

P.E.R.C. NO. 2016-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Petitioner,

-and-

Docket No. SN-2016-012

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Borough's request for a restraint of binding arbitration of a grievance contesting the Borough's decision not to hire/promote the grievant to a position because he did not possess the requisite license or experience. The Commission finds that the Borough has a non-negotiable managerial prerogative to determine the qualifications required for the position, including whether a particular license is required or desirable.

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, Cleary Giacobbe Alfieri Jacobs,  
LLC, attorneys (Matthew J. Giacobbe, of counsel and on  
the brief; Andres Acebo, of counsel and on the brief)

For the Respondent, Law Offices of Timothy R. Hott,  
P.C., attorneys (Timothy R. Hott, of counsel)

DECISION

On August 24, 2015, the Borough of Madison (Borough) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters Local Union No. 469 (Local 469). The grievance alleges that the Borough violated Article XVIII of the parties' collective negotiations agreement (CNA) when it decided not to hire/promote a Borough employee to the meter reader position.

The Borough has filed briefs, exhibits, and the certification of its attorney. Local 469 filed a brief.<sup>1/</sup> These facts appear.

Local 469 represents all full-time employees employed by the Borough in the following classifications unit: Water, Sanitation, Roads and Parks and Mechanical Service Classified as Truck Drivers, Laborers, Equipment Operators, Foremen, Lead Men, Meter Readers, Customer Serviceman, Second Class Truck Driver, Mechanics and Water Utility Men, Station Operator and Building Custodian and Head Custodian, but excluding office clerical, craft and professional employees, managerial executives, policemen, firemen and supervisors. The Borough and Local 469 are parties to a CNA in effect from January 1, 2015 through December 31, 2017. The grievance procedure ends in binding arbitration.

Article XVIII of the CNA is entitled "Promotions, Demotions and Transfers" and provides, in pertinent part:

1. It is the intention of the Borough to fill job vacancies with qualified personnel from within the bargaining unit before hiring new employees.
2. Promotion is hereby defined as a move from a lower pay grade to a higher pay grade.

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<sup>1/</sup> Local 469 did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

3. Notice of all job vacancies shall be posted on the bulletin board. This notice will remain on the bulletin board for forty-eight (48) hours and will include job title, labor grade and a brief description of the job duties including qualifications and necessary skills. Only those employees who make application during the posted period will be considered for the job.
  
4. Promotions shall first be offered to the most senior qualified employee within the department where the vacancy occurs, if he/she has bid for the job. If no such employee bids then the job shall be offered to the most senior qualified employee who bids from within the bargaining unit. If no such employee exists, then the Borough may hire outside for the job.

[emphasis supplied].

On or about July 16, 2015, the Borough posted and advertised a new meter reader position. The grievant applied and interviewed for the position, but was not selected.

On August 11, 2015, Local 469 filed a grievance on behalf of the grievant, asserting that the Borough violated Article XVIII (1), (3) and (4) "in reference to the meter reading job posted 7-16-15." On August 13, the Borough Administrator denied the grievance, writing, in pertinent part, as follows:

Appointment of qualified personnel is a managerial prerogative per the advice of the Borough attorney.

Section 4 of Article XVIII provides that "Promotions shall first be offered to the most senior qualified employee (emphasis added) within the department where the vacancy occurs, if he/she has bid for the job."

During your interview, you were determined by the hiring committee not to be qualified for the position of meter reader. You have failed to secure the Commercial Driver License (CDL) required for your current Laborer position, have no experience reading water or electric meters and do not have a working knowledge of the streets and neighborhoods in Madison.

On the same day, Local 469 demanded binding arbitration due to "failure to promote [grievant] to the job of meter reader per Article XVIII of the collectively negotiated agreement." This petition ensued.

The Commission's inquiry on a scope of negotiations petition is quite narrow. We are addressing a single issue in the abstract: whether the subject matter in dispute is within the scope of collective negotiations. The merits of Local 469's claimed violation of the agreement, as well as the Borough's contractual defenses, are not in issue, because those are matters for the arbitrator to decide if the Commission determines that the question is one that may be arbitrated. 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].

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Borough argues that it considered grievant and other unit members for the position. However, it asserts that its decision not to promote the grievant was an exercise of its managerial prerogative to hire the best qualified individual for the position.

Local 469 responds by characterizing the issue in the scope petition as to whether the Borough's "refus[al] to bargain over the issue of qualifications for job duties negate[s] the grievance and arbitration procedure which encompasses 'any dispute'." It also asserts that changes in job descriptions and job functions is a mandatory subject of bargaining.

The Borough replies, reiterating its managerial prerogative to hire the best qualified individual for the position and refuting Local 469's characterization of the issue before the Commission.

In a similar case involving these same parties, we determined that a public employer has a managerial prerogative to determine the qualifications required for a job. Borough of Madison, P.E.R.C. No 2012-30, 38 NJPER 255 (¶86 2012), see also Edison Tp., P.E.R.C. 2010-39, 356 NJPER 442 (¶145 2009); Tp. Of Nutley, P.E.R.C. 2010-89, 36 NJPER 229 (¶81 2010). Included in that prerogative is the determination of whether a particular license is required or desirable for a position. Livingston Tp., P.E.R.C. No. 2016-26, 42 NJPER 228 (¶64 2015), West Windsor-Plainsboro Bd. Of Ed., P.E.R.C. No. 2000-26, 25 NJPER 436 (¶30191 1999).

According to the Borough's letter denying the grievance, the grievant was not selected for the position because he did not possess the requisite license or experience. To permit an arbitrator to consider Local 469's grievance would significantly interfere with the Borough's policy-making power to determine which qualifications are necessary to perform the meter reader position.

To the extent that Local 469 is asserting that the issue before us concerns whether job descriptions or functions were changed, it has not filed a certification to provide a basis for that claim. To the extent that Local 469 is asserting that an issue in the grievance is contractually arbitrable, that assertion is outside of our scope of negotiations jurisdiction.

Ridgefield Park. Accordingly, the Borough's scope petition is granted.

ORDER

The request of the Borough of Madison for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: March 31, 2016

Trenton, New Jersey