

P.E.R.C. NO. 98-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,

Petitioner,

-and-

Docket No. SN-98-19

TEAMSTERS INDUSTRIAL AND  
ALLIED WORKERS UNION, AFL-CIO,  
LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey Highway Authority for a restraint of binding arbitration of two grievances filed by employees represented by Teamsters Industrial and Allied Workers Union, AFL-CIO, Local 97. The grievances assert that the Authority violated the parties' collective negotiations agreement when it denied a promotion to two negotiations unit employees and promoted an out-of-unit employee instead. The Commission finds that the Authority has a managerial prerogative to interview candidates outside a negotiations unit and also to determine which job applicants are qualified for a position.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (James L. Plosia, Jr., of counsel)

For the Respondent, Cohen, Weiss & Simon, attorneys (Peter Zwiebach, on the brief)

DECISION

On August 25, 1997, the New Jersey Highway Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of two grievances filed by employees represented by the Teamsters Industrial and Allied Workers Union, AFL-CIO, Local 97. The grievances assert that the Authority violated the parties' collective negotiations agreement when it denied a promotion to two negotiations unit employees and promoted an out-of-unit employee instead.

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

Local 97 represents all office, clerical, and technical employees employed by the Authority. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration. Article X is entitled Seniority. Sections 3, 4, 5 and 6 provide:

3. Posted open classifications within the unit that are created by an increase in the work force, termination, resignation, promotion, transfer or any other reason will be filled by the qualified employee within the affected Division or Section. Open positions will be posted for a period of five (5) days. Open positions will then be offered to employees on a unit wide basis.

Non-unit employees who are deemed "confidential" will be eligible to bid for open positions immediately following unit members. Seniority is a tie-breaker if the candidates are equally qualified.

4. If the Authority feels that an employee does not meet the job requirements within ninety (90) working days of a promotion, the matter will first be discussed with that employee and his/her designated representative of the Union before a decision is made. The Authority will notify the employee and the Union representative, in writing, of the time and place of such discussion.

5. In cases of promotion, the probationary period may be extended for additional days and the Union and employee shall be notified of such, if the notification request is made in writing prior to the end of the initial probationary period.

6. Should the Authority feel that an employee does not meet the job requirements of the job the employee was promoted to, the employee shall be returned to the prior position.

The position of senior engineering technician -- traffic management has existed for several years in the Authority's

engineering department and has recently been upgraded from pay grade 08 to pay grade 09. The employee holding this position "facilitates the safe and efficient flow of traffic on the Garden State Parkway."

On May 23, 1997, the incumbent senior engineering technician -- David Ernst -- resigned. Four days later, Cathy Newman, an engineering coordinator, applied for the position.

On June 25, 1997, the Authority posted vacancies in several positions, including senior engineering technician -- traffic management. The listing for that position stated, in a footnote: "First consideration to in-Division Local 97 unit members."

The chief engineer and assistant chief engineer interviewed eight applicants. Newman was one person interviewed. Another was Phillip Ehlers, a procedure analyst in the maintenance department. A third was Michael Tomasula, a communication shift supervisor in the executive department. The chief engineer and assistant chief engineer decided that Tomasula was the only qualified candidate. He was appointed.

Newman and Ehlers filed grievances. Both Newman and Ehlers asserted that the Authority had violated Section 3 of Article X by filling the position with a non-unit employee. Stating that she had been told that she did not have the basic requirements to fill the position, Newman asserted that she had performed the job functions for the past month and she met the

qualifications listed in the job description. Ehlers asserted that he also met the qualifications and that he was the most senior union member and was entitled to be promoted.

The assistant chief engineer denied the grievances. With respect to Newman's grievance, she stated that the Authority was not limited to interviewing employees within the negotiations unit and that management had a prerogative to determine that she was not qualified.<sup>1/</sup> With respect to Ehlers' grievance, she repeated that management had a prerogative to determine he was not qualified.

Local 97 appealed to the Labor Relations Manager. He also denied the grievances. With respect to Newman's grievance, he rejected her claim that she should have received the position because she had 11 years of experience in the engineering department and had worked for at least 30 days (after Ernst left) performing many of the job functions. He stated that most of her engineering department experience was administrative; she lacked the five years of traffic-related experience required by the job description; and she did not know enough about "Smart Highway" systems or about "hands-on fundamentals regarding the

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<sup>1/</sup> The assistant chief engineer also filed a certification responding to Newman's assertion that she performed many of these essential functions of the job after Ernst left. According to the assistant chief engineer, the only function performed by Newman was coordinating "lane closure" information and that function took only 10% of her time and was related to her duties as engineering coordinator.

establishment of detours for special traffic events." He cited a contractual provision recognizing the Authority's right to determine its employees' qualifications and concluded that Newman had properly been found not to be qualified. With respect to Ehlers' grievance, his claim that he was qualified for the position was rejected. He was found to be deficient in these job functions: traffic surveillance and knowledge base of "Smart Highway" devices; computer console skills; and computer software experience relevant to traffic-related programs.

Local 97 demanded arbitration. 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 Authority may have.

The Authority has a managerial prerogative to interview candidates outside a negotiations unit. North Bergen Tp. Bd. of Ed v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976). It also has a prerogative to determine which job applicants

are qualified for a position. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978); Sayreville Bd. of Ed., P.E.R.C. No. 87-106, 13 NJPER 264 (¶18108 1987). Thus, an arbitrator cannot secondguess the Authority's determinations that Newman and Ehlers were not qualified for the promotional position and that Tomasula was the only qualified applicant to hold that position. Contrast City of Vineland, P.E.R.C. No. 91-57, 17 NJPER 58 (¶22025 1990) (senior qualified employees have mandatorily negotiable interest in seeking trial period in promotional position). We reject Local 97's claim that an arbitrator could determine whether the Authority had already deemed Newman qualified by having her do the functions of the job or had in fact already promoted her. Based on this record, it is clear that the Authority had not done so and had concluded that Newman lacked the qualifications necessary to do the job. We also reject Local 97's claim that an arbitrator could determine, assuming that Newman was entitled to the position, that Ehlers should then have an opportunity to bid on the position if Newman did not satisfactorily complete the probationary period. We reject the assumption underlying this argument because the Authority had a prerogative to decide Newman was not qualified. For these reasons, we restrain arbitration of both grievances.

ORDER

The request of the New Jersey Highway Authority for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

*Millicent A. Wasell*

Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998  
Trenton, New Jersey  
ISSUED: January 30, 1998