

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF WILLINGBORO,

Petitioner,

-and-

Docket No. SN-82-16

WILLINGBORO EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission restrains arbitration of a decision of the Board of Education of the Township of Willingboro to promote two employees other than the grievant to the position of supervisor of General Detention. The Willingboro Education Association had contended that the Board violated the collective agreement when it failed to promote the most senior person from among otherwise equally qualified candidates. The Commission, however, allows arbitration of the Association's claims that the Board failed to announce in advance the criteria for promotion or provide the grievant written notice of his rejection.

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Appearances:

For the Petitioner, Barbour & Costa, Esqs.
(John T. Barbour, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.
(Joel S. Selikoff, of Counsel, Russell Weiss, Jr.,
of Counsel)

DECISION AND ORDER

On October 15, 1981, the Willingboro Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain the binding arbitration of a grievance which the Willingboro Education Association (the "Association") had filed. The grievance contested the Board's decision to promote two employees other than Jules Pellerin to supervisors of General Detention.^{1/}

Both parties have filed briefs. Documents accompanying their submissions provide the history of the Association's grievance. There does not appear to be a dispute as to the factual background necessary to decide the scope issue.

^{1/} In its petition, the Board requested interim relief to restrain arbitration while the Commission considered the scope of negotiations question. The Association has agreed to stay arbitration pending the Commission's decision.

On October 20, 1980, the Association initiated the instant grievance. The Association contended that the Board violated the following provisions of the collective agreement when it decided to promote two employees and not Jules Pellerin to the honorarium position of supervisor of General Detention:

- A. Promotional positions are defined as follows: Positions paying a salary differential and/or positions on the administrator-supervisory level, including but not limited to positions such as Assistant Superintendent, Administrative Assistant, Supervisor, Principal, Grade Level Chairperson, Instructional Specialist, Coordinator and Assignments to which an honorarium is attached.
- B. All vacancies in promotional positions caused by death, retirement, discharge, resignation, or by the creation of new promotional positions shall be filled pursuant to the following procedure:
 - 2. Said notice of vacancy shall clearly set forth the qualifications for the position. Standards of qualifications must be consistent with the position and may be changed from time to time, providing notice of change shall be given at least 65 days prior to the publication for said position.
 - 4. Such vacancy shall be filled on the basis of fitness for the vacant positions provided, however, that when one or more applicants request the same position, other qualifications being equal, seniority in the district shall prevail.
- G. The Board agrees that it will send each unsuccessful applicant for a promotional position a written notice indicating that their application was rejected.

Specifically, the Association contended that the Board violated its collective agreement when it failed to: (1) announce in advance the criteria for promotion; (2) promote the most senior person from otherwise equally qualified candidates; and (3) provide the grievant written notice that he had been rejected.

On October 31, 1980, the Principal of the grievant's school denied the grievance on the basis that Pellerin's qualifications were not equal to the two employees selected. In particular, the Principal noted that a panel of three interviewers, after asking all candidates a list of predetermined questions, unanimously recommended the two employees over Pellerin. One of the employees recommended had already served successfully as a supervisor of General Detention and was familiar with the school's discipline procedures; the other employee was also familiar with these procedures as a result of his years of service at that school.

On November 25, 1980, the Superintendent confirmed the denial of the grievance. He specifically stated that the qualifications of the individuals appointed exceeded those of the applicants not appointed.

On January 17, 1981, the Association filed its demand for arbitration. The Association listed the nature of the dispute as the Board's failure to promote Pellerin and asked that he be awarded the position of supervisor of General Detention or be made whole.

The Board asserts that its adoption of criteria and its decisions on promotions and assignments cannot be arbitrated.^{2/}

^{2/} The Board characterizes the filling of the position of supervisor of General Detention as an assignment, not a promotion. Under In re Hillside, P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), we do not address questions of contractual interpretation in deciding a scope of negotiations issue. Instead, we assume that a matter is contractually arbitrable. Thus, we will assume, without deciding, that the contractual clause concerning promotion applies to the position of supervisor of General Detention.

