

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :  
ASSOCIATION :  
v. : Case No. PF-C-01-155-E  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Pennsylvania State Troopers Association (Complainant) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) on October 15, 2001 alleging that the Pennsylvania State Police (Employer) violated Act 111 of 1968 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). The Complainant alleges in its charge that the procedures for a promotion to the rank of sergeant consist of a written test, an oral examination, and a performance evaluation. Before October 1, 2001, the written test comprised 35% of the total score, the oral examination was 55%, and the performance evaluation was 10% of the total score. The Complainant alleges that on October 1, 2001 the Employer increased the weight of the oral examination to 60%, and decreased the written test to 30% of the total score. The Complainant contends that these unilateral changes to the written test and oral examination affected the procedures for a promotion to sergeant, and were subject to mandatory bargaining under Act 111 and the PLRA.

By letter dated November 28, 2001, the Secretary of the Board advised the Complainant that no complaint would be issued on the charge. The Secretary noted that the Employer's October 1, 2001 changes to the weight of the written test and oral examination were not procedural, but substantive to the selection of a qualified candidate for promotion, and therefore within management's prerogative. The Complainant filed timely exceptions to the Secretary's decision arguing that the Employer's changes to the testing for a promotion to sergeant were procedural. The Complainant also contends that a hearing is necessary for a factual inquiry to determine whether a change to the weight afforded the test is a mandatory subject of bargaining under Act 111.

Generally, the procedures for a promotion are subject to mandatory bargaining, while the selection of qualified candidates for promotion is management prerogative. Fraternal Order of Police, Rose of Sharon Lodge 3 v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 560 Pa. 712, 743 A.2d 923 (1999). The ability to select a qualified employe for a promotion includes establishing the criteria to evaluate the potential candidates. The Commonwealth Court has repeatedly sustained the Board's finding that "[i]t is within [the employer's] prerogative to establish and utilize a method to aid in selecting and directing its personnel and measuring and evaluating their performance." Delaware

County Lodge No. 27, FOP v. Pennsylvania Labor Relations Board, 722 A.2d 1118, 1121 (Pa. Cmwlth. 1998); Rose of Sharon Lodge 3, 729 A.2d at 1281. In this regard, the Board has held that

the ultimate selection of candidates for positions including evaluation of qualifications and standards for promotion remain managerial prerogative within the employer's right to select, direct and discipline personnel. Fraternal Order of Police Lodge 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999); Delaware County Lodge 27, Fraternal Order of Police v. PLRB, 722 A.2d 1118 (Pa. Cmwlth. 1998); Berks County, *supra*. Accordingly, while the employer is obliged to bargain over matters such as posting notices of job vacancies, bidding procedures, applicant testing, and matters such as employe probation terms and periods, it is ultimately the public employer's managerial right, at the conclusion of these processes, to select among candidates and retain qualified candidates based on the public employer's assessment of the qualifications of candidates.

Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER ¶132083 (Final Order, 2001).

The alleged changes to the weight afforded the written and oral portions of the promotion test do not involve the procedures used for the promotion to sergeant, but the substantive assessment of qualifications for a promotion. After October 1, 2001, there is still a written test, a performance evaluation, and an oral examination. The substantive weight afforded to any given part of the overall test is merely the Employer's establishment of the means to measure and evaluate a candidate's performance for a promotion to the rank of sergeant. The measurement and evaluation of a candidate's qualifications for promotion are not subject to bargaining. FOP State Conference of Liquor Law Enforcement Lodges, *supra*.

In a similar situation, the Board noted that the substitution of new questions for old questions within the same topical framework of existing promotional testing is not a mandatory subject of bargaining. Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 26 PPER ¶126048 (Final Order, 1995). Likewise, altering the weight afforded parts of an existing promotional examination would be within management's prerogative.<sup>1</sup>

After a thorough review of the exceptions and all matters of record, the Board concludes that the Complainant failed to allege facts supporting violation of Act 111 and the PLRA. The Employer's refusal to bargain over a change to the weight afforded different parts of the

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<sup>1</sup> We reject Complainant's argument that a hearing is required because the Board has not previously addressed the specific facts involved with this particular case. From the facts as alleged in the charge, a determination may clearly be made between the procedural and substantive aspects of the promotion to sergeant. The Board has consistently held that the substantive aspects of a promotion, such as those involved here, are within management prerogative.

promotional testing does not constitute a violation of Section 6(1)(a) or (e) of the PLRA. Accordingly, the Secretary did not err in declining to issue a complaint.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions are dismissed and the Secretary's decision not to issue a complaint is 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 nineteenth day of February, 2002. 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.