

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. CO-82-102-103

RAMSEY PBA LOCAL NO. 155,  
Inc.,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in the absence of Exceptions, dismisses a Complaint based on an unfair practice charge filed by the Ramsey PBA Local No. 155, Inc. against the Borough of Ramsey. The charge had alleged that the Borough had refused to negotiate concerning promotional procedures. The Chairman agreed with the Hearing Examiner that the PBA failed to prove this charge by a preponderance of the evidence.

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INC.,

Charging Party.

Appearances:

For the Respondent, James F. Brennan, Esquire,  
Borough Attorney

For the Charging Party, Robert B. Blackman, Esquire

DECISION AND ORDER

On November 6, 1981, Ramsey PBA Local No. 155 ("PBA") filed an unfair practice charge against the Borough of Ramsey ("Borough") with the Public Employment Relations Commission. The PBA alleged that the Borough violated subsection 5.4(a)(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to negotiate concerning promotional criteria.<sup>2/</sup>

On November 12, 1981, the PBA filed an amended charge.

<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

<sup>2/</sup> Specifically, the PBA objected to the Borough's assignment of the following percentages to the factors which would be considered in promotions: 40% for the written examination, 30% for the oral examination, and 30% to be allocated to merit evaluation and seniority.

It alleged that the Borough violated subsection 5.4(a)(5) when it refused to negotiate concerning 11 specific promotional procedures.<sup>3/</sup>

On April 16, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On April 20, 1982, the Borough answered the Complaint and denied the PBA's allegations.

On July 12, 1982, two days prior to the hearing, the Borough filed a motion for summary judgment and a request for stay of proceedings. On the same date, the Chairman of the Commission, pursuant to N.J.A.C. 19:14-4.8(a), referred the Borough's motion to Hearing Examiner Arnold H. Zudick. The Hearing Examiner granted the Borough's request to stay the hearings. On July 21, 1982, the PBA submitted a brief in opposition to the Borough's motion.

On September 8, 1982, the Hearing Examiner issued his decision on the Borough's motion. In re Borough of Ramsey, H.E.

3/ The PBA listed the following items:

1. Location, date and time said test will be given;
2. Amount of time the officers would have to study for said tests;
3. Exactly what materials are to be studied for the test and a requirement of the Borough of Ramsey to supply said materials;
4. When, where and how the results of said tests will be posted including immediate posting of each separate facet of said test;
5. Creation of a job description for which said test is to be offered;
6. How much time prior to the taking of the test will the officer have off as certain officers were required to take the most recent tests without any sleep whatsoever;
7. Nature of the marking system to be used to grade the tests;
8. Nature of questions to be asked and whether it will be a multiple choice or essay test;
9. The agency who administers the test;
10. The number of openings for positions available;
11. Setting forth the qualifications for that position."

No. 83-8, 8 NJPER 542 (¶13249 1982). He dismissed the original charge and items 5, 7, 8, 9, 10, and 11 of the amended charge because he found they concerned promotional criteria which were non-negotiable under State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981). He ordered that a hearing be conducted with respect to the PBA's allegation that the Borough refused to negotiate over promotional procedures, specifically including items 1, 2, 3, 4, and 6 of the amended charge.

On September 8, 1982, the Hearing Examiner advised the PBA of its rights to request special permission to appeal pursuant to N.J.A.C. 19:14-4.6(b) and 19:14-4.8(c). The PBA did not file a request. Consequently, the Hearing Examiner's decision dismissing the original charge and portions of the amended charge is not before the Commission now.

On November 5, 1982 and April 5, 1983, the Hearing Examiner conducted a hearing. The parties examined witnesses, presented evidence, and argued orally. Neither party submitted a post-hearing brief.

On September 7, 1983, the Hearing Examiner issued his report and recommended decision. In re Borough of Ramsey, H.E. No. 84-16, 9 NJPER \_\_\_\_ (¶\_\_\_\_ 1983). He recommended dismissal of the Complaint, finding that the PBA had failed to prove that it attempted to negotiate over procedural matters.


On September 7, 1983, the Hearing Examiner informed the parties by letter that exceptions could be filed within 10 days of the date of service of his report pursuant to N.J.A.C. 19:14-7.3. Neither party filed exceptions or requested an extension of

time.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this case. I have reviewed the record. The Hearing Examiner's findings of fact are accurate and I adopt and incorporate them here. Based on these facts, and in the absence of exceptions, I agree with the Hearing Examiner that the PBA has failed to meet its burden of proving, by a preponderance of the evidence, that the Borough refused to negotiate over promotional procedures.

