

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF FIRE :
FIGHTERS LOCAL #10 :
 :
 v. : Case Nos. PF-C-02-27-W
 : PF-C-02-46-W
CITY OF McKEESPORT :

FINAL ORDER

The City of McKeesport (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a December 19, 2002 Proposed Decision and Order (PDO) in which the hearing examiner concluded that the City violated Act 111 of 1968 (Act 111) and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). The City excepts to the hearing examiner's finding that it had committed unfair labor practices by unilaterally altering promotional processes without bargaining with the International Association of Firefighters, Local No. 10 (IAFF). The City's exceptions and supporting brief were filed January 8, 2003, and the IAFF's response was timely filed January 23, 2003.

On February 15, 2002, the IAFF filed a Charge of Unfair Labor Practices (Case No. PF-C-02-27-W) alleging that on January 9, 2002, the City's Civil Service Commission amended its Rules and Regulations to effect changes to the promotion process for City firefighters. The IAFF asserted that the City had altered mandatory subjects of bargaining by reducing the number of applicants the civil service commission forwarded to the mayor from three to two and adding psychological testing, agility testing, drug testing, and background checks to the promotion requirements. In addition, the IAFF alleged that the City unlawfully changed the composition of the oral examination board and the duration of the eligibility list. The Secretary of the Board issued a Compliant and Notice of Hearing on the charge.

On March 21, 2002, the IAFF filed a second Charge of Unfair Labor Practices (Case No. PF-C-02-46-W) incorporating the Specification of Charges set forth in Case No. PF-C-02-27-W and further alleging that on March 1, 2002 the City imposed subsequent changes, including discipline for false representations during the promotion process, and implementing an "application for advancement". The IAFF's two charges were consolidated for further proceedings.

The parties entered into a stipulation essentially limiting the issues before the hearing examiner. Specifically, the IAFF challenged the City's reduction in the number of eligible candidates for promotion that the civil service commission forwarded to the mayor for selection. The parties also agreed that the City's imposition of an oral interview, and the composition of the interview board were also before the hearing examiner.

The hearing examiner issued a PDO in which he found that (1) the use of an oral interview was a procedural change to the promotion process and therefore a mandatory subject of bargaining; (2) the composition of the

interview board was within management's prerogative; and (3) the reduction to the number of eligible candidates forwarded to the mayor from three to two was not a management prerogative. Accordingly, the hearing examiner concluded that the City violated Section 6(1)(a) and (e) of the PLRA by unilaterally implementing the oral interview process and reducing the number of candidates certified to the mayor.

In its exceptions and supporting brief, the City excepts only to issue (3) and argues that the hearing examiner erred in finding that the reduction in the number of candidates forwarded to the mayor was a procedural change to the promotion process and subject to mandatory bargaining. The unappealed decision of the hearing examiner as to issues (1) and (2) has become final and is not before the Board.

The Board has recognized that the procedural aspects of a promotion are mandatory subjects of bargaining. See AFSCME v. Berks County, 29 PPER 29044 (Final Order, 1998), aff'd sub. nom. Troutman, et. al. v. PLRB, 735 A.2d 192 (Pa. Cmwlth. 1999) (job bidding and posting requirements). However, the Board also recognizes 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. ...[I]t is ultimately the public employer's managerial right, ... to select among 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 ¶32083 at 215-216 (Final Order, 2001); see also State of New Jersey, Department of Law and Public Safety, Division of State Police v. State Troopers NCO Association of New Jersey, Inc., 430 A.2d 931 (N.F. Super, 1981); and Jersey City Board of Education, 8 NJPER ¶13144 (NJ PERC 1982) (recognizing that under a similar substantive/procedural distinction the methods of selection for a promotion are management prerogative).

The usual deliberation or winnowing process used by the employer in furtherance of selecting the most qualified person is part and parcel of the decision making and falls squarely within management's right to select an employe for promotion. Regardless of whether the employer makes preliminary choices to narrow the field of applicants or makes only one final selection among all candidates, that entire process is the substantive selection of personnel. Whether the employer accomplishes the selection in steps, rather than a single choice from among all candidates, does not interject the union as a participant in the selection during the preliminary steps, reserving only the final selection to the employer.

The City selection process here involved the civil service commission's narrowing of the number of qualified candidates in furtherance of the ultimate selection by the mayor of an employe for promotion. Prior to the City's change, after all testing and promotional requirements were met the civil service commission certified a list of the top three scores to the mayor from which the mayor selected his choice of candidate for a

promotion. The City's unilateral change has reduced the number of certified candidates to two.

In Fraternal Order of Police, Rose of Sharon Lodge No. 3 v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa. Cmwlth. 1999) a similar change to the applicant pool was held to be a matter of management prerogative. In Rose of Sharon Lodge No. 3, the employer increased the number of available candidates by decreasing the service time for a promotion, and here, similarly, the City has decreased the number of available candidates by selecting the two highest scores on an examination. As noted in Rose of Sharon Lodge No. 3, such a change to the requirements for a promotion is management prerogative.¹

Review of the changes that occurred here reveals that only the top two, rather than top three candidates for promotion were forwarded to the mayor. The City's use of the civil service commission's certification of only a limited number of candidates is part of its decision making process involved in selecting the most qualified candidate. The Board recognizes that an employer's decision-making involved with selecting an employe for promotion is within management's prerogative. See FOP, State Conference of Liquor Law Enforcement Lodges, supra. As such, the City's use of, or changes to this winnowing process to ultimately select the best candidate for promotion is within its inherent managerial right.

Because the methods used by the City in selecting from the eligible candidates is not a mandatory subject of bargaining, the City did not violate Act 111 and Section 6(1)(a) and (e) of the PLRA by unilaterally altering that selection process without bargaining. Accordingly, the City's exceptions will be sustained and the PDO amended accordingly.

CONCLUSIONS OF LAW

That CONCLUSIONS number 1 through 4, as set forth in the Proposed Decision and Order, are hereby affirmed and incorporated herein by reference.

5. The City has not committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA by unilaterally altering the number of candidates who may be selected for promotion by the mayor.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the City's exception to the Proposed Decision and Order of December 19, 2002 is sustained, and that paragraph 3(a) of the Order, is hereby vacated and set aside, and

¹ Furthermore, as recently held by the Commonwealth Court, an employer's choice of how it weighs and utilizes test scores for a promotion is a matter within management's prerogative under Act 111. Pennsylvania State Troopers Association v. Pennsylvania Labor Relations Board, 809 A.2d 422 (Pa. Cmwlth. 2002).

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in addition to the requirements of paragraphs 3(b) and (c) of the Order on page 13 of the PDO, the City shall take the following affirmative action which the Board finds necessary to effectuate the policies of the PLRA:

(d) Rescind the amendments to the civil service rules and regulations dealing with oral interviews for promotion.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, Member, this eighteenth day of February 2003. 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.

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AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violation of sections 6(1)(a) and 6(1)(e) of the PLRA, that it has rescinded the amendments to the civil service rules and regulations dealing with oral interviews for promotion, that it has posted the final order and proposed decision and order as directed and that it has served a copy of this affidavit on the Union.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public