

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :  
ASSOCIATION :  
 :  
 v. : Case No. PF-C-01-156-E  
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 COMMONWEALTH OF PENNSYLVANIA :  
 PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Pennsylvania State Troopers Association (PSTA) filed timely exceptions and a memorandum on January 8, 2003 with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued December 19, 2002. In the PDO the hearing examiner concluded that the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth) did not violate Act 111 of 1968 (Act 111) and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by adding an oral component to the test for promotion to corporal, assigning a weight to that component, and thereby decreasing the weight of the existing written component. The Commonwealth's brief in response was filed January 29, 2003.

The hearing examiner dismissed PSTA's claim regarding the change to the weight afforded the different sections of the promotional examination based on the Board's holding in Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 33 PPER ¶133056 (Final Order, 2002), aff'd sub nom, Pennsylvania State Troopers Association v. Pennsylvania Labor Relations Board, 809 A.2d 422 (Pa. Cmwlth. 2002), that the Commonwealth's change to the weight of the oral and written components of the examination for promotion to sergeant was management prerogative. With regard to the implementation of the oral examination for the promotion to corporal, the hearing examiner determined "(1) that decision-making and communication skills are essential to performance of the responsibilities of the position of corporal; and (2) that the Commonwealth added the oral component to the corporal promotional test to determine whether the candidates possessed these necessary skills (FF5, 14)." (PDO at 7). In his thorough analysis of this issue, the hearing examiner concluded that "because the oral test was implemented to assess job qualifications, the Commonwealth's managerial interest in the matter substantially outweighs any impact on the employees." (PDO at 7). Accordingly, the hearing examiner determined that the Commonwealth had not committed an unfair labor practice by unilaterally introducing the oral examination to the testing for promotion to corporal.

In its exceptions, PSTA argues that the hearing examiner erred in determining that the Commonwealth's interests in implementing the oral examination substantially outweighed the interests of the employees. PSTA contends that the addition of the oral component for the promotion to corporal was merely a procedural step in the process, and thus was subject to bargaining. In furtherance of the alleged procedural nature of the oral examination, PSTA claims that the knowledge, skills, and

abilities tested in 1999 by a written exam were essentially the same as those tested through an oral examination after October 9, 2001.<sup>1</sup>

The Board has addressed the negotiability of various aspects of employe promotions on several occasions. Initially, it is noted that promotional opportunity is a condition of employment, Uniontown Area School District v. Pennsylvania Labor Relations Board, 557 Pa. 180, 732 A.2d 607 (1999), although hire and direction of employes, including decisions regarding which employes to promote, remain a matter of management prerogative. The Board and the courts have determined that promotional opportunity for bargaining unit employes includes such matters as notice to employes of the promotional opportunities (posting of job openings and opportunities) and the job bidding procedures and requirements for interested employes. See AFSCME v. Berks County, 29 PPER 29044 (Final Order, 1998), aff'd sub. nom. Troutman, et. al. v. Pennsylvania Labor Relations Board, 735 A.2d 192 (Pa. Cmwlth. 1999); See also, Pennsylvania Labor Relations Board v. East Allegheny School District, 13 PPER ¶13060 (Proposed Decision and Order 1982) (holding that posting requirements were a mandatory subject of bargaining).

However, "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 State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER ¶132083 at 215 (Final Order, 2001); see also, Fraternal Order of Police, Rose of Sharon Lodge No. 3 v. City of Sharon, 29 PPER ¶29147 (Final Order, 1998), aff'd sub nom, Fraternal Order of Police, Rose of Sharon Lodge No. 3 v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa. Cmwlth. 1999). In this regard, the Commonwealth Court has recognized that "[i]t is within [an employer's] prerogative to establish and utilize a method to aid in selecting and directing its personnel and in measuring and evaluating their performance. The ability to formulate policies in these areas is essential for the proper and efficient functioning of a police force." Delaware County Lodge No. 27, Fraternal Order of Police v. Pennsylvania Labor Relations Board, 722 A.2d 1118 (Pa. Cmwlth. 1998); City of Sharon v. Rose of Sharon Lodge, 315 A.2d 355 (Pa. Cmwlth. 1973). Consistent with this precedent, the Board has recently noted that an employer's establishment of a means to measure and evaluate a candidate's qualification for a promotion is paramount to the selection and direction of personnel and therefore is not subject to bargaining. Pennsylvania State Troopers Association, 33 PPER at 118, aff'd 809 A.2d at 424.<sup>2</sup>

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<sup>1</sup> In its exceptions, PSTA also asserts that the hearing examiner failed to make certain findings of fact. Generally, the hearing examiner need only set forth the findings that are necessary to support the conclusion reached. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). Upon review of the PDO and PSTA's proposed findings, the Board finds that the hearing examiner has set forth all finding necessary to support the conclusions needed to decide this matter.

<sup>2</sup> In addressing a similar issue under the New Jersey labor laws, the New Jersey Public Employee Relations Commission noted that

Here, PSTA expressly concedes in its exceptions and memorandum that, as a matter of law, oral communication skills are within the knowledge, skills and abilities required of a corporal and that it is within management's prerogative to establish those qualifications. However, PSTA then balks at the notion that it is within management's right to administer an oral test as a legitimate part of management's conceded right to assess oral communication skills. PSTA claims that the employer must bargain with the union before administering an oral test and, without agreement from PSTA, must continue to assess oral communication skills purely through a written examination. Common sense dictates that if it is managerial prerogative to assess oral communication skills required for a position, administering an oral test to assess those skills is, of necessity, a managerial prerogative. Accordingly, the utilization of an oral examination to assess oral communication skills necessary for a promotion to corporal is more rationally related to the employer's interest in selecting and directing personnel, and therefore a matter within management's prerogative. See Pennsylvania State Troopers Association, 809 A.2d at 425; Rose of Sharon Lodge No. 3, 729 A.2d at 1282; Delaware County Lodge No. 27, 722 A.2d at 1121; and City of Sharon, 315 A.2d at 358.

In addition, PSTA argues at the conclusion of its memorandum in support of the exceptions that the decision to initiate an oral component to the test is "procedural" and thus negotiable because the 1999 promotion test was not shown by the Commonwealth to have "deficiencies". While PSTA does not explain how and by whom such deficiencies are to be assessed to PSTA's satisfaction, we find that such an exercise plays no part in resolving this unfair labor practice charge. There is no burden on the Commonwealth to prove, or justify, how it chooses to exercise a matter of management prerogative. As such, the Board will not delve into the wisdom of the Commonwealth's chosen means of assessing those qualifications. Reading Fraternal Order of Police Lodge #9 v. City of Reading, 30 PPER ¶130121 (Final Order, 1999). It is sufficient for our purposes that the Commonwealth has determined that an oral test is an appropriate, or better, means to assess oral communication skills and abilities. Our inquiry should go no further. Once the Board has properly resolved the question of whether a matter in dispute is a managerial prerogative and not a mandatory subject of bargaining, it is not the Board's function to second guess managerial decision-making in the guise of resolving an unfair labor practice charge.

Accordingly, after a thorough review of the exceptions and all matters of record, the hearing examiner did not err in concluding that the Commonwealth had not violated Act 111 and Section 6(1)(a) and (e) of the PLRA.

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whether a written examination shall be given involves a managerial function relating to the establishment of criteria and that such a determination, together with the type, administration, and scoring of the examination, is a necessary extension of managerial decision making.

Jersey City Board of Education, 8 NJPER ¶13144 (PERC 1982).

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 exceptions filed by the Pennsylvania State Troopers Association are dismissed, and the Proposed Decision and Order of December 19, 2002 is hereby 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 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.