

P.E.R.C. NO. 2024-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-2023-045

JERSEY CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the PSOA's motion for reconsideration of the Commission's decision in P.E.R.C. No. 2024-9 granting the City's request for a restraint of binding arbitration of the PSOA's grievance. The grievance asserted that the City violated the parties' collective negotiations agreement (CNA) by failing to request a promotional examination from the Civil Service Commission (CSC) for the rank of lieutenant. On reconsideration, the PSOA asserts that a recent CSC decision finding that the City's rescinded lieutenant announcement should proceed despite the City stating that it would not be filling any lieutenant vacancies requires that the Commission change its decision. The Commission finds that the CSC decision does not conflict with the Commission's decision, as the CSC decision applied the relevant CSC statutes within its jurisdiction concerning promotional announcements and examinations, but explicitly did not consider the Commission's distinct scope of negotiations jurisdiction regarding the legal arbitrability of the parties' CNA provisions.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, of counsel; Christopher M. Kurek, on the brief)

For the Respondent, Sciarra & Catrambone, LLC, attorneys (Christopher A. Gray, of counsel)

DECISION

On October 13, 2023, the Jersey City Police Superior Officers Association (PSOA) filed a motion for reconsideration of P.E.R.C. No. 2024-9, 50 NJPER 192 (¶43 2023). In that decision, the Commission granted the City of Jersey City's (City) request for a restraint of binding arbitration of a grievance filed by the PSOA. The grievance alleged that the City's refusal to request a promotional examination from the Civil Service Commission (CSC) for the rank of lieutenant violated provisions of the parties' collective negotiations agreement (CNA) requiring the City to maintain a promotional list and request a promotional examination from the CSC every three years.

The City asserted that its decision to initiate or not initiate the promotional process with the CSC is a non-negotiable managerial prerogative. The PSOA asserted that maintaining a promotional list should be permissively negotiable and acknowledged that the City would not be required to make promotions following the CSC promotional examination process. Applying the negotiability balancing test for police officers and firefighters outlined by the New Jersey Supreme Court in Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), as well as Commission precedent finding that an employer has the prerogative to leave a lieutenant position vacant and that CSC statutes preempt a contractual commitment to request a promotional examination,^{1/} we held:

[T]he City's decision not to request a promotional examination from the CSC is not mandatorily negotiable. Requiring the City to request a promotional examination with the CSC would significantly interfere with its governmental policymaking powers in deciding whether to initiate a promotional process.

[P.E.R.C. No. 2024-9, 50 NJPER at 195.]

The Commission decision also noted the Merit System Board (now CSC) decision In the Matter of Promotional List for Public Safety Titles, DOP Docket No. 2004-3187. That decision expressed the CSC's policy preference for promotion through examination.

^{1/} See Montclair Tp., P.E.R.C. No. 98-36, 23 NJPER 546 (¶28272 1997); City of Hoboken, P.E.R.C. No. 90-124, 16 NJPER 400 (¶21166 1990).

However, that decision did not alter that an employer's determination not to initiate a promotional process is not legally arbitrable and therefore may not be pursued through binding arbitration. Finally, the Commission noted the PSOA's pending appeal with the CSC concerning the City's withdrawal of a promotional announcement and stated that the PSOA should pursue any other alleged violations of CSC rules with the CSC.

Here, the PSOA asserts that reconsideration is warranted because of a new CSC decision (In the Matter of Police Lieutenant (PM3381E), Jersey City, CSC Dkt. No. 2024-112 (decided August 2, 2023)) issued subsequent to the briefing for P.E.R.C. No. 2024-9. That CSC decision decided the City's request to rescind its lieutenant promotional announcement and ordered the City to participate in this year's promotional examination for police lieutenant, despite the City's position that it would not be filling vacancies in that job title. The PSOA argues that this recent Jersey City CSC decision contradicts the Commission's decision in this matter and its previous holding in Hoboken, P.E.R.C. No. 90-124, supra. The PSOA contends that, as the CSC has primary jurisdiction over CSC rules and regulations, the Commission must abide by the CSC's decision and allow it to be enforced in arbitration under the CNA's grievance procedures.

A motion for reconsideration of a Commission scope of negotiations determination "will only be granted based on a

demonstration of extraordinary circumstances and exceptional importance.” N.J.A.C. 19:13-3.12(a). “The movant shall specify and bear the burden of establishing the grounds warranting reconsideration.” Id. Having reviewed the Commission decision in light of the PSOA’s arguments in support of its motion, we find no extraordinary circumstances warranting reconsideration.

