

I.R. NO. 89-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-89-166

EDISON PAID FIRE OFFICERS ASSOCIATION,
LOCAL #2883 I.A.F.F., AFL-CIO/CLC,

Charging Party.

SYNOPSIS

A Commission Designee declines to issue a restraint upon the City of Edison in an action brought before the Public Employment Relations by the Edison Paid Fire Officers Association. The charging party asserts that promotions in the Township were, by past practice, based upon seniority, but on December 14, 1988, the Township announced that it was promoting five individuals. These promotions were not based upon seniority. Criteria for promotions are not negotiable and the Association failed to show a substantial likelihood of success on the law in this matter.

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Appearances:

For the Public Employer
Peter A. DeSarno, Esq.

For the Charging Party
Schlesinger, Schlosser & Foy, Esqs.
(John F. Pilles, of counsel)

INTERLOCUTORY DECISION

On December 15, 1988, the Edison Paid Fire Officers Association, Local 2883 of the IAFF AFL-CIO/CLC ("Association") filed an unfair practice charge accompanied by a request for temporary restraints with the Public Employment Relations Commission ("Commission"). The charge alleges that the Township of Edison ("Township") violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5)^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

when it announced that effective December 16, 1988 it was granting some five promotions without following the past practice of granting promotions on the basis of seniority. A Hearing was held on the 15th on the Association's Application for Temporary Restraints. Both parties had an opportunity to argue orally and present relevant evidence. The Application was denied but an Order to Show Cause was entered into setting a return date of December 22, 1988. A Hearing was conducted at that time and the parties were again given an opportunity to submit relevant evidence, argue orally and present briefs.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

1/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The Association argues that dating back to at least 1981, there has been a policy in the Township of promoting superior officers on a seniority basis. On January 22, 1987, the Township issued to all fire stations a promotional eligibility list to captain for posting effective only to July 31, 1987. The Association alleges that the list of names was "a list of promotional criteria for fire suppression captain. This amounted to a new policy." No other promotional lists were promulgated until April 25, 1988 when a list of members who had obtained the minimum required educational criteria, as per the January 22, 1987 communication for promotion to fire suspension captain, was distributed.

On June 28, 1988, a meeting was held between the Association and the City. The parties agreed that no promotions would be made that were not on the basis of seniority until an interest arbitrator rendered a decision on a contract dispute between Local 1197's and the Township. Local 1197 represents the rank and file unit of firefighters is not the charging party here. On November 14, 1988, the Arbitrator rendered his award and on

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

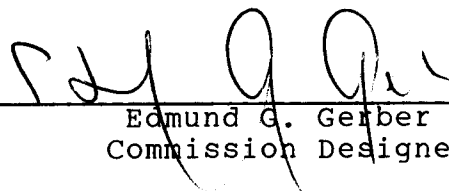
December 14, 1988, the Township communicated its intent to promote five members of the unit represented by the charging party on December 16, 1988. The five persons named for promotion are:

- Captain Albert Lamki
- Lieutenant Ralph Abrosio
- Lieutenant George Campbell
- Lieutenant James Montanye
- Lieutenant Fred Vickery

The Association claims that Captain Lamki is the son-in-law to the former Fire Chief; Lieutenant Campbell's sister is the Director of Recreation for Edison Township; Lieutenant Montanye is the stepson of Deputy Police Chief, and Lieutenant Vickery is the son-in-law to the Vice Chairman of the Democratic Party.

It is well settled that the criteria for promotions are non-negotiable.^{3/} but the Association is seeking to negotiate criteria.

Since criteria for promotions are not negotiable, the Association has failed to show it has a substantial likelihood of success in prevailing on the law in this matter before the Commission. Accordingly, the Application for Interim Relief is denied.



 Edmund G. Gerber
 Commission Designee

DATED: January 9, 1989
Trenton, New Jersey

^{3/} Where, however, equally qualified employees can fill a position, the parties may agree to fill it with the most senior employee. Borough of Sayreville, P.E.R.C. 87-2, 12 NJPER 597 (¶17223 1986); Township of Middletown and Middletown P.B.A., P.E.R.C. 82-90, 8 NJPER 227 (¶13095 1982) aff'd App. Div. A-3664-81T3 (4/28/83).