ORDER

The Complaint is dismissed.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
October 25, 1983

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. CO-82-102-103

RAMSEY PBA LOCAL NO. 155, INC.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Borough did not violate the New Jersey Employer-Employee Relations Act concerning the establishment of procedures for a promotional examination. The Charging Party failed to prove by a preponderance of the evidence that it requested negotiations or actually attempted to negotiate over procedural matters.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Respondent

James F. Brennan, Esq., Borough Attorney

For the Charging Party, Robert B. Blackman, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on November 6, 1981 and amended on November 19, 1981 by the Ramsey PBA Local No. 155 ("Charging Party") alleging that the Borough of Ramsey ("Borough") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Charging Party alleged that the Borough had, since 1966, promoted employees based upon seniority, but that on September 29, 1981, the Borough advised the employees that it would conduct a written examination for the promotion of sergeants to lieutenants. The Borough allegedly unilaterally established the criteria and procedures for promotion including the relative weight of the test versus the weight of seniority, and allegedly refused to negotiate with the Charging Party over these

issues, all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act. <sup>1/</sup>

The Charging Party alleged that it requested negotiations on both criteria and procedures for the examination prior to the scheduled date of the examination but that the employer refused to negotiate over any aspects of the examination. The Borough did not deny that the Charging Party attempted to negotiate over criteria for the examination but claimed that since criteria was non-negotiable it was not obligated to negotiate those issues with the Charging Party. Regarding the procedures for the examination, the Borough alleged that the Charging Party never sought to negotiate procedures for the examination prior to November 7, 1981, the date of the exam.

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 16, 1982 scheduling a hearing for June 9 and 10, 1982. Subsequently, pursuant to the Borough's request, the hearings were rescheduled for July 14 and 22, 1982. On July 12, 1982, however, the Commission received a motion and brief for summary judgment and a request for stay of proceedings from the Borough. Pursuant to N.J.A.C. 19:14-4.8(a), the Chairman of the Commission on July 12, 1982, referred the Respondent's motion to the undersigned Hearing Examiner for determination. The undersigned granted the Borough's request to stay the hearings, and the Charging Party submitted a brief in opposition to the motion which was received by July 21, 1982.

<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employees in that unit, or refusing to process grievances presented by the majority representative."



On September 8, 1982, the undersigned Hearing Examiner issued a decision on the motion, In re Borough of Ramsey, H.E. No. 83-8, 8 NJPER 542 (¶ 13249 1982) granting most but not all of the Borough's request to dismiss the Charge, and scheduled a hearing for October 14, 1982 for the remaining issues. The Charging Party had alleged in its original Charge that the Borough was required to negotiate over the criteria for the examination and the assignment of quality points to those criteria. <sup>2/</sup> Specifically, the Charging Party sought to apply more points to seniority than the Borough had allocated. In its Amended Charge the Charging Party listed eleven (11) items allegedly concerning procedures for promotion over which the Borough allegedly refused to negotiate. <sup>3/</sup> In Borough of Ramsey, supra, the undersigned, relying upon State of N.J. v. State Troopers NCO Assn., 179 N.J. Super 80 (App. Div. 1981), dismissed the original Charge in its entirety,

<sup>2/</sup> The "quality points" referred to by the Charging Party regarding the examination were actually the percentages assigned by the Borough to the various portions of the entire examination process. As indicated in the Borough's posting of September 29, 1981 (Exhibit CP-1) announcing the examination, the final grade would be computed as follows: 40% of the written test mark, 30% of the oral test mark, 30% on merit evaluation and seniority.

