

P.E.R.C. NO. 86-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY

Petitioner,

-and-

Docket No. SN-85-84

LOCAL 196 IFPTE, AFL-CIO

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains and partially permits binding arbitration of a grievance which Local 196, IFPTE, AFL-CIO filed against the New Jersey Highway Authority. The grievance alleges the Authority violated the parties' contract when it required a toll collector to take a physical exam to receive a promotion. The Commission restrains binding arbitration to the extent the grievance challenges the Authority's decision to require employees to take a physical exam. The Commission permits binding arbitration to the extent the grievance challenges the alleged failure of the Authority to give adequate notice that a physical was required for promotion.

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro and
Murphy, Esqs. (Melvin L. Gelade, of Counsel)

For the Respondent, Oxfeld, Cohen and Blunda, Esqs.
(Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On April 3, 1985, the New Jersey Highway Authority ("Authority") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Authority seeks a restraint of binding arbitration of a grievance which Local 196, IFPTE, AFL-CIO ("Local 196") has filed. The grievance involves a toll collector's refusal to take a physical exam the Authority now requires for a promotion.

Both parties have filed briefs and documents. The following facts appear.

The Authority operates the Garden State Parkway. Local 196 is the majority representative of toll collectors and several other non-supervisory titles totaling approximately 1,000 employees. The Authority and Local 196 are parties to an agreement covering the

period from July 1, 1984 to June 30, 1985. The Authority is also a party to a July 1, 1984 to June 30, 1986 agreement with the Toll Supervisors of America, Local 193, IFPTE, AFL-CIO, (Local 193) the majority representative of uniformed supervisory personnel in the toll division, including the title of Assistant Plaza Supervisor.

Peter Strumolo, is a Toll Collector who, prior to August, 1984 and pursuant to Article VIII of the Authority-Local 196 contract, successfully completed an on-the-job-training program as an Assistant Plaza Supervisor.^{1/} In early August, 1984, Assistant Plaza Supervisor positions were posted and Strumolo successfully bid for one of them. His promotion was withheld after he refused to take a physical examination which the Authority required. The job descriptions for the positions of Plaza Supervisor and Assistant Plaza Supervisor appear in the Local 193 contract. The duties include carrying bags of change and automatic toll collection machines which weigh up to 90 pounds. The job description states: "Since the physical duties require bending, lifting and positioning heavy equipment, persons selected for this position must be in sound physical condition." Prior to February, 1984 the Authority selectively required only those toll collectors who had prior illnesses or physical conditions that might interfere with the duties of supervisor to undergo physicals administered by the Authority's Medical Director. The Authority then began to require all candidates for promotion to have a physical in order to avoid

^{1/} Strumolo was paid for more than 1200 hours of work as an Assistant Plaza Supervisor over a period of years.

claims that the requirement was being discriminatorily applied and to insure that all prospective supervisors were physically qualified. Strumolo alleges that Local 196 was never notified of the requirement that all applicants take a physical. He states that he had already been congratulated by the Superintendent of Tolls on his promotion and given his date to start in the new position when he was informed that a physical was required. He asserts that given his numerous hours of prior work in the position, there was no need for the authority to further verify that he was able to perform as an Assistant Plaza Supervisor. After Strumolo refused to take a physical he was denied the promotion. He filed a grievance, which alleged that the Authority violated provisions of the Local 196 agreement concerning changes and notice of changes in job descriptions, posting of promotional vacancies and past practice. The grievance was denied by the Authority and Local 196 demanded arbitration. This petition ensued.

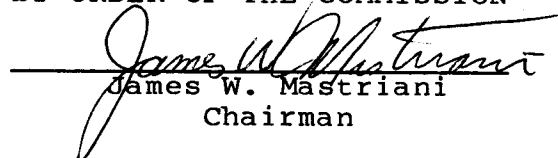
The Highway Authority is correct in asserting that it has a non-negotiable right to establish promotional criteria. In re Byram Twp. Bd. of Ed. and Byram Twp. Ed. Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977). Even though Strumolo's prior training in the position may have shown that he was able to do the work, a public employer may require its employees to periodically demonstrate their fitness for the physical tasks required of their positions. See PBA Local 174 and Tp. of Bridgewater, P.E.R.C. No. 84-63, 10 NJPER 16 (¶15010 1983), aff'd, ___ N.J. Super. ___ (App. Div. 1984). However, it is equally

well-established that advance notice of the requirements for securing a promotion is a mandatorily negotiable term and condition of employment. See Byram, supra., 152 N.J. Super. at 26 and State v. State Troopers NCO Ass'n, 179 N.J. Super. 80, 94 (App. Div. 1981). Strumolo alleges that neither he nor Local 196 was advised that the Authority had instituted a uniform requirement of a physical for all applicants for Assistant Plaza Supervisor. Accordingly, we restrain arbitration of the Authority's decision to require employees to take a physical exam. However, Local 196 may arbitrate whether the Authority failed to give applicants notice that a physical was required for promotion to Assistant Plaza Supervisor and whether such failure violated the parties' agreement.

ORDER

The request of the New Jersey Highway Authority for a restraint of binding arbitration is granted to the extent Local 196 seeks to arbitrate the Authority's decision to require employees to take a physical exam. However, Local 196 may arbitrate whether the Authority failed to give applicants notice that a physical was required for promotion to Assistant Plaza Supervisor and whether such failure violated the parties' agreement.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. However, Commissioner Graves dissented from that portion of the decision which restrained arbitration.

DATED: Trenton, New Jersey
November 18, 1985
ISSUED: November 19, 1985