The Association concedes that the Board has the unilateral and unreviewable right to determine promotional criteria and assess an individual's qualifications, but argues that the instant grievance involves mandatorily negotiable promotional procedures, not criteria.

Our Supreme Court, the Appellate Division, and the Commission have undeviatingly affirmed that procedures to be followed in making evaluations, promotions, and related decisions are mandatorily negotiable terms and conditions of employment, while criteria governing such determinations are not. 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); Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, App. Div. Docket Nos. A-4582-78 and A-4642-78 (Feb. 17, 1981), pet. for certif. pending Supreme Court Docket No. 18,327; Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); In re Rutgers, The State University, P.E.R.C. No. 82-47, 7 NJPER ____ (¶ _____ 1981); In re New Jersey Institute of Technology, P.E.R.C. No. 82-13, 7 NJPER 461 (¶12203 1981); In re Delaware Valley Reg. Dist., P.E.R.C. No. 79-69, 5 NJPER 183 (¶10100 1979).

Whether the filling of the position of supervisor of General Detention is an assignment or promotion, to the extent that the disputed contract clauses concern procedures, such procedures do not infringe upon managerial prerogatives. The Appellate Division in the State v. State Troopers NCO Ass'n, supra at pp. 89-91, has examined procedures which are similar to those

presented in this case. The Court held that the obligation to provide notice of criteria governing promotional decisions is a mandatory subject of negotiations which may be submitted to binding arbitration. Accordingly, we hold that the portions of this grievance alleging a failure to provide notice of applicable criteria and written notice of rejection may be the subject of binding arbitration.

We now consider whether the Association may submit to arbitration its contention that the Board violated the seniority provision of the contract by selecting two employees rather than Pellerin to serve as supervisors of General Detention. We hold that it may not.

The Association concedes that under the seniority provision, the Board has a unilateral right to determine and apply the criteria governing an employee's qualifications for supervisor of General Detention. Only after the Board has determined in its sole discretion that two or more candidates for the position are equally qualified does the seniority provision come into play. So construed, the provision, argues the Association, constitutes a term and condition of employment under State v. State Supervisory Employees Ass'n, supra. at pp. 90-92.

Our review of the grievance, the demand for arbitration and the other documents submitted satisfies us that even if this argument is correct, under the facts of this particular case, we must restrain arbitration of that position of the grievance

invoking the seniority provision.^{3/} Throughout the grievance process, the Board and its representatives have uniformly taken the position that Pellerin did not possess qualifications equal to the two employees it selected. Thus, the Association necessarily seeks to challenge the Board's assessment of the relative fitness and qualifications of the candidates. Under established case law cited above, an arbitrator may not substitute his assessment of relative employee qualifications for that of a board of education. Cf. In re Atlantic Community College, P.E.R.C. No. 82-58, 7 NJPER ____ (¶ ____ 1981), p. 4, n. 2; In re Middlesex County College, P.E.R.C. No. 82-57, 7 NJPER ____ (¶ ____ 1981), pp. 1-2, n.1.^{4/}

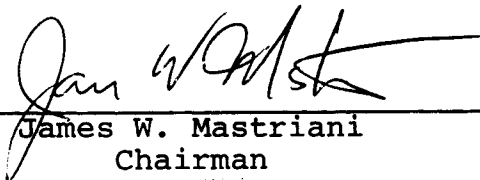
^{3/} Our review of these documents is both proper and essential to an analysis of the scope question. See, In re Elizabeth, P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979); In re West Paterson Bd. of Ed., P.E.R.C. No. 80-17, 5 NJPER 377 (¶10193 1979).

^{4/} Under these facts, we need not and do not address the arbitrability of the instant seniority provision insofar as it might apply to a case in which the Board determines that the appointed and rejected candidates in fact were otherwise equally qualified.

ORDER

The Board's request for a permanent restraint of arbitration of the seniority issue is granted. The Board's request for permanent restraint of the notice of criteria and written notice of rejection issues is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hartnett and Suskin voted in favor of the decision. Commissioner Graves dissented from that part of the order restraining arbitration. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
January 12, 1982
ISSUED: January 13, 1982