

P.E.R.C. NO. 96-75

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTCLAIR TOWNSHIP,

Petitioner,

-and-

Docket No. SN-96-34

FMBA LOCAL 20,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a firefighter represented by FMBA Local 20 against Montclair Township to the extent the grievance asserts that the firefighter was denied a promotion on the basis of his race. The request for restraint is denied to the extent the grievance asserts that the firefighter has a right to be told why he was not promoted. A claim that a promotional denial was discriminatorily motivated by an employee's race must be pursued in the appropriate administrative agency or court.

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, Genova, Burns, Trimboli & Vernioia,  
attorneys (James J. McGovern, III, of counsel)

For the Respondent, Michael Lennon, grievant

DECISION AND ORDER

On October 3, 1995, Montclair Township petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by a firefighter represented by FMBA Local 20. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied a promotion to the firefighter on the basis of race.

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

The Township is not a civil service jurisdiction. The FMBA represents the Township's uniformed firefighters. The parties' most recent contract, effective from January 1, 1991 through December 31, 1993, has a grievance procedure ending in binding arbitration.

Article IX of the agreement provides, in pertinent part, that "[t]he Employer shall not discriminate against any Employee because of race, creed, color, age or national origin."

Michael Lennon was one of a group of firefighters who were designated as being eligible for promotion off a list promulgated in November 1988. The list was terminated in February 1992 by the Township Manager, but was revived in May 1992 by a new manager, allegedly in response to other firefighters' grievances.<sup>1/</sup> Lennon alleges that between 1992 and 1995, when a new promotional exam was held, there were enough vacancies to reach his position on the 1988 list, but the Township failed to promote him. His arbitration demand asserts that he was not promoted because he is white and that the failure to promote him contravened Article IX. In his brief, Lennon asserts that the Township has a statutory duty to tell him why he was denied promotion.

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

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<sup>1/</sup> In a prior case involving the same employer and majority representative, Montclair Tp., P.E.R.C. No. 93-101, 19 NJPER 262 (¶24131 1993), we allowed arbitration over a grievance alleging that the Township had agreed to create a new promotional list. No particular promotion, or failure to promote, was challenged in that case and this case presents no issue concerning the continuation of a "stale" promotional list.

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 arbitrability or merits of the grievance.

Public employers have a prerogative to make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990). Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983), holds that a claim that a promotion denial was discriminatorily motivated by an employee's race must be pursued in the appropriate administrative agency or court.<sup>2/</sup> We accordingly restrain arbitration over Lennon's claim that he was denied a promotion on account of his race. To the extent the grievant asserts that he has a right to be told why he was not promoted, that procedural claim is mandatorily negotiable and legally arbitrable. Cf. Donaldson v. Bd. of Ed. of N. Wildwood, 65 N.J. 236 (1974).

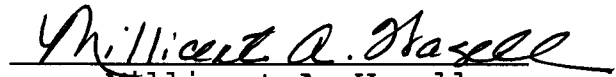
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<sup>2/</sup> Teaneck declined to follow Blue Hills Reg. Dist. Sch. Comm. v. Flight, 383 Mass. 642, 421 N.E. 2d. 755 (1981), a case the respondent relies on.

ORDER

The request of Montclair Township for a restraint of binding arbitration is granted to the extent the grievance asserts that Michael Lennon was denied a promotion on the basis of his race. The request for a restraint is denied to the extent the grievance asserts that Lennon has a right to be told why he was not promoted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Acting Chair

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

DATED: May 23, 1996  
Trenton, New Jersey  
ISSUED: May 24, 1996