

D.U.P. NO. 2020-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

MAPLEWOOD TOWNSHIP,

Public Employer,

-and-

Docket Nos. CO-2020-122
CO-2020-124

PBA LOCAL 44, PBA LOCAL 44A,

Charging Party's.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by PBA Locals 44 and 44A against the Township of Maplewood (Township). The charges allege the Township violated N.J.S.A. 34:13A-5.4a(1) and (5) by discontinuing a past practice of promoting sergeants and lieutenants when vacancies were created by the promotion of a lieutenant to captain. Locals 44 and 44A represented units of officers below the rank of sergeant, and a unit of sergeants, lieutenants and captains, respectively. The Director dismisses the charges, finding the Township has a managerial prerogative to promote or not promote any officer regardless of past practice.

D.U.P. NO. 2020-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

MAPLEWOOD TOWNSHIP,

Public Employer,

-and-

Docket Nos. CO-2020-122
CO-2020-124

PBA LOCAL 44, PBA LOCAL 44A,

Charging Party's.

Appearances:

For the Public Employer, Genova Burns, LLC, attorneys
(Eric D. Engelman, of counsel)

For the Charging Party's, (Marc D. Abramson,
consultant)

REFUSAL TO ISSUE COMPLAINT

On November 1, 2019, Maplewood Township PBA Local No. 44
(Local 44) and Maplewood Township PBA Local No. 44A (Local 44A)
("Unions") filed unfair practice charges against the Township of
Maplewood (Township). The charges allege the Township violated
section 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee
Relations Act (Act), N.J.S.A. 34:13A-1, et seq. (Act), by not

1/ These provisions prohibit public employers, their
representatives or agents from: (1) Interfering with,
restraining or coercing 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.

promoting officers to sergeant and lieutenant titles after a lieutenant was promoted to captain. According to the Unions, the Township administered a promotional examination, evaluations and interviews in August, 2019 for a vacant captain position, but did not also initiate the same promotional process for the lieutenant and sergeant positions that would become vacant once a lieutenant was promoted to captain, consistent with an alleged past practice regarding promotions. The Township's failure to adhere to this promotional practice and initiate a promotional examination for sergeant and lieutenant positions, according to the Unions, violate the Act.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

I find the following facts.

Local 44 is the exclusive majority representative of police officers below the rank of sergeant employed by the Township. Local 44A is the exclusive majority representative of sergeants, lieutenants and captains employed by the Township. The Unions are each parties to collective negotiations agreements with the Township that expired on December 31, 2019.

In August, 2019, the Township administered an examination to promote an officer to captain. The Township also conducted evaluations and interviews with officers for captain. On or about October 10, 2019, the Township's Chief of Police notified members of the police department that a lieutenant would fill the vacant captain position in December, 2019. The Unions allege the lieutenant's promotion created a vacancy for a lieutenant position and that "in the past and pursuant to practice, whenever a vacancy was occurring or occurred, all the other positions below that position would also be triggered; the testing, interviews and the evaluations for those positions would be conducted at the same time" and that the Township did not initiate this promotional process in accordance with past practice.

On October 18, 2019, the Unions' Presidents emailed a letter to the Township's Public Safety Committee inquiring as to why the Township ". . . was not testing, interviewing and evaluating police employees for the positions of sergeant and lieutenant with the captain's position." The Unions' also wrote in the letter that it "has been customary to interview and promote all ranks during promotions." The Township did not respond to the October 18 letter.

ANALYSIS

The gravamen of the Unions' charges is that the employer violated the Act by not testing and promoting sergeants and lieutenants to vacant positions whenever an officer is promoted to captain, in accordance with an alleged past practice. The Township disagrees and contends it has a managerial prerogative not to promote or fill a vacant lieutenant or sergeant position. I agree with the Township and dismiss the Unions' charges.

The decision by an employer to promote a public employee or fill a job vacancy is a managerial prerogative. State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 95 (1978); State v. State Troopers NCO Association, 179 N.J. Super. 80 (App. Div. 1981); State of New Jersey, P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979); Montclair Tp., P.E.R.C. No. 98-36, 23 NJPER 546 (¶28272 1997). This prerogative is part of a public employer's managerial prerogative to determine staffing levels. Montclair Tp. 23 NJPER at 547-548. In determining appropriate staffing levels, a public employer has "the right to promote or not promote at anytime" and may "leave a position vacant after its former holder has retired, resigned otherwise been promoted to another position." State of New Jersey 5 NJPER at 163; Montclair Tp. And that prerogative includes the decision as to whether to initiate a promotional process of examination and evaluation. Id.; see also State Troopers, 179 N.J. Super. at 92.

Here, the Unions allege the Township has violated the Act by refusing to negotiate over a subject that is non-negotiable: the decision whether to promote a sergeant or lieutenant after a lieutenant is promoted to captain. Even if this were the employer's past practice, the employer has a managerial prerogative to discontinue that practice and decide not to fill a sergeant or lieutenant vacancy. To require an employer to fill a lieutenant or sergeant vacancy would significantly interfere with that employer's ability to determine staffing levels and would implicate a non-negotiable governmental policy determination (i.e., the number of staff employed and how many of those employees would hold a particular position). State of New Jersey; State Troopers; Montclair Tp.

For these reasons, I dismiss the Unions' (a) (5) and derivative (a) (1) claims.

ORDER

The Unions' unfair practice charges are dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: April 6, 2020
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by April 21, 2020