

P.E.R.C. NO. 97-89

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-95-43

HOSPITAL PROFESSIONALS AND  
ALLIED EMPLOYEES OF NEW JERSEY,  
LOCAL 5094,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration of a grievance filed by an employee represented by the Hospital Professionals and Allied Employees of New Jersey, Local 5094. The grievance alleges that UMDNJ violated the parties' collective negotiations agreement when it refused to permit an employee who had been laid off from his position as Principal Architect to bump into either one of two positions and when it allegedly denied that employee a meaningful interview for one of these positions and a written reason for not receiving that position. The request for a restraint is otherwise denied.

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, Peter Verniero, Attorney General  
(Anne Marie Kelly, Deputy Attorney General)

For the Respondent, Loccke & Correia, attorneys  
(Leon B. Savetsky, of counsel)

DECISION AND ORDER

On October 28, 1994, the University of Medicine and Dentistry of New Jersey petitioned for a scope of negotiations determination. UMDNJ seeks a restraint of binding arbitration of a grievance filed by an employee represented by the Hospital Professionals and Allied Employees of New Jersey, Local 5094. The union alleges that UMDNJ violated the parties' collective negotiations agreement when it refused to permit an employee who had been laid off from his position as Principal Architect to bump into either one of two positions and when it allegedly denied that employee a meaningful interview for one of these positions and a written reason for not receiving that position.

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

Local 5094 represents UMDNJ's non-supervisory professional employees. The parties entered into a collective negotiations agreement effective from July 1, 1993 through June 30, 1995. The grievance procedure ends in binding arbitration of contractual disputes.

In February 1993, UMDNJ conducted a study of its Operations Department. The study concluded that management, budgetary, and scheduling problems had been caused by a lack of focus concerning mission, goals, outcomes, and responsibilities; a lack of policies and procedures; gaps and overlaps in responsibilities; and insufficient staff with proper technical and administrative skills.

Based on this study, UMDNJ reorganized its Department of Operations. The department had been divided into three sections: (1) Facilities Planning and Design, (2) Construction Engineering, and (3) Physical Plant. Under the new structure, the three sections are (1) Operations Planning, (2) Facilities Design and Construction, and (3) Physical Plant. As part of the reorganization, the position of Principal Architect and several other positions were eliminated, and the positions of Senior Architect/Design and Construction and Space Planner and several other positions were created.

The previous position of Principal Architect had been placed in the P24 salary range and assigned the functions of developing, designing, and reviewing the design of buildings and

facilities in building construction programs. The requirements for that job were a bachelor's degree in architecture or engineering and three years of professional experience designing large and various types of buildings and preparing architectural plans, drawings, and specifications.

The new position of Space Planner has been placed in the P28 salary range and assigned the functions of evaluating and coordinating implementation of space allocation/reallocation requests for assigned property; assisting in coordinating the development/update of a facilities master plan; and conducting feasibility studies to evaluate space-related requests. The requirements for that job include a bachelor's degree in architecture and three years of relevant experience.

The new position of Senior Architect/Design and Construction has been placed in the P31 salary range and assigned such functions as providing architectural design and project management services; performing design, code and construction drawing reviews; preparing designs and specifications for in-house projects; overseeing outside construction contractors, and providing contract administration and overall project management.<sup>1/</sup> The requirements for that position include a bachelor's degree in architecture or engineering and five years of professional experience in designing large and various types of academic/clinical

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<sup>1/</sup> There had been a previous position of Senior Architect, but that position was then rated below Principal Architect.

buildings and preparing architectural plans, drawings, and specifications.

Armando Torres was hired in 1983 as a Senior Architect and later promoted to the position of Principal Architect. On March 11, 1994, Torres received a letter informing him that effective March 25, he would be laid off from his position as Principal Architect. The letter stated that he could choose to be placed on a recall list or exercise any bumping rights he might have.

Torres applied for the position of Senior Architect/Design and Construction. He was interviewed, but according to Local 5094 the interview lasted only one minute and was a sham. The letter informing him that his application had been rejected did not give a reason for that rejection.

On March 21, 1994, Torres filed a grievance claiming that his contractual rights "for fair treatment and seniority" had been violated. The grievance cited three contractual provisions. The first section (3.03) concerns promotion procedures such as announcements, interviews, and written reasons for denying an application. The second section (4.07(3)) concerns seniority and layoffs, including the right to bump into an equivalent or lower-rated job classification within the employee's geographic location. The third section (15) protects employees against racial discrimination or other forms of discrimination. The grievance asked that Torres be placed in the position of Senior Architect/Construction and Design.

UMDNJ's Manager of Labor Relations conducted a Step II hearing and issued a report denying the grievance. With respect to the claimed violation of section 3.03, he concluded that the issues of non-selection and length of interview were untimely and not grievable and that even though Torres had not been given a written reason for not receiving the Senior Architect position, management was entitled to select the candidate it deemed best. With respect to the claimed violation of section 4.07(3), he concluded that the positions of Senior Architect and Space Planner were higher-rated and higher-paid classifications than Principal Architect and therefore Torres could not bump into either one. With respect to the claimed violation of section 15, he found no supporting evidence.

Local 5094 demanded arbitration. This petition ensued. A Commission designee restrained arbitration pending this decision. I.R. No. 95-14, 21 NJPER 47 (¶26031 1994).

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.

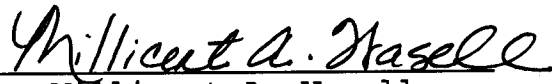
Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

A public employer has a prerogative to determine promotional criteria and to determine whether or not to promote an employee. Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993). We agree with our designee that it would have been a promotion for Torres to have received either the Space Planner position or Senior Architect position and that his substantive claims to these positions are therefore not legally arbitrable. Not only are the new positions rated higher, but the educational and/or experience requirements are greater as well. Compare N.J.A.C. 4A:8-2.1(a) (Civil Service regulations for determining titles the same or comparable to title of laid off employee); South Brunswick Tp., P.E.R.C. No. 97-29, 22 NJPER 368 (¶27193 1996). Further, the claim that a promotion has been discriminatorily denied is not legally arbitrable. Teaneck Tp. Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 9 (1983). However, promotional procedures are mandatorily negotiable. Rutgers; Department of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981). We therefore decline to restrain arbitration over the claims that Torres did not receive a meaningful interview or a written reason for not being promoted. See, e.g., Donaldson v. North Wildwood Bd. of Ed., 65 N.J. 236 (1974); Franklin Tp. Bd. of Ed., P.E.R.C. No. 90-82, 16 NJPER 181 (¶21077 1990).

ORDER

The request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration is granted to the extent the grievance contests the decision not to give Armando Torres either the position of Space Planner or the position of Senior Architect/Construction and Design. The request for a restraint is otherwise denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: January 30, 1997  
Trenton, New Jersey  
ISSUED: January 31, 1997