

P.E.R.C. NO. 90-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-18

FRANKLIN TOWNSHIP SCHOOL
SUPPORT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Franklin Township School Support Association to the extent the grievance asserts that a promotion should have been granted because of seniority and that the promotion was denied because of race. The Commission declines to restrain arbitration to the extent the grievance seeks an explanation as to what specific factors the Franklin Township Board of Education relied upon in selecting another candidate for promotion.

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Appearances:

For the Petitioner, Kenney, Gross & McDonough (Malachi J. Kenney, of counsel and on the brief; Frank M. McDonough, on the brief)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 12, 1989, the Franklin Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Franklin Township School Support Association. The grievance alleges that the Board violated the contract when it failed to appoint employee Robert J. Gantt as assistant head custodian.

The parties have filed briefs, reply briefs and documents. These facts appear.

The Association is the majority representative of the Board's custodial, maintenance and grounds, food service and student

transportation employees. The parties entered into a collective negotiations agreement effective from July 1, 1988 through June 30, 1990. Its grievance procedure ends in binding arbitration. Article 18 addresses vacancies and promotions. Section C provides: "All things being equal, promotions shall be awarded to the employees according to date of hire." Section F provides that Article 18 disputes will be subject to the grievance and arbitration procedure.

On November 30, 1988, the Board posted a vacancy for assistant head custodian. Robert Gantt applied and was interviewed, but a less senior employee was chosen. Having filled in as assistant head custodian and head custodian when the jobs were vacant because of absences and a retirement, Gantt had more experience in the posted position than the successful candidate. On February 24, 1989 Gantt filed a grievance. The grievance was denied at the various levels of the negotiated procedure. The Board maintained that another candidate was better qualified to serve in a supervisory position. The Association demanded arbitration and this petition ensued.

Promotional criteria are not negotiable, but promotional procedures are. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978); Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554, 558 (App. Div. 1980).

We have held that an employer has the right to determine what weight to place on seniority as a criterion for promotion. Woodbridge Tp., P.E.R.C. No. 86-46, 11 NJPER 679 (¶16234 1985); see also N. Bergen Tp. Bd. of Ed. v. N. Bergen Fed. of Teachers, 141

N.J. Super. 97 (App. Div. 1976). Where, however, equally qualified employees can fill a position, the parties may agree to fill it with the most senior employee. Easthampton Tp. Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983) Thus, in Easthampton, we found mandatorily negotiable a clause, like Article 17C, providing that, "[w]here all qualifications are equal, seniority rights shall be honored in selection of a candidate." In Trenton Bd. of Ed., P.E.R.C. No. 85-62, 11 NJPER 25 (¶16013 1984), we found a similar clause negotiable because the Board retained the right to determine qualifications:

Essentially, this clause will only come into play when a board, in its sole discretion, has weighed all other factors it would otherwise consider in the transfer process and has stated that the applicants are completely equal. Thus, for example, the Board has an absolutely free hand to weigh such factors, among others, as competence, character, attitude, and demeanor. An arbitrator, moreover, is not free to question the Board's assessment of relative qualifications. Given these limitations, we understand the instant proposal to protect the employees' mandatorily negotiable interest in being eligible for consideration for promotion or vacancies if they meet all the criteria and qualifications established by the employer. [Id. at 27; citation and note omitted]

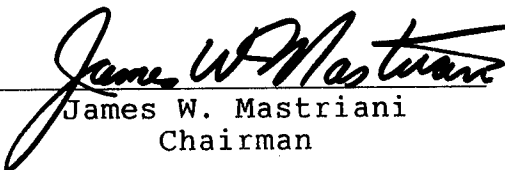
In this case, the Board has asserted in its responses to the grievance that the promoted candidate was superior to the grievant. Under the caselaw just discussed, the claim that seniority should prevail over that judgment cannot be arbitrated. See also Willingboro Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982).

The grievance documents and other related correspondence submitted by the parties establish that the grievance also raises two other issues. Gantt alleges that racial discrimination was used to deny him the promotion. That issue may not be submitted to binding arbitration. Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983). The grievance also seeks an explanation as to what specific factors the Board relied upon in selecting the other candidate. That request concerns a procedural and arbitrable issue. Whether the Board must provide such an explanation and whether its responses to date have done so are issues for arbitration. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

ORDER

Binding arbitration is restrained to the extent the grievance asserts that the promotion should have been granted Gantt because of his seniority and that the promotion was denied him because of his race.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Smith, and Johnson voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioners Reid and Ruggiero were not present.

DATED: Trenton, New Jersey
February 28, 1990
ISSUED: March 1, 1990