The CSC’s August 2, 2023 decision applied the relevant Civil Service statutes and precedent to determine that the City should proceed with the lieutenant promotional announcement. In the Matter of Police Lieutenant (PM3381E), Jersey City, at 5-6. Specifically, the Jersey City CSC decision cited N.J.S.A. 11A:4-1(a), 11A:4-2, 11A:4-4(a), and 11A:4-5 and relied on In the Matter of Promotional List for Public Safety Titles, DOP Docket No. 2004-3187, for the proposition that “appointments and promotions [be] consistently awarded based on merit and fitness by automatically issuing announcements for public safety promotional titles in jurisdictions where historical data demonstrated an ongoing need to fill vacancies.” The CSC found that the record indicated the City’s historical and ongoing need for appropriate public safety protection and that the lieutenant promotional exam announcement “was appropriate to ensure that fully-qualified candidates from a complete list could be appointed to the title of Police Lieutenant if the appointing authority’s needs to fill vacancies [in] the subject title were

to change in the near future.” Id. at 6. The CSC’s decision therefore denied the City’s request to withdraw from its previously announced lieutenant promotional announcement and allowed the announcement to proceed, while recognizing that the City may decide not to make a promotional appointment.

The PSOA’s claim that the Jersey City CSC decision conflicts with Hoboken, P.E.R.C. No. 90-124 conflates the Commission’s scope of negotiations jurisdiction with the CSC’s exclusive jurisdiction concerning promotional announcements and examinations. The Jersey City CSC decision actually reinforces PERC’s delineation between its jurisdiction and that of the CSC. Notably, the Jersey City CSC decision did not make any determinations regarding the legal arbitrability of the parties’ CNA provisions concerning promotional lists and examinations. Moreover, the PSOA explicitly acknowledged before the CSC the distinctions between this Commission’s scope of negotiations jurisdiction and the CSC’s jurisdiction to enforce the Civil Service laws, arguing that “PERC’s determination does not have a bearing on” the matter before the CSC. Jersey City at 3. As discussed in P.E.R.C. No. 2024-9, in Hoboken we found that the Civil Service statutes contemplate that an employer’s request for a promotional examination should be made only if the employer intends to fill a vacancy, noting that if the employer chooses not to fill the vacancy then the employer may be required to

reimburse the CSC for the cost of the examination process.

Hoboken, 16 NJPER at 401. We therefore held:

This statutory scheme means that an employer must be committed to filling a vacancy before it requests an examination. Thus a contractual commitment to request an examination even if the employer does not intend to fill current vacancies, or have any vacancies, contravenes the statutory scheme.

[Hoboken, 16 NJPER at 401.]

The preemption analysis in Hoboken recognized that an employer's contractual agreement with a majority representative to maintain a promotional list effectively undermines the Civil Service statutory scheme in which an employer should not request an examination unless it intends to promote. However, Hoboken specifically noted that the CSC itself (DOP at the time) may always order a promotional examination. Therefore, we stated: "The decision to hold a promotional examination lies with the Department of Personnel. N.J.S.A. 11A:4-2." Hoboken, 16 NJPER at 401. It is this exclusive statutory authority that the CSC exercised in the Jersey City CSC decision which preempts this issue from being legally arbitrable. See State v. State Supervisory Employees Ass'n, 78 N.J. 54, 95-96 (1978) (contract proposal on promotional versus open examinations was non-negotiable because "the ultimate decision as to whether open examinations should be given lies within the exclusive discretion of the Civil Service Commission.")

Accordingly, as in our initial decision, we find no merit to the PSOA's averment that CSC decisions interpreting Civil Service laws are incompatible with our scope of negotiations jurisprudence concerning the managerial prerogative to decide when and if to initiate the promotional process. There is nothing in the Jersey City CSC decision relied on by the PSOA that is inconsistent with P.E.R.C. No. 2024-9 or Hoboken, P.E.R.C. No. 90-124. Finding that the PSOA has not demonstrated extraordinary circumstances or that this is a case of exceptional importance, we deny reconsideration.

ORDER

The Jersey City Police Superior Officers Association's motion for reconsideration of P.E.R.C. No. 2024-9 is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Higgins, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford was not present.

ISSUED: November 21, 2023

Trenton, New Jersey