

P.E.R.C. NO. 96-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBRIIDGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-95-72

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 73, LOCAL 3044,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of grievances filed by two secretaries represented by American Federation of State, County, and Municipal Employees, Council 73, Local 3044. The grievances assert that the Township violated the parties' collective negotiations agreement when it appointed a less senior employee to a temporary secretarial position. The Commission concludes that the employer had a prerogative to hire someone it decided was more qualified than the grievants.

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, Genova, Burns, Trimboli & Vernioia,
attorneys (T. Sean Jackson, of counsel)

For the Respondent, Don Dileo, Staff Representative

DECISION AND ORDER

On February 2, 1995, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by two secretaries represented by American Federation of State, County, and Municipal Employees, Council 73, Local 3044. The grievances assert that the Township violated the parties' collective negotiations agreement when it appointed a less senior employee to a temporary secretarial position.

The parties have filed exhibits and briefs. These facts appear.

Local 3044 represents clerical employees and certain other employees. The parties entered into a collective negotiations agreement effective from January 1, 1993 through December 31, 1995.

Article IV prohibits discrimination based on age, political affiliation, union membership and other criteria. Article VII is entitled Seniority. It provides, in part:

In matters of promotions, lateral transfers, provisional appointments, vacancies, or position upgrades, the employee with the greatest amount of Township seniority shall be given preference.

Article VIII is entitled Job Posting and Job Vacancies. It provides, in part:

When provisional appointments are to be made, the Township shall appoint, among those eligible to take a test for the position, in accordance with Article VII and with the employee's ability to perform the job, as determined by the Business Administrator. Where three (3) or more employees have relatively equal ability then the appointment shall be made to the employee with the most Township seniority.

The grievance procedure ends in binding arbitration.

An administrative secretary in the Department of Planning and Development went on leave. On August 5, 1994, the employer notified employees it was taking applications to fill that position until she returned; 14 applications were received. The Director of Planning and Development asked a principal planner to interview the candidates and make recommendations. The planner conducted interviews and narrowed the field to six candidates. She ultimately recommended an unidentified candidate who was given the position. According to the planner, this candidate was chosen because she had the best array of secretarial skills; she could read blueprints and thus could process applications for site development permits; and

she had experience in the department and knew its terminology and workings.

Rose Wiegman is a principal clerk typist in the Department of Health and Human Services and Joan Breining is a principal clerk typist in the Sewer Utility Tax Office. They filed grievances asserting that the employer had violated Articles IV, VII, and VIII by denying their applications. Each grievant alleged that she had the most seniority and that she had the knowledge, skills, and abilities necessary for the position. According to the principal planner, however, neither Breining nor Wiegman was one of the six finalists. Breining was not chosen because she had no WordPerfect experience, minimal dictaphone skills, no familiarity with blueprints, and limited knowledge of the department's functions. Wiegman was not chosen because she had no WordPerfect experience, no stenographic dictation skills, no familiarity with blueprints, and no demonstrated knowledge of the department.

After conducting a hearing, the Business Administrator denied the grievance. He found no evidence of discrimination and he concluded that Article VIII had not been violated since the employer had a contractual right to determine qualifications before considering seniority.

Local 3044 demanded arbitration of both grievances. Its demand contested the "Denial of Promotion based on experience and age." 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 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 these grievances or any contractual defenses the employer may have.


In Woodbridge Tp., P.E.R.C. No. 94-38, 19 NJPER 570 (¶24268 1993), we restrained arbitration over a claim that this employer had violated Article VII by denying the grievant a provisional appointment as a senior word processor. We concluded that the employer had a prerogative to hire someone it decided was more qualified than the grievant and that Article VII was not mandatorily negotiable. See also Pascack Valley Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-126, 18 NJPER 361 (¶23157 1992); Franklin Tp. Bd. of Ed., P.E.R.C. No. 90-82, 16 NJPER 181 (¶21077 1990). Contrast West Milford Bd. of Ed., P.E.R.C. No. 94-41, 19 NJPER 574 (¶24271 1993) (declining to restrain arbitration of a grievance asserting that senior qualified employee had a right to trial period in custodial position). We reach the same conclusion here and add that this dispute is not legally arbitrable under Articles IV or VIII either.

See Teanack Tp. Bd. of Ed. v. Teanack Teachers Ass'n, 94 N.J. 9 (1984) (allegation of discrimination in hiring or promotion not legally arbitrable); Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992) (arbitrator cannot second-guess determination that applicants' qualifications are not substantially equal). We accordingly restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: July 28, 1995
Trenton, New Jersey
ISSUED: July 28, 1995