

P.E.R.C. NO. 2016-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-032

SAYREVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants a Board's request for a restraint of binding arbitration of a grievance contesting the Board's decision not to limit the candidate pool for a secretarial position to current full-time employees. Finding that the criteria governing promotions are not mandatorily negotiable and that the grievance seeks to second-guess the Board's managerial prerogative to determine who was most qualified for the position, the Commission restrains 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. 2016-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-032

SAYREVILLE EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, The Busch Law Group, LLC, attorneys
(Ari D. Schneider, on the brief)

For the Respondent, Bergman & Barrett, attorneys
(Michael T. Barrett, on the brief)

DECISION

On November 15, 2015, the Sayreville Board of Education (the Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Sayreville Education Association (the Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (the Agreement) when it did not limit the candidate pool for the Principal's Secretary position to current full-time employees. We grant the Board's request for a restraint of binding arbitration.

The Board has filed briefs, the certification of its Assistant Superintendent, and exhibits. The Association has filed a brief.^{1/} These facts appear.

The Association represents most personnel employed by the Board. The Board and the Association are parties to an Agreement effective from July 1, 2013 through June 30, 2016. The grievance procedure ends in binding arbitration.

Article 17B (1) of the Agreement, entitled "Post and Bid Procedures", provides in pertinent part that "[I]t is the intention of the Board to fill job vacancies within each unit sub-group (Secretarial, Cafeteria Manager, Cafeteria Workers, Paraprofessional) before hiring new employees." Article 7A (8) (e), entitled "Part Time Employees", states that "[p]art-time positions are not subject to the Post and Bid process in Article 17." Article 1F states that the term SECRETARIAL/CLERICAL EMPLOYEES refers to job titles listed in A21 through 32, which includes both Secretaries to the Building Principals and Part-time secretaries.

The Board's Assistant Superintendent certifies that on or about March 26, 2015, the Board posted the Principal's Secretary position at Wilson Elementary School as an open full-time

^{1/} The Association did not file a certification. Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall. . . [r]ecite all pertinent facts supported by certification(s) based upon personal knowledge."

position. She further certifies that the Board received interest from eight potential candidates; seven internal candidates (current employees of the Board as well as Association members) and one external candidate. All eight candidates were interviewed and rated by a hiring committee consisting of three individuals, and the candidate pool was then narrowed down to four candidates. The Assistant Superintendent certifies that both she and the Principal interviewed the final four candidates, and they both felt confident that a part-time secretary, who was an Association member working at another school in the District, was the most qualified due to her skills, demeanor and work ethic. That employee was offered the position and began working as the Principal's Secretary on July 1, 2015.

On June 1, 2015, the Association filed a grievance asserting that the Board violated the Agreement by considering candidates who were not Association members or presently employed by the District, and by hiring a part-time secretary for a full-time position. On June 8, the Superintendent denied the grievance. On November 15, the Board filed the within petition.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the

employer may have. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[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.

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

The Board argues that if it were obligated to fill the position with a current full-time employee, its managerial prerogative to select the most qualified and able candidate would have been frustrated.

The Association responds that an agreement to limit the pool of candidates for a position to current full-time employees does not infringe on the Board's managerial prerogative.^{2/}

The Board responds that it has a managerial prerogative to pick a candidate from either within or outside the pool of full-time current employees.

It is well-settled that the criteria governing promotions are not mandatorily negotiable. See, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981). Contract clauses may legally give preference to certain employees for promotions based on seniority or other designations when qualifications among the employees are equal. However, the employer retains the right to determine whether employees are in fact 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).

The dominant issue in this case is the Board's non-negotiable prerogative to meet the governmental policy goal of finding the best qualified individual to fill the Principal's

^{2/} The Association also asserts that the issues raised in the grievance are permissively negotiable. However, there are only two categories of subjects for negotiations regarding non-police public employees - - mandatorily negotiable terms and conditions of employment and non-negotiable matters of governmental policy. Ridgefield Park Ed. Ass'n.; Paterson Police PBA v. Paterson, 87 N.J. 78 (1981).

Secretary position. See, e.g., Local 195, IFPTE; Ridgefield Park Ed. Ass'n. After considering numerous candidates, the Board determined that the employee hired for the position was more qualified than the other candidates due to her skills, demeanor and work ethic. The Board's determination of who was the most qualified individual to fill the position is paramount to the Association's claim that the pool of candidates must be limited to current full-time employees. Teaneck Bd. of Educ. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); see also North Bergen Board of Educ., v. North Bergen Federation of Teachers, 141 N.J. Super., 97, 103-104 (App. Div. 1976). Thus, we must restrain arbitration since this grievance seeks to limit the candidate pool to current full-time employees and second-guess the employer's determination as to who was the most qualified for the position.

ORDER

The Sayreville Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: March 31, 2016

Trenton, New Jersey