

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :
ASSOCIATION :
 :
 v. : Case No. PF-C-00-141-E
 :
 COMMONWALTH OF PENNSYLVANIA :
 PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Pennsylvania State Troopers Association (Association) filed timely Exceptions with the Pennsylvania Labor Relations Board (Board) from an August 10, 2001 Proposed Decision and Order (PDO) wherein the Hearing Examiner found that the Commonwealth of Pennsylvania, Pennsylvania State Police (Employer) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA). The Association filed a Charge of Unfair Practices alleging that Employer altered its past practice when it no longer required troopers to transfer out of the specialized records and identification (R&I) unit when they were promoted to corporal. The Hearing Examiner determined that there was no violation of the PLRA because these "promotions in place" were a matter of managerial prerogative. The Association filed Exceptions with a supporting brief on August 29, 2001, and the Employer filed a timely response on September 19, 2001. After a thorough review of the Exceptions and all matters of record, the Board makes the following:

AMENDED FINDING OF FACT

3. That there are approximately thirty types of "specialized positions" that are found in both troops and bureaus of the Pennsylvania State Police. Specialized positions require more training than regular patrol positions. In troops, a specialized position is any position not identified on troop rosters as having a patrol unit function. Among those positions classified as specialized are: Records and Identification (R&I), Criminal Investigation Assessment (CIA), Troop Communication Specialist (TCS), Polygraph, Auto Theft, Fire Marshall, and Intelligence and Vehicle Accident Reconstruction (VAR). When a vacancy occurs in a specialized position, Article 37 of the parties' collective bargaining agreement controls the filling of that vacancy. Article 37 does not apply when a promotion in place is utilized. When a promotion in place occurs, the trooper who is in the position remains in that position and is promoted. By definition, a promotion in place does not involve a vacancy. The Commissioner has not granted promotions in place in all specialized positions in troops.

(N.T. 15, 16, 23, 24, 25, 31, 34, 52-55, 64; Association Exhibit 1, Association Exhibit 2).¹

DISCUSSION

The Association filed a charge of unfair labor practices on October 12, 2000 contending that the Employer violated Section 6(1)(a) and (e) of the PLRA by refusing to bargain over an alleged unilateral change in policy. The Association asserts that according to past practice only troopers below the rank of corporal were permitted to hold specialized positions in the R&I unit. Therefore, it argues that on September 2, 2000 the Employer violated the PLRA and Act 111 by unilaterally promoting a trooper to the rank of corporal while allowing him to remain in the R&I unit.

Based on testimony presented at the hearing, the Hearing Examiner found that the interests of the Employer in allowing the Commissioner to exercise his discretion to promote in place in the specialized units was to save money on training, and concluded that this interest substantially outweighed the interest of the Association. Having determined that promotions in place were a matter of managerial prerogative, the Hearing Examiner dismissed the charge.

In its Exceptions, the Association contends that the Hearing Examiner's findings regarding the interests of the Employer were not supported by substantial evidence, and that the conclusion that promotions in place were not subject to mandatory bargaining was in error. In this regard, the Association also argues that promotions in place were nothing more than selective wage increases undermining the collective bargaining process and cannot substantially outweigh the Association's interests in protecting its members from unequal treatment.² Furthermore, even if promotions in place are a management

¹ We have amended Finding of Fact No. 3 to clarify the factual evidence presented in the record. The Hearing Examiner found that "[w]hether a member will be promoted in place is up to the discretion of the Commissioner." (PDO, Finding of Fact No. 3). While an employer witness asserted that it was within the Commissioner's discretion to promote-in-place, whether the Commissioner has violated the Employer's bargaining duty in exercising discretion under these circumstances is placed at issue in this proceeding. Accordingly, we have amended this finding of fact by deleting that conclusion.

² The Association contends that the real interest of the Employer is to unilaterally increase the compensation of select employes undermining the Association's role as the exclusive bargaining representative. In support of this assertion, the Association points to testimony that the only difference following a promotion in place is the wages paid the employe. Therefore, the Association contends that a promotion in place is nothing but a matter of wages, expressly bargainable under Act 111. However, because there is no indication that the Employer deviated from the bargained for pay rates when promoting troopers to corporals, there is insufficient evidence to support that a promotion in place was strictly a matter of a unilateral increase in wages subject to bargaining under Act 111 and PLRA. See Pennsylvania Labor Relations Board v. Department of Transportation, 13 PPER ¶13188 (Proposed Decision and Order, 1982). Were the Board to adopt such a

prerogative, the Association contends that the Hearing Examiner should have found a refusal to bargain over the impact of the promotion in the R & I unit.³ The Employer maintains that promotions in place are merely a function of selecting and directing the work force.

The Association first argues that the Hearing Examiner's finding that, by promoting in place, the Employer saved money on training is not supported by substantial evidence. Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942) (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1938)). As a matter of law, the hearing examiner's findings of fact must be supported by substantial and legally competent evidence. Id.

