowledge of specific outreach programs and networking avenues; excellent communication skills; and the ability to read, write and speak in Spanish. The Association has not provided a certification and/or documentation alleging facts to support its allegation that the employee was not promoted for discriminatory reasons.

Local 1766 filed a grievance on March 9, 2010 seeking that the University stop discriminating against the grievant and follow the parties' agreement and University policy and

procedures in regards to job classifications and employment. The remedy requests all lost monies because of the University's refusal to place the grievant into the position of Community Coordinator.

On March 22, 2010, a Step 2 grievance meeting was held. On April 2, Susan Stephenson-Martin, Senior Project Administrator for Outreach Operations denied the grievance finding the Union did not provide any evidence that the department's decision to not select the grievant for the position of Community Coordinator was in violation of the parties' agreement. On April 21, a Step 3 hearing was conducted. On July 29, Jennifer E. Penley, Sr. Labor Relations Specialist issued a decision denying the grievance. On August 2, Local 1766 demanded binding 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 merits of the grievance or any contractual defenses the employer 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 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.

The University argues that its decision not to promote the grievant was an exercise of its managerial prerogative to determine how to best deploy and assign personnel based on its assessment of the relative qualifications of individual applicants. It further argues that the grievant is also challenging her non-selection in an unfair practice charge.

Local 1766 responds that it is not challenging the employer's prerogative to select the most qualified candidate for

the job, but whether the refusal to promote the grievant was in violation of the parties' agreement. It asserts whether the University discriminated against the grievant in violation of the parties' agreement is a mandatorily negotiable subject.

Local 1766 cannot challenge the substantive decision not to promote the grievant. Public employers have a managerial prerogative to match the most qualified employees to particular jobs. See NJIT, P.E.R.C. No. 97-65, 23 NJPER 26 (¶28019 1996); see also State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-61, 26 NJPER 98 (¶31040 2000), recon. den. P.E.R.C. No. 2000-80, 26 NJPER 206 (¶31083 2000) (employer had prerogative to delay or deny officer's promotion pending disciplinary investigation). In addition, arbitration is not the appropriate forum for claims that a promotion was denied for discriminatory reasons. See Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983) (claims of discrimination in promotion decisions not legally arbitrable); City of Newark, P.E.R.C. No. 2005-2, 30 NJPER 294 (¶102 2004), aff'd 31 NJPER 287 (¶112 App. Div. 2005) (barring arbitration of claim that transfers and reassignments were racially discriminatory). Accordingly, we restrain arbitration over the claims challenging the decision to deny the grievant a promotion based on the assertion that there was discrimination in selection.

ORDER

The request of Rutgers, The State University of New Jersey for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Wall voted in favor of this decision. None opposed. Commissioner Jones recused himself. Commissioner Voos was not present.

ISSUED: October 27, 2011

Trenton, New Jersey