

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

CITY OF UNION,

-and-

Docket No. SN-86-42
LAP-86-11

UNION CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

DECISION

On January 9, 1986, the City of Union City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission ("Commission"). The City takes the position that Paragraph A of Article 26, Promotions, illegally infringes upon inherent managerial prerogatives and, consequently, must be deleted from the collective agreement. The parties advised the Commission of their willingness to have the matter resolved through the Commission's Litigation Alternative Program ("L.A.P."). A L.A.P. hearing took place on May 9, 1986.^{1/} It was mutually agreed at the L.A.P. hearing that this decision would be binding upon both Parties.

The facts in this case are as follows:

The City of Union City is an employer whose personnel practices are covered under the jurisdiction of the Civil Service

^{1/} Hearing dates scheduled for March 12 and April 23, 1986 were adjourned at the parties' request.

Commission. As such, Union City is bound by Civil Service law, rules and regulations.

Article 26A states:

In the event a vacancy is created in the superior officer rank of the Department, whether said vacancy be created as a result of retirement, death, discharge, dismissal or otherwise, an appointment filling such vacancy shall be made from the existing Civil Service list no later than ninety (90) days from the date said vacancy was created.

This matter is clearly controlled by Paterson Police PBA Local #1 and the City of Paterson, 87 NJ 78 (1981). The promotion article in Paterson is very similar to the promotion article at issue in this case. In Paterson the promotion article read as follows:

The City shall fill any and all vacancies in the table of organization above the rank of patrolmen within sixty (60) days of the date a position becomes vacant, by the promotion of an eligible employee to a higher rank, according to existing Civil Service Rules, Regulations and Procedures. If the aforementioned list of eligibles is due to expire during the sixty (60) day period the appointment or promotion to the vacancy must be made before the expiration date of the eligibles list, unless said Civil Service eligible list is incomplete. Id. at 83.

After analyzing the promotion article contained in the Paterson collective agreement, the Supreme Court concluded that

Municipal decisions about how to organize and deploy their police forces to comply with economic needs are unquestionably policy decisions and affect the public welfare. The requirement of this collective negotiations agreement that all vacancies be filled within 60 days, or sooner in some instances, places substantial limitations on the City's policy-making authority. During the term of the agreement, the City is compelled to promote officers even if such promotions are determined to be unnecessary and the

economic well-being of the City is at stake. Yet the Statute expressly gives the City discretion to make decisions to lay-off or demote police officers for economic reasons. The restraints on the City's discretionary powers, expressly derived from the Statute and inherent in our system of government, are two severe to allow the public employer to bind itself to such an agreement. We hold that ...the promotion clause of this agreement, was not permissively negotiable.

Accordingly, the clause is unenforceable as outside the scope of negotiations. Id. at 98.

Thus, the Supreme Court found the City of Paterson's promotion article to be outside the permissible scope of negotiations and unenforceable even if previously agreed to by the parties.

Applying Paterson to the instant case, it is readily apparent from the similarities in the promotion articles contained in the Union City and Paterson agreements that the language of Paragraph A of Article 26 impermissibly restricts management's inherent right to fill promotional vacancies as it deems appropriate or to refrain from filling such vacancies. See also Township of Belleville, P.E.R.C. No. 84-1, 9 NJPER 405 (¶14185 1983); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985).

Accordingly, effective immediately Paragraph A, Article 26, Promotions, shall be considered deleted from the agreement.


Stuart Reichman, Commission Designee

DATED: May 20, 1986
Trenton, New Jersey