<sup>3/</sup> The eleven items are as follows:

1. Location, date and time said test will be given;
2. Amount of time the officers would have to study for said tests;
3. Exactly what materials are to be studied for the test and a requirement of the Borough of Ramsey to supply said materials;
4. When, where and how the results of said tests will be posted including immediate posting of each separate facet of said test;
5. Creation of a job description for which said test is to be offered;
6. How much time prior to the taking of the test will the officer have off as certain officers were required to take the most recent tests without any sleep whatsoever;
7. Nature of the marking system to be used to grade the tests;
8. Nature of questions to be asked and whether it will be a multiple choice or essay test;
9. The agency who administers the test;
10. The number of openings for positions available;
11. Setting forth the qualifications for that position.

and dismissed items 5, 7, 8, 9, 10, and 11 of the Amended Charge because they all involved non-negotiable matters. The Charging Party was advised of its rights under N.J.A.C. 19:14-4.8(e) and 19:14-4.6(b) to file a request for special permission to appeal that determination but no request to appeal was ever filed. <sup>4/</sup>

Thereafter, pursuant to the Charging Party's request the hearing scheduled for October 14, 1982 was cancelled, and the parties agreed to reschedule the hearing for November 5, 1982. Pursuant to the parties agreement hearings were held herein on November 5, 1982, and April 5, 1983, in Newark, New Jersey, at which time the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. <sup>5/</sup> The parties were given until May 20, 1983 to file post-hearing briefs in this matter but none were filed. The last transcript was received by the undersigned on April 28, 1983.

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<sup>4/</sup> In an on the record discussion and motion on November 5, 1982, the Charging Party, for the first time, sought a stay of the hearing to seek leave to move before the Commission for a review of the undersigned's decision on the motion for summary judgement. (Transcript "T" I, pp. 10-12). The Borough opposed the motion and the undersigned denied the motion because the Charging Party had been given ample opportunity between September 8 and November 5, 1982 to seek the Commissions review of the undersigned's decision. Moreover, the undersigned notes that the instant hearing did not conclude until April 5, 1983, and yet the Charging Party made no attempt to seek review by the Commission of the Summary Judgment decision between November 5, 1982 and April 5, 1983.

<sup>5/</sup> The second hearing was originally scheduled for January 25, 1983, however, that hearing was cancelled by request of the Charging Party and could not be rescheduled until April 5 because of the undersigned's schedule.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Borough of Ramsey is a public employer within the meaning of the Act and is subject to its provisions.
2. Ramsey PBA Local No. 155 is an employee representative within the meaning of the Act and is subject to its provisions.
3. The Borough and the Charging Party have been parties to collective agreements covering full-time patrolmen, sergeants and lieutenants employed by the Borough. The parties submitted three collective agreements at the hearing: Exhibit R-2 was effective from 1976-1978, Exhibit J-2 was effective from 1979-1980, and Exhibit J-1 was effective from 1981-1982 and covered the time period involved herein. None of the collective agreements contained clauses concerning promotions, however, the Charging Party did propose a promotional clause during the 1979 negotiations for J-2. <sup>6/</sup> However, that proposed clause was not subsequently included in that agreement.

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<sup>6/</sup> The promotional clause proposed for J-2 was contained in Exhibit R-1, the Charging Party's 1979 contract proposals, and provided as follows:

"Promotions to the ranks of sergeant, lieutenant and captain shall be based solely on the written examination prepared and administered by the Borough. In the event a vacancy occurs in any rank, the Borough shall immediately fill the rank from an eligibility list established from the results of such promotion examinations."

4. Between 1966 and 1981 seniority was the primary factor considered in making promotions. In July 1981, however, then Acting Chief Smith announced at a departmental meeting that future promotions would be by written examination (T. II, pp. 67-68). Subsequently, on September 29, 1981, the Borough posted a notice (Exhibit CP-1) advising the employees that a promotional examination would be conducted for sergeants on November 7, 1981 for promotion to the rank of lieutenant. The notice also listed six sergeants who were eligible to take the examination and it provided information on the criteria for the examination, i.e. the quality points listed in note 2 supra, and information on certain procedures for the examination such as which books to study.

The Charging Party took no action with respect to the notice until its attorney, by letter dated November 3, 1981 (Exhibit R-3), requested that the examination be postponed to permit the Charging Party to negotiate the criteria for the examination. <sup>7/</sup> On November 4, 1981,

7/ The pertinent parts of R-3 are as follows:

Please be advised that I have been retained...regarding the matter of the new promotional criteria which have been established and the methodology to be used in implementing perspective future promotions.

It is the opinion of the PBA that the promotional criteria unilaterally established by the Borough definitively effects a condition of employment and this is mandatorily negotiable.

The Borough has decided to establish certain objective criteria and have allocated a certain amount of quality points thereto and since this criteria certainly effects the members of the PBA in terms of their future promotions same is definitely negotiable. The unilateral development of promotional criteria without first bargaining same with the PBA is, in my opinion, an unfair labor practice.