The Hearing Examiner found that "[s]pecialized positions require more training than regular patrol positions do[,] " (Finding of Fact No. 3), and noted that the Employer would not incur the cost of training new troopers if it promoted specialized troopers in place. Further, the Hearing Examiner indicated that continued employment in the specialized positions would build expertise.

These findings are adequately supported in the record. Rose Polek, the Director of the Employment Services Assistance Division, testified that promotions in place could be utilized to save money on training new officers for the specialized positions. In addition, Trooper Allen Stewart testified extensively regarding the training he received as part of his assignment to the R&I unit. This testimony reasonably supports the finding that the Employer has a demonstrable interest in saving money on training through promoting specialized troopers in place.

Regardless, the Association contends that any evidence of the interests of the Employer is insufficient to support the conclusion that that interest substantially outweighs the interests of the Association and its members. Generally, under the PLRA and Act 111, a subject is presumptively bargainable if it bears a rational relationship to an officer's working conditions, Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998), however, that issue may be deemed a management prerogative where the employer's policy concerns substantially outweigh any impact the issue has on the employees. Delaware County Lodge No. 7, FOP v. PLRB, 722 A.2d 1118 (Pa. Cmwlth. 1998).

standard, it is arguable that selecting any candidate for promotion, with its attendant increase in wages, presents a bargaining obligation by the employer before selection of a candidate.

³ Although the Association presented testimony that it asked the Commissioner why there was a promotion in place in the R&I unit, and his alleged response was that he did not know and would look into it, there is no evidence indicating that the Association made a demand to bargaining over the impact of the promotion that was denied by the Employer. See Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000).

Promotions are rationally related to wages and working conditions since they touch directly upon compensation and usually involve pay increases or possible career advancements. See Amalgamated Transit Union, Division 1436 v. Capital Area Transit, 24 PPER ¶24113 (Final Order, 1993). However, the promotion of a particular employe is generally within management's prerogative under Act 111 since the employer's interest in the selection of qualified candidates substantially outweighs the employes' concerns in their working conditions. Fraternal Order of Police, Rose of Sharon Lodge 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 560 Pa. 712, 743 A.2d 923 (1999).

The Association asserts an interest in seeing that bargaining unit employes are treated equally in the promotional processes, and the Board has recognized that unions do have an interest in the procedural aspects of promotions. Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER ¶32083 (Final Order, 2001). We must however weigh that interest to see if it is substantially outweighed by the Employer's managerial policy concerns presented here. Plumstead Township, supra.

The Employer has a significant asserted interest in saving money by promoting in place within the R&I unit. Trooper Stewart testified regarding his extensive training when assigned to the R&I unit, including training occurring outside the Pennsylvania State Police. Ms. Polek acknowledged that saving money on this training could be a consideration in the decision to promote in place within the specialized units. As for the Employer's interests in the direction and selection of personnel, promotions in place appear to be similar to, if not, merit based promotions used to retain qualified and experienced personnel within the specialized units. The Board has recognized a substantial managerial policy concerns involved in the ultimate right of management to select, promote or retain particular employes based on its assessment of the employe's qualifications.⁴ See State Conference of Liquor Law Enforcement Lodges, supra.

Accordingly, on balance, the Employer's interest in directing its workforce by promoting in place in the specialized units to save money on training and to select and retain qualified employes through merit type promotions, substantially outweighs the Association's interests in the promotions in place. Therefore, promotions in place are not a mandatory subject of bargaining, and as such, the Hearing Examiner did not err in concluding that promotions in place were entirely within managerial prerogative.⁵

⁴ To the extent the Association is asserting an interest in overseeing the Employer's fairness in a merit selection for promotion in place, that issue is better left to the contractual grievance process, since the question presented in the context of this unfair labor practice is whether Employer has the authority to make the selection at all. See State Conference of Liquor Law Enforcement Lodges, supra.

⁵ Because we have found that promotions in place are managerial prerogative, and since the 1997 Letter of Agreement providing for discretionary promotions in place has expired, the Agreement and the alleged past practice preceding it, are irrelevant to the resolution of

After a thorough review of the Exceptions and all matters of record, the Board concludes that the Employer has not committed an unfair labor practice in violation of Sections 6(1)(a) and (e) of the PLRA, and affirms the PDO.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

HEREBY ORDERS AND DIRECTS

that the Exceptions filed to the Proposed Decision and Order in the above-captioned matter are hereby dismissed, and that the Proposed Decision and Order of August 10, 2001, as amended, is hereby affirmed and made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this eighteenth day of December, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

this matter, see South Park Township Police Association v. South Park Township, 32 PPER ¶132078 (Final Order, 2001), appeal pending, South Park Township Police Association v. PLRB, 892 C.D. 2001 (Pa. Cmwlth.), and accordingly cases such as Palmyra Area School District v. Pennsylvania Labor Relations Board, 27 PPER ¶127032 (Court of Common Pleas of Lebanon County, 1995) (regarding the status quo following a temporary agreement) are of no moment.