

P.E.R.C. NO. 2017-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY VALLEY REGIONAL  
SEWERAGE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2016-068

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 125,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Sewerage Authority for a restraint of binding arbitration of a grievance contesting the selection of an employee with an S-1/C-1 license for a trunk line operator position rather than the most senior employee, finding that the Authority acted pursuant to its managerial prerogative to determine the qualifications required for a job and to fill positions based upon a comparison of employee qualifications.

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, Trimboli & Prusinowski, LLC,  
attorneys (Stephen E. Trimboli, of counsel and on the  
brief)

For the Respondent, Cohen, Leder, Montalbano &  
Connaughton, LLC, attorneys (Bruce Leder, on the brief)

DECISION

On April 18, 2016, the Rockaway Valley Regional Sewerage Authority (Authority) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 125 (Local 125). The grievance alleges that the Authority violated the parties' collective negotiations agreement (CNA) when it selected an employee with an S-1/C-1 license for a trunk line operator position rather than the most senior employee.

The Authority filed a brief, exhibits, and the certification of its Executive Director. Local 125 filed a brief.<sup>1/</sup> The Authority also filed a reply brief. These facts appear.

Local 125 represents all hourly paid Authority employees, excluding office and clerical employees, managerial executives, plant guards, salaried supervisors, professional employees, confidential employees, seasonal employees and any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees. The Authority and Local 125 were parties to a CNA in effect from January 1, 2008 through December 31, 2012. In April 2016, the parties entered into a memorandum of agreement (MOA) extending the CNA with limited changes for the period from January 1, 2013 through December 31, 2017. The grievance procedure ends in binding arbitration.

Article XIII of the CNA, entitled "Miscellaneous," Paragraph H, entitled "Job Bidding," provides in pertinent part:

1. When in the sole judgement of the Employer, a need exists to fill a vacancy, the vacancy shall be posted on the bulletin board for a period of three (3) days and shall contain the title of the job, the hourly rate of pay, and the hours of work.

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<sup>1/</sup> Local 125 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.

2. Provisions for employees who are on leave of absence or sick leave to participate in bidding on such jobs shall be made by the Employer. Unless an obvious deficiency exists, the employee with the longest service with the Employer who signifies his interest will be given the opportunity to qualify for the job on a six (6) month basis.
3. If he qualifies in the opinion of the Employer for the job for which he has bid, he shall be assigned to that job and he shall be paid at the rate of that job for all hours worked from the date on which he began his trial period.
4. If at any time during the six (6) month trial period the supervisor concludes that the employee is not qualified, he shall thereupon be regarded as having failed to qualify and shall revert to his former job.

The Executive Director certifies that the Authority operates a wastewater and sewage treatment facility. The Authority also maintains and operates off-site trunk line equipment and metering stations for the collection of wastewater and sewage and the delivery of same to the main facility for treatment. The Executive Director certifies that the Authority employs both licensed and unlicensed operators.

As of September 2015, there were no licensed blue-collar operators assigned to work on the Authority's off-site trunk line equipment and metering stations. The Executive Director determined that it was necessary to have at least one licensed trunk line operator, specifically holding an S-1 or C-1 or N-1

license, assigned to the off-site trunk line equipment metering stations and posted a corresponding vacancy announcement for the position from September 1 through October 1, 2015.<sup>2/</sup> Three Authority employees expressed interest in the position. Although the grievant was the most senior applicant, another applicant who had an S-1/C-1 license was selected for the position. The Executive Director certifies that the grievant has never held either an S-1 or C-1 license.

On December 3, 2015, Local 125 filed a grievance on behalf of the grievant claiming that he should have been selected for the truckline operator position based upon his seniority. On December 4, Local 125 demanded binding arbitration. The Authority denied the grievance on December 16. 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

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<sup>2/</sup> According to the Executive Director: "S" series licenses are licenses pertaining to public wastewater treatment; "C" series licenses are licenses pertaining to public collection systems involving wastewater and sewage; "N" series licenses are licenses pertaining to industrial wastewater. The number following the series designation indicates the level of the license, with "1" being the lowest level.

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 contractual merits of the grievance or any contractual defenses the employer may have.

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 POBA*, 154 N.J. 555, 574-575 (1998).

The Authority argues that it has a non-negotiable managerial prerogative to establish promotional/hiring criteria and to assign employees to meet the governmental policy goal of matching

the best qualified employees to particular jobs. The Authority maintains that contractual seniority provisions do not supersede these prerogatives.

Local 125 argues that under the third prong of the Local 195 balancing test, negotiability of the Authority's licensing requirement does not significantly interfere with any managerial prerogative. Specifically, Local 125 maintains that: (1) an applicant may be required to revert to his/her former position if the Authority deems him/her unqualified during the initial six-month trial period; (2) despite an applicant's seniority, he/she may be deemed ineligible if an obvious deficiency exists; (3) although the parties executed an MOA that changed the licensing requirements for new hires, the original language in the CNA controls with respect to existing employees. Accordingly, Local 125 seeks "to arbitrate the [Authority's] decision [to pass] over the Grievant for the trunk line operator position in favor of an employee with less seniority" and contends that "[a] finding as to whether the Grievant is eligible or ineligible due to an 'obvious deficiency' is readily ascertainable because the term implies a deficiency that is blatant, significant and easily recognized."

In reply, the Authority reiterates its position and argues that Local 125's reliance on cases pertaining to shift assignments is misplaced.

The Commission has consistently held that public employers have a managerial prerogative to determine the qualifications required for a job. *Madison Bor.*, P.E.R.C. No. 2016-68, 42 NJPER 497 (¶138 2016); *Madison Bor.*, P.E.R.C. No. 2012-30, 38 NJPER 255 (¶86 2011). Included in that prerogative is the determination as to 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).

Public employers also have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., *Monmouth County Sheriff's Office*, P.E.R.C. No. 2016-77, 42 NJPER 553 (¶152 2016); *Union County Sheriff's Office*, P.E.R.C. No. 2016-35, 42 NJPER 266 (¶76 2015); *County of Union and PBA Local No. 108*, P.E.R.C. No. 2013-4, 39 NJPER 83 (¶32 2012), *aff'd* 40 NJPER 453 (¶158 2014); *Local 195*. "While contract clauses may legally give preference to senior employees when all qualifications are substantially equal, the employer retains the right to determine which, if any, candidates are equally qualified." *Edison Tp. Bd. of Ed.*, P.E.R.C. No. 2015-74, 41 NJPER 495 (¶153 2015). "Where an employer fills a position or a vacancy based upon a comparison of employee qualifications, that decision is neither negotiable nor

arbitrable." South Brunswick Tp., P.E.R.C. No. 91-47, 16 NJPER 599 (¶21264 1990).

To permit an arbitrator to determine whether the grievant was eligible/ineligible due to an "obvious deficiency" (e.g., not holding an S-1 or C-1 or N-1 license) would significantly interfere with the Authority's governmental policy interest in conducting operations using employees that meet its desired minimum qualifications and its managerial prerogative to fill positions based upon a comparison of employee qualifications. Madison Bor.; Livingston Tp.; South Brunswick Tp. Accordingly, the Authority's decision to select the candidate it determined was best qualified for the trunk line operator position is not subject to binding arbitration.

ORDER

The request of the Rockaway Valley Regional Sewerage Authority 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. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself.

ISSUED: August 18, 2016

Trenton, New Jersey