Although the word "methodology" is used in the first sentence of the letter it was never defined or used again in the letter. Rather, the Charging Party emphasized the alleged negotiability of criteria for promotion and the quality points, and never indicated a desire to negotiate over "procedures" for promotion.

the parties did meet regarding the examination and the Charging Party was given the opportunity to make known its position regarding the examination. On that same day the Borough circulated a memorandum (Exhibit CP-3) setting forth the date, time and place of the examination.

Thereafter, by letter dated November 5, 1981 (Exhibit CP-2), the Borough's administrator denied the Charging Party's request to delay the examination. The Borough in CP-2 indicated that it did not believe that the issue raised by the Charging Party was subject to negotiations. The following day, November 6, Chief Smith advised the sergeants by notice (Exhibit CP-5) that applicants for the examination were required to undergo a psychological examination as part of the promotional process. Thereafter, on November 7, 1981, two of the seven eligible sergeants took the written examination. Finally, by notice dated November 9, 1981 (Exhibit CP-4), the Chief advised the sergeants of the date, time and place of the oral interviews which were required as part of the promotional process.

5. The Charging Party presented two witnesses in an attempt to prove that the Borough failed to negotiate procedures for the examination. Thomas McNamara, a former union officer who was not involved in the negotiations for J-1, was present at the November 4 meeting and was asked on direct:

Did you attempt to meet with the Borough Council in an attempt to negotiate promotional and procedural criteria? (T. I. p. 30).

His first answer was not responsive to the question.

He said:

I believe we went to them and we received a letter back. We asked them to hold off on the test...they said it was too late and we should have brought it up sooner. (T. I, p. 30).

However, when that question was asked again on direct he responded "yes" (T. I, p. 31). Nevertheless, on cross-examination McNamara, for the first time, was clearly asked whether he attempted to negotiate "promotional procedures" concerning the examination and his answer was not directly responsive to the question. He said:

I believe after I spoke with Van Detvelde, I believe we had a meeting. It was either with the Public Safety Committee or there was, I believe, three members.

In fact, I think you were there and we asked to negotiate it and, I believe, we were told it is a little late now in the ballgame. (T. II, p. 48). <sup>8/</sup>

The Charging Party's second witness, Robert Jewett, current President of the Charging Party, was present during negotiations for J-1 but was not present at the meeting of November 4, 1981. He testified that during negotiations for J-1 the Charging Party attempted to negotiate "for methodology for promotion." (T. II, p. 9). Jewett

8/ The undersigned does not credit McNamara's testimony to support a finding that the Charging Party requested to negotiate procedures for the examination. Rather, the undersigned finds that McNamara only attempted to negotiate criteria for promotion. The undersigned discounts McNamara's first answer because it was not responsive to the question. His second answer, the "yes" response, is discounted because the question which elicited that response;

At that time did you advise that you were requesting to negotiate promotion and procedural criteria in reference to the examination? (T. I, p. 31)

relates only to criteria and not procedure. The phrase "promotional and procedural criteria" is not the same as "promotional procedure" or "procedure for promotion." Consequently, by answering "yes" to that question McNamara actually admitted his intent to negotiate criteria. He never said he asked to negotiate "procedures for promotion." Finally, McNamara's third answer is discounted because it is so tentative that it is not believable.

was then asked if he was given a blanket denial to negotiate promotions and he said:

A blanket denial to negotiate anything to do with promotions creating of more ranks and any table of organization. (T. II, p. 10).

He was then asked on direct why the PBA had requested negotiations on promotion methodology and he replied:

We were looking to create more rank within the department (T. II, p. 10).

He was subsequently asked if the Charging Party attempted to negotiate criteria and procedures and replied:

To my knowledge the PBA did...try to have the test postponed and discuss criteria and methods of testing. (T. II, p. 12).

On cross-examination Jewett defined what he meant by promotion methodology as the criteria and requirements established by the Borough for promotion (Tr. II, p. 18), and then he added that promotion methodology included "what point evaluation was given to each issue." (T. II, p. 19). <sup>9/</sup>

9/ On redirect examination Jewett was asked a leading question:

Did you understand promotion methodology to also deal with procedures... (T. II, p. 21).

He responded "yes."

