

D.U.P. NO. 94-20

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

In the Matter of

TOWNSHIP OF READINGTON,

Respondent,

-and-

Docket No. CO-93-277

READINGTON TOWNSHIP PBA LOCAL No. 317,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge brought by Readington Township PBA Local No. 317. The charge alleges that the contract between itself and Readington Township was repudiated when after a promotional exam, two individuals were promoted rather than one. However, the Notice of Promotion by the Township, before the promotional exam, was by its terms not misleading and no violation of the Act.

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

In the Matter of

TOWNSHIP OF READINGTON,

Respondent,

-and-

Docket No. CO-93-277

READINGTON TOWNSHIP PBA LOCAL No. 317,

Charging Party.

Appearances:

For the Respondent,
Gerald L. Dorf, attorney

For the Charging Party,
Abramson & Liebeskind Associates
(Marc D. Abramson, consultant)

REFUSAL TO ISSUE COMPLAINT

On February 16, 1993, the Readington Township PBA Local No. 317 filed an unfair practice charge against the Township of Readington alleging that it violated N.J.S.A. 34:13A-5.1 et seq.; specifically subsections (a)(1) & (5)^{1/} when on or about December 31, 1992, the Township promoted two officers to the sergeant

^{1/} These subsections 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."

position in violation of an earlier settlement agreement which holds that the Township will promote one patrolman to sergeant and only those patrolmen who would have been eligible as of May 4, 1992 will be eligible for this promotion.

The PBA alleges that the promotion of an additional sergeant without informing the members of the PBA that two positions were available, changes the existing term and conditions of employment for unit members. Specifically, "the PBA only agreed to preclude certain individuals for eligibility for the promotion of one sergeant on the basis of the May 4 cut-off date. If in fact an additional sergeant position was available, all members normally eligible for said promotion should have been permitted to participate in the promotional process and the Township should have informed the PBA and all officers."

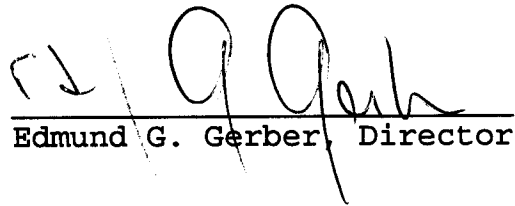
The only unfair practice alleged is the repudiation of a notice requirement.^{2/} The Association does not allege that those employees who were qualified for promotion under the earlier agreement were misled or that their rights to notice were violated.

^{2/} Neither promotion criteria nor the number of employees promoted is negotiable. To the extent the contract between the PBA and the Township limits such matters, it is unenforceable. Only those aspects of the agreement concerning procedures are enforceable. Since the number of employees promoted is not negotiable, it cannot have been an unfair practice for the Township to promote two patrolmen to sergeant rather than to promote only one patrolman to sergeant as stated in the agreement.

The PBA argues that unit members, who were not eligible under the agreement, may have missed the opportunity to take the exam. However, prior to the exam, the Chief promulgated a notice of the promotional exam to all police personnel. That notice does not limit the exam to only those patrolmen who were eligible the prior year. If this notice were incorrect, the PBA had the obligation to grieve and/or demand negotiations over the notice issued at that time; that was not done. The PBA cannot now claim as an unfair labor practice that the notice issued was misleading.

Accordingly, the Commission complaint issuance standard has not been met.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 23, 1993
Trenton, New Jersey