

P.E.R.C. NO. 81-83

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-20

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations procedure, the Commission finds nonnegotiable and nonarbitrable a contract provision that provides for establishing a committee composed partially of members appointed by the Association to establish promotional criteria and make recommendations to the Superintendent from which the Superintendent must make appointments. The finding was based on prior Commission decisions holding that the composition of a committee to make promotional recommendations a nondelegable managerial prerogative.

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Appearances:

For the Petitioner, Herman W. Steinberg, Esq.

For the Respondent, Thomas Ziccardi, NJEA Field  
Representative

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on October 6, 1980 by the Paterson Board of Education (the "Board") seeking a determination as to whether certain matters in dispute between the Board and the Paterson Education Association (the "Association") are within the scope of collective negotiations. The dispute arose as a matter which the Association sought to process to binding arbitration through the grievance/arbitration procedure contained in the parties' collective negotiations agreement.

The Board and the Association have filed briefs concerning their respective positions, both of which were received by November 13, 1980.

The grievance in question concerns an alleged failure to comply with a section of the collective negotiations agreement between the parties entitled "Article XV - Promotional Policy." The demand for arbitration by the Association identifies the grievance as a failure to comply with promotional procedures. The procedures referred to are procedures to be followed by a promotional committee established under the contract which recommends candidates for promotion to the Superintendent of Schools and the Board. The Committee's evaluation is to be based on criteria established by the Committee. The Association requests that the Superintendent make appointments from candidates ranked in a manner provided in their agreement and not in the manner set out by the Superintendent.

The relevant sections of the Agreement provide for the establishment of a committee to review applicants for promotion, to evaluate them, and to make recommendations to the Superintendent and the Board for appointment. Five members are appointed by the Superintendent and two are appointed by the Association. Selections are to be made solely from the Committee's recommendations.

The Board requests that we permanently restrain the arbitration because allowing the Association even a minority role in establishing criteria for promotions and in the selection of individuals eligible for promotion concerns matters of educational policy and is an improper delegation of a managerial prerogative.

The Association argues that since it only appoints two of the seven members of the Committee, its minority representation could not control the judgment of the entire Committee in establishing criteria in substantive decision-making. It also argues that since provisions for establishing promotional criteria had been removed from the contract and a new promotional policy was established through bilateral negotiations and agreement, the Board should thereafter be estopped from requesting removal now.

We are convinced that the gravamen of the dispute herein is not promotional procedures, which the Board agrees are mandatorily negotiable, but rather the selection of individuals for promotion and the selection of the criteria therefor.

We have held that the composition of a committee which makes recommendations for promotion is a managerial prerogative. In re Rutgers, The State University, P.E.R.C. No. 81-57, 6 NJPER \_\_\_\_ (¶ \_\_\_\_ 1980). We stated in In re Board of Education of the City of Newark, P.E.R.C. No. 80-2, 5 NJPER 283 (¶10156 1979):

Under this committee system, the union, in effect, has a vote in the selection of candidates for the promotional pool. As the Commission discussed in In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), such provisions, by granting union members the right to assist management in making these decisions, go far beyond the procedures utilized in making a decision on promotions. The board cannot be required to negotiate the composition of a body it may choose to create to assist the executive superintendent in making promotional recommendations to the board. This is completely up to management.

(Emphasis added)

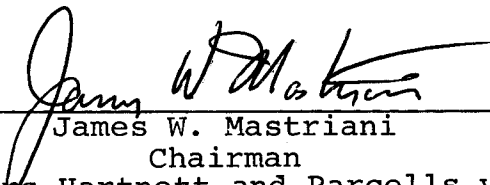
Therefore, even if the Association plays a minority role in the selection of a promotional pool, this is not a mandatorily negotiable term and condition of employment.

The designation of persons responsible for the effectuation of management decisions is a management prerogative. In re East Orange Board of Education, P.E.R.C. No. 80-154, 6 NJPER 331 (111164 1980). The Commission and the Courts have held that evaluation criteria are not negotiable. In re Teaneck Board of Education, 161 N.J. Super. 75 (App. Div. 1978). Managerial prerogatives that are not mandatorily negotiable may not proceed to binding arbitration even if they are contained in a bilaterally negotiated agreement. Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education, 78 N.J. 144 (1978).

ORDER

For the above reasons, IT IS HEREBY ORDERED that the Paterson Education Association is permanently restrained from seeking binding arbitration in this matter.

BY ORDER OF THE COMMISSION

  
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 James W. Mastriani  
 Chairman

Chairman Mastriani, Commissioners Hartnett and Parcells voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
 January 20, 1981  
 ISSUED: January 21, 1981