The undersigned does not credit that response as an indication that methodology dealt with procedure. First, the witness was lead on direct and the question was framed to intentionally elicit the "yes" response. Second, the witness had already testified that methodology meant criteria. The undersigned credits Jewett's earlier statement that methodology meant criteria and the quality points assigned to the different sections of the examination process. Moreover, the undersigned finds that Jewett attempted to negotiate for a table of organization and for more rank in the department neither of which were negotiable subjects.

Finally, Jewett admitted that he had no knowledge whether the five procedural items raised in the Amended Charge were ever presented to the Borough. (T. II, pp. 23-24).

6. Chief Smith testified on behalf of the Borough that at the November 4 meeting McNamara did not attempt to negotiate over promotional procedures. Rather, he indicated that McNamara wanted to discuss the amount of points being ascribed to seniority and the written test. (T. II, pp. 72, 89). Moreover, he testified that the Charging Party never attempted to specifically negotiate the five procedural items remaining in the Amended Charge. (T. II, p. 74).

With respect to the negotiations for J-1, Smith indicated that the Charging Party never sought to negotiate over promotional procedures. Rather, Smith testified that the Charging Party attempted to negotiate over the criteria for promotion and an organizational chart on how many sergeants, lieutenants, captains and patrolman would be in the department. (T. II, pp. 73-74).

#### ANALYSIS

Having reviewed the entire record herein the undersigned concludes without hesitation that the Charging Party never attempted to negotiate "procedures" for promotion prior to the promotional examination. Rather, the reliable evidence shows that the Charging Party sought only to negotiate criteria for promotion such as the amount of quality points assigned to "seniority," as well as to other elements of the examination process, and that it illegally attempted to negotiate over the number of employees in the department. The undersigned credits Chief Smith's testimony that the Charging Party never attempted to negotiate over the specific procedural items remaining



in the Amended Charge.

As the undersigned noted in Borough of Ramsey, supra, the Appellate Division in State Troopers NCO, supra, held that the percentage value to attribute to the factors considered in the promotional process, i.e., seniority and experience, are criteria for promotion and are not lawful subjects for negotiation. The undersigned also held that the Appellate Division's decision in Bd/Ed. Twp. of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976) did nothing to alter the non-negotiability of promotional criteria. Moreover, the undersigned notes that the Charging Party's attempt to negotiate over the creation of more rank in the department is a manning issue. The law in this State is well settled that manning is an illegal subject for negotiations. <sup>10/</sup>

The Charging Party's argument that it attempted to negotiate procedures for promotion during negotiations, and at the November 4, 1981 meeting, is not supported by the evidence. Jewett admitted that during negotiations he attempted to negotiate for more rank in the department (a manning issue), and that he sought to negotiate criteria and "methods of testing." However, he defined "methods of testing" and "promotion methodology" as the criteria and requirements for promotion and the point value given to each issue. That definition is limited to criteria, and does not encompass procedures for promotion. In addition, the five procedural items remaining in the Amended Charge were never presented by Jewett during negotiations.

<sup>10/</sup> See, In re N.J. Sports & Exposition Authority, P.E.R.C. No. 81-37, 6 NJPER 455 (¶ 11232 1980); aff'd App. Div. No. A-90-80T2 (11/12/81), pet. for certif. den. 89 N.J. 447 (1982); In re City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶ 11195 1980); In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

Regarding the November 4 meeting, the undersigned has already discounted McNamara's testimony and credited Smith's testimony that no request was made by the Charging Party at that meeting to negotiate over procedures for promotion.

Accordingly, based upon the above analysis, the undersigned finds that the Charging Party had ample opportunity to seek to negotiate over procedures for promotion prior to the announced examination but that it never requested such negotiations over the procedural items remaining in the Amended Charge -- or any other procedural item(s) -- prior to the examination. Consequently, it is recommended that the Complaint be dismissed in its entirety.

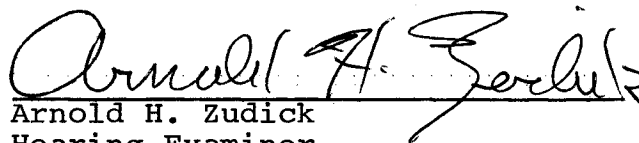
Based upon the entire record the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Borough did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) in establishing the procedures for the examination.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

  
Arnold H. Zudick  
Hearing Examiner

Dated: September 7, 1983  
Trenton, New Jersey