

P.E.R.C. NO. 2014-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2013-072

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 32,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Manchester Township for a restraint of binding arbitration of a grievance filed by the Office and Professional Employees International Union, Local 32. The grievance asserts the Township violated the parties' collective negotiations agreement and past practice when it failed to promote the most senior qualified applicant to the position of Heavy Equipment/Truck Driver. The Commission holds that the selected employee was promoted on evaluation criteria and therefore the grievant's seniority does not form the basis for a legally arbitrable grievance. The Commission further holds that the Union did not submit a certification to support its past practice claim and the arbitration demand does not assert a procedural claim.

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, Secare, Ryan & Hensel, P.C.,
attorneys (Steven Secare, of counsel)

For the Respondent, Mets Schiro & McGovern, LLP,
attorneys (Kevin P. McGovern, of counsel)

DECISION

On May 16, 2013, Manchester Township filed a scope of negotiations petition. The Township seeks a restraint of binding arbitration of a grievance filed by the Office and Professional Employees International Union, Local 32. The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) and past practice when it failed to promote the most senior qualified applicant to the position of Heavy Equipment/Truck Driver.

The parties have each filed a brief and exhibits. Neither party filed a certification as required by N.J.A.C. 19:13-3.6(f).

Based on the parties' stipulations and exhibits, these facts appear.

Local 32 represents a unit of all blue collar employees employed by the Township. The Township and Local 32 are parties to a CNA effective from January 1, 2009 through December 31, 2011. The grievance procedure ends in binding arbitration.

Article 2, paragraph B. of the CNA states, in pertinent part:

Established past practices between the current Township Administration and the OPEIU are considered covered by this Agreement.

On April 4, 2012, the Township posted a notice for the position of "Heavy Equipment Operator/Truck Driver." The Township received six applications from in-house candidates. An April 24, 2012 memorandum from Township Public Works Director Stephen Stanziano to Township Business Administrator Elena Zsoldos indicates that the six candidates were evaluated by six supervisors in the following manner:

In order to fairly and objectively make a decision regarding who is most qualified and deserving of this promotion, all supervisory employees were involved in evaluating the applicants and in the decision making process. Each was to select who they felt were the top 3 candidates for the said position, with number 1 being the best score.

The grievant was ranked "3" by four of the supervisors, and was not ranked in the top three by the other two supervisors.

Another candidate, "P.L.", was ranked "1" by all six supervisors,

while another candidate, "D.D.", was ranked "2" by all six supervisors. Based on those rankings, Stanziano recommended that P.L. be promoted to the position of Heavy Equipment Operator. P.L. and D.D. had been working for the Township since 2007, while the grievant had been working for the Township since 2003.

On May 29, 2012, Local 32 filed a grievance asserting that the Township violated a past practice of promoting the most senior employee when it promoted P.L. to Heavy Equipment/Truck Operator instead of the more senior grievant. As a remedy Local 32 seeks for the grievant to be promoted to the position. In a June 4 letter denying the grievance, Stanziano disputed that there had been a past practice of giving promotions based on seniority. A grievance hearing was held on July 30, and on August 9 the Township's Hearing Officer affirmed the denial of the grievance. On December 31, 2012, Local 32 demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. We consider the negotiability of the issues raised by the dispute that are challenged in the petition. We express no opinion about the contractual merits of the grievance or any contractual defenses the Township may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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]

The Township asserts that it has a non-negotiable managerial prerogative to determine promotional criteria and select candidates for promotion. Local 32 responds that the Commission has found that promotional procedures are mandatorily negotiable, and that the procedure used by the Township here was an unannounced, unilateral departure from the past practice of promoting the most senior applicant. Citing New Jersey Institute of Technology, P.E.R.C. No. 87-23, 12 NJPER 749 (¶17281 1986), Local 32 argues that while the employer has a right to change promotional criteria, it has a corresponding obligation to notify the union/employees of such changes.

A claim that a promotional position should be awarded on the basis of seniority can be negotiated and enforced through binding arbitration only where the criteria for promotion, including the results of candidate interviews, show that the qualifications of the candidates are equal. See Township of Piscataway, P.E.R.C. No. 89-32, 14 NJPER 644 (¶19270 1988); Camden Cty., P.E.R.C. No. 88-115, 14 NJPER 350 (¶19135 1988). New Jersey Institute of Technology, P.E.R.C. No. 87-23, 12 NJPER 749 (¶17281 1986).

It is undisputed that the promoted candidate was rated first by all six supervisors who evaluated the applicants. And, both the initial grievance and the demand for arbitration clearly assert that seniority (as opposed to evaluations of the candidates) should have determined who was to be promoted. Thus, given the undisputed facts, the grievant's seniority does not form the basis for a legally arbitrable grievance.^{1/} Finally, neither the grievance nor the demand for arbitration articulate a procedural claim that the employer failed to advise Local 32 in advance of the promotional process that it was departing from its

^{1/} Local 32's uncertified assertion that prior vacancies were awarded to the most senior candidate is not determinative as the record does not show if those applicants were the most qualified. And, during the internal grievance hearing, the presiding officer credited the testimony of the Public Works Director that qualifications were the determining factor in the 50 promotions made during his 17 years as head of that department.

alleged past practice of awarding the job to the qualified applicant with the most seniority.

ORDER

The request of Manchester Township for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: January 30, 2014

Trenton, New Jersey