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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0949-15T1

IN THE MATTER OF  
SOMERSET COUNTY SHERIFF'S  
OFFICE,

Petitioner-Respondent,

and

POLICEMEN'S BENEVOLENT  
ASSOCIATION LOCAL 177,

Respondent-Appellant.

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Submitted February 7, 2017 – Decided March 10, 2017

Before Judges Fasciale and Gilson.

On appeal from the New Jersey Public  
Employment Relations Commission, Docket No.  
SN-2015-036.

Crivelli & Barbati, L.L.C., attorneys for  
appellant (Frank M. Crivelli and Donald C.  
Barbati, on the brief).

Ruderman, Horn & Esmerado, P.C., attorneys for  
respondent (Mark S. Ruderman, of counsel;  
Nicholas DelGaudio, on the brief).

Robin T. McMahon, General Counsel, attorney  
for Public Employment Relations Commission  
(David N. Gambert, Deputy General Counsel, on  
the statement in lieu of brief).

PER CURIAM

Appellant, Policemen's Benevolent Association Local 177 (PBA), appeals from an October 29, 2015 final agency decision by the Public Employment Relations Commission (PERC) that granted the request of the Somerset County Sheriff's Office (County) to restrain arbitration of grievances. We affirm.

The PBA and the County were parties to a collective negotiations agreement (CNA) that was in effect from January 2010, through December 2014. The CNA contained a grievance procedure that culminated in binding arbitration. The CNA also contained an article, Article XIII, addressing vacancies in position. Article XIII states that "whenever there is a vacancy in one of the positions covered by [the CNA], a notice of the vacancy will be posted by the County, and the position will be filled according to the principles of seniority, provided the employee is qualified and willing to perform the work."

The record's classification supervisor position at the county jail had been vacant since 2013. In June 2014, the County announced that it was posting that position. Thereafter, the County notified all corrections sergeants regarding that opening.

The PBA filed a grievance contending that Article XIII of the CNA governed the position. The County denied that grievance, stating that the selection process referenced in the posting was

a management prerogative. The County then announced that it was interviewing two sergeants for the position and would select the best candidate. The two sergeants had been sharing the position while it was vacant and one of the sergeants, Sergeant Essig, was more senior to the other sergeant, Sergeant Covert. The PBA then filed a second grievance. Again, the County denied that grievance and the PBA filed a request with PERC to submit the grievance to a panel of arbitrators.

Meanwhile, Sergeant Covert was appointed to the records classification supervisor position. In response, the PBA filed a third grievance, which the County also denied.

On November 25, 2014, the County filed a petition with PERC for a scope of negotiations determination seeking to restrain binding arbitration of the grievances. On October 29, 2015, PERC issued a written decision granting the County's request and restrained arbitration. In its written decision, PERC explained that the County's decision to transfer or reassign the selected sergeant to the supervisor position was a "governmental policy determination and was neither mandatorily nor permissibly negotiable." PBA now appeals PERC's final agency decision.

On appeal, the PBA argues that PERC erred and the grievances should proceed to arbitration.

"The standard of review of a PERC decision concerning the scope of negotiations is 'thoroughly settled. The administrative determination will stand unless it is clearly demonstrated to be arbitrary or capricious.'" City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 568 (1998) (citing In re Hunterdon Cty. Bd. of Chosen Freeholders, 116 N.J. 322, 329 (1989)). "PERC is a specialized administrative agency designated by statute to interpret, implement, and enforce the [Employer-Employee Relations Act]," N.J.S.A. 34:13A-1 to -43 (the Act). Borough of Keyport v. Int'l Union of Operating Eng'rs, 222 N.J. 314, 351 (2015). "PERC brings expertise to the resolution of public-body labor disputes, and its 'interpretation of the [Act] is entitled to substantial deference.'" Ibid. (citations omitted). We are not bound, however, by the agency's interpretation of strictly legal issues. Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973). Applying this well-established standard of review, we discern no basis to disturb PERC's decision.

"The Legislature has vested PERC with 'the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations.'" Jersey City, supra, 154 N.J. at 567-68 (quoting N.J.S.A. 34:13A-5.4(d)). The merits of

the PBA's claimed violation of the CNA are not at issue. PERC's inquiry concerns only whether the matter in dispute is within the scope of collective negotiations and may thus be submitted to an arbitrator for a determination on the merits. Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 154 (1978).

Here, the subject of the dispute is the assignment of a sergeant to a vacant position over a more senior sergeant in contravention to Article XIII of the CNA. PERC determined that Article XIII of the CNA was not mandatorily or permissively negotiable because it placed substantial limitations on the County's policy-making powers and was therefore within the County's managerial prerogatives. If an item "places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away." Paterson Police PBA Local v. City of Paterson, 87 N.J. 78, 92-93 (1981); see also In re Local 195, IFPTE, 88 N.J. 393, 404-05 (1982) (explaining that a negotiated agreement cannot "significantly interfere with the determination of governmental policy").

The determination by PERC that Article XIII of the CNA significantly interfered with the determination of governmental policy is consistent with existing law. The Court has explained:

[T]he substantive decision "to transfer or reassign an employee is preeminently a policy determination. The power of the employer to make the policy decision would be significantly hampered by having to proceed through negotiation." However, negotiations about the procedures for implementing transfers and reassignment "will not significantly interfere with the underlying substantive policy determination."

[Jersey City, supra, 154 N.J. at 570 (quoting Local 195, supra, 88 N.J. at 417).]

The PBA argues that Article XIII of the CNA does not interfere with the County's substantive decision to transfer or reassign an employee. Instead, it argues the provision relates to the procedures for implementing such a reassignment and thus does not interfere with the underlying substantive policy determination. The PBA then argues that Article XIII states only that once both candidates are deemed "qualified," the position should be awarded according to seniority and that "all things being equal," giving the position to the more senior officer is merely implementing "an objective, procedural criterion." We disagree for three reasons.

First, Article XIII does not state that an assignment will be based on seniority if all candidates are equally qualified. Instead, the Article requires the appointment of the most senior candidate, "provided the employee is qualified and willing to perform the work."

Second, the record here does not support the assumption that the County considered the two officers equally qualified except for seniority. When the County posted the position, it explained:

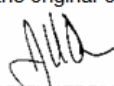
The Sergeant selected to fill this position will be the one who is deemed to be the most qualified and best suited to fill the position, based on the results of an interview to confirm qualifications, determine job knowledge relative to position, and observation of past job performance.

Finally, filling the vacancy based on seniority is not merely procedural; rather it is a substantive determination of who is the best candidate for the job. Consideration of seniority is not part of a procedure for reassignment of officers and the County's prerogative to fill a supervisor position is not subject to negotiation. See Local 195, supra, 88 N.J. at 418 (explaining that seniority is a substantive criterion for reassignment and therefore a provision regulating its use in reassignment decisions is non-negotiable).

PERC's decision to restrain binding arbitration was supported by sufficient credible evidence in the record as a whole, is not arbitrary, capricious, or unreasonable, and falls within its area of expertise.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION