

P.E.R.C. NO. 2005-79

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PISCATAWAY,

Respondent,

Docket Nos. CO-2003-329

PISCATAWAY PBA LOCAL NO. 93,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies Piscataway PBA Local No. 93's motion for reconsideration of P.E.R.C. No. 2005-55. In that decision, the Commission held that the Township of Piscataway committed an unfair practice by unilaterally implementing two procedures in a new promotional policy. The Commission ordered the employer to rescind the two procedures and to negotiate over them, but rejected the PBA's request that all promotions made pursuant to the unilaterally adopted policy be rescinded. The Commission concludes that the PBA has not provided any extraordinary circumstances to grant reconsideration. Even if the Commission were to consider the statements made in a certification attached to the motion, the Commission concludes that the PBA has not shown that the results of the promotional process would have been any different had its position on these two issues been adopted.

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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TOWNSHIP OF PISCATAWAY,

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Appearances:

For the Respondent, DeCotiis, Fitzpatrick, Cole & Wisler, LLP, attorneys (Stacey D. Adams, of counsel)

For the Charging Party, Marc D. Abramson, consultant

DECISION

On April 22, 2005, Piscataway PBA Local No. 93 moved for reconsideration of P.E.R.C. No. 2005-55, 31 NJPER 102 (¶44 2005). There, we held that the Township of Piscataway committed an unfair practice by unilaterally implementing two procedures in a new promotional policy. We ordered the employer to rescind the two procedures and to negotiate over them, but we rejected the PBA's request that all promotions made pursuant to the unilaterally adopted policy be rescinded.

Our decision stated that our remedy "places the parties back in the position they would have occupied had the employer not committed an unfair practice." The PBA disagrees. It contends that no promotions had been made before the Township's unilateral

actions. Since then, four employees have been promoted. The PBA also contends that whether the same employees would have ultimately been promoted is of no import, and that we will never know whether the promotional procedures were compromised by the Township's unilateral action. The PBA asserts that the promotions made pursuant to the unilaterally adopted procedures are laden with potential improprieties and that unit members can never be assured that the process was fair and free of favoritism.

Our decision also stated that:

Nothing in the parties' submissions suggests that the results of the promotional process would have been any different had the PBA's positions on these two issues been adopted by the Township and incorporated into its promotional policy.

The PBA contends that if the parties' submissions were insufficient, we had the responsibility to require the parties to provide additional data. The PBA has now attached a certification of its president. He states that officers did not seek promotions because they believed that they would not get a fair shake, or that some officers did not study as hard because they knew the Township would simply pick its favorite candidate. Those alleged facts cannot be the basis for a decision on reconsideration because they were not in the record when we decided the summary judgment motion.

The Township responds that the PBA did not demonstrate that the results of the promotional process would have been any different had the Township adopted the PBA's position and it should not be given a second opportunity to prove its case. It also contends that the record indicates that even if the Township had implemented the PBA's demands with respect to the two disputed provisions, the outcome of the promotions would have been the same. First, the Township asserts that the only aspect of the examination that it could have manipulated was the "Review of File."<sup>1/</sup> Second, it asserts that the different performance factors and traits to be reviewed were negotiated with the PBA and that specific weights were assigned to each aspect of the file review.<sup>2/</sup>

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1/ The oral examination was conducted by an outside agency. The written examination was developed by an outside agency and scored with the candidates present. A third component was seniority. There is no suggestion that there could be any bias in the administration of these first three components. The fourth component is "Review of File."

2/ The Township has submitted a document that was attached to an amended unfair practice charge in a matter that was consolidated with this one. Based on that document, the Township asserts that the same individuals who were ranked one through four prior to the "Review of File" continued to be ranked one through four after completion of the "Review of File" and were ultimately promoted. Thus, even if the Review of File component had been omitted, the same individuals would have been promoted. This document will not be considered because it was not in the record before us when we decided the summary judgment motion.

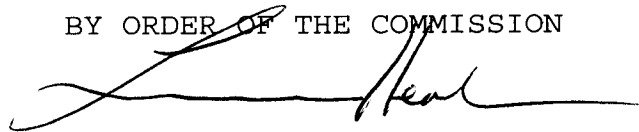
The Township also contends that, contrary to the PBA's assertions, its unilateral action did not affect the number of candidates who participated in the promotion process. When the Township decided to make sergeant promotions in March 2002, 29 officers signed up for the written examination. When the Township unilaterally implemented the new promotion process in June 2003, 28 officers signed up for the examination. The Township argues that there is no evidence explaining why one person did not participate.

Reconsideration will be granted only in extraordinary circumstances. N.J.A.C. 19:13-3.11; 19:14-8.4. Even if we were to consider the statements in the PBA's new certification, the PBA has not shown that the results of the promotional process would have been any different had its positions on these two issues been adopted. We therefore deny reconsideration.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Katz voted in favor of this decision. None opposed. Commissioners Mastriani and Watkins were not present.

DATED: June 30, 2005  
Trenton, New Jersey  
ISSUED: June 30, 2005