

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WASHINGTON,

Petitioner,

-and-

Docket No. SN-2002-14

P.B.A. LOCAL 318,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Washington for a restraint of binding arbitration of grievances filed by P.B.A. Local 318. The request is granted to the extent the grievances allege that the Township is required to negotiate with the PBA concerning the content of test questions and to the extent the grievances seek to enforce provisions of a sidebar agreement that mandate promotions; grandfather current eligibles from any new examination requirement; direct that three individuals be added to the current list; specify the promotional process for those individuals; require future promotional examinations; set parameters for who may prepare, administer and evaluate examinations; require a threshold examination score; direct the content of interview questions; specify that weight be given to departmental seniority, time in grade, and seniority within a division; and specify what officers may apply for what positions.

The request for a restraint of binding arbitration is denied to the extent the grievances seek to enforce alleged obligations to provide timely notice of promotional examinations to eligible candidates; provide the PBA with a list of eligible candidates; and advise candidates of study material and specific sections of recommended texts. A restraint of binding arbitration is also denied to the extent the grievances seek to enforce an alleged obligation under the sidebar agreement that, absent notice of a change in promotional criteria, the Township is obligated to use the current promotional list to fill those vacancies that it chooses to fill, and to the extent the grievances maintain that an individual is entitled, absent a change in promotional criteria and in the circumstances outlined in the agreement, to revert to his prior position on the promotional list, as that position might be modified by promotions of other candidates. Finally, the request for a restraint of binding arbitration is denied to the extent the grievances seek to enforce alleged obligations under the last sentence of Section 8 or requirements that the chief interview all eligible candidates and to require current eligibles to submit an updated resume.

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.

P.E.R.C. NO. 2002-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WASHINGTON,

Petitioner,

-and-

Docket No. SN-2002-14

P.B.A. LOCAL 318,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C.,
attorneys (Steven S. Glickman, on the brief)

For the Respondent, Stuart J. Alterman, attorney

DECISION

On October 26, 2001, the Township of Washington petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 318. The grievance alleges that the police chief's announcement of a promotional test violated what the PBA contends are procedural requirements of a sidebar agreement.

The parties have filed briefs and exhibits. These facts appear.

The PBA represents patrol officers and corporals in the police department. The Township and the PBA are parties to a collective negotiations agreement effective from January 1, 2001 through December 31, 2001. The grievance procedure ends in binding arbitration. The Township has submitted the prior agreement which expired on December 31, 2000.

Article XXII is entitled "Promotional Procedures." It sets forth procedures for employees acting in higher ranks and how they shall be compensated. It also states that procedures for promotion to higher ranks shall be defined "in rules and regulations in accordance with this agreement."

On June 7, 2000, the PBA signed a sidebar agreement with the now-retired police chief, Edmund Giordano, as well as the then-mayor, Gerald Luongo. The stated aim of the agreement was to establish "new promotional procedures for future promotional examinations for the ranks of Corporal and Sergeant." The agreement was entered into after approximately three months of negotiations to resolve a grievance concerning an existing promotional list. The grievance had been filed after Giordano informed the PBA that the list had irregularities that could jeopardize "potential movement on the list."

The sidebar agreement addresses a broad range of promotional practices. For example, it requires development of a new promotional examination by outside consultants; mandates that future promotions be effected by examination; and requires that candidates achieve a "threshold" score on the examination. It expresses an intent to eliminate "automatic" promotions but, at the same time, includes detailed provisions "grandfathering" individuals on the current list from the process that the sidebar contemplates. The closing sections of the agreement state that it is intended to correct deficiencies and inequities in prior

promotional practices. The pertinent parts of the agreement are included in the appendix to this opinion.

The sidebar agreement was never approved by the governing body and the Township notified the PBA that it would not implement the document because it involved managerial prerogatives. The Township does not state when that notification occurred, and the PBA maintains that several promotions were made in accordance with the agreement.

On September 14, 2000, the Chief announced that a new promotional test would be given in October 2000. On September 20, the PBA filed a grievance (Grievance 2000-3) alleging that the notification violated the sidebar and contending that "[a]ny and all new promotional testing procedures should be negotiated pursuant to the sidebar agreement prior to being published in the form of notification and implemented with regard to the actual test." The grievance incorporates the sidebar by reference and, as a remedy, seeks delay of the examination until testing procedures are negotiated and agreed upon.

On November 16, 2000, the PBA filed another grievance (Grievance 2000-5) that refers to, and protests, a November 22 test date. It alleges that eligible candidates were not properly notified and were not informed about study materials and specific sections of recommended texts. In addition, the grievance alleges that the PBA was not supplied with a list of eligible candidates and that the parties still needed to discuss "incorporating

testing questions outside the past practice with tests not recognized by the Chief's Association. . . ." As a remedy, the grievance seeks a stay of the examination pending negotiations and agreement on all testing procedures.

On December 6, 2000, the PBA filed Grievance 2000-6. The grievance refers to the two previous unresolved grievances and alleges that notification of a December 13, 2000 test was not timely supplied to eligible candidates and that some eligible candidates were not notified. The grievance also asks for a stay of the test until promotional procedures are negotiated.

On December 19, 2000, Grievance 2000-6 was amended to allege a unilateral change in the times and dates of the promotional examinations. It states that the chief did not set forth times and places for the test and that members thought the test was to be given on December 13 and December 15, but the test was changed to December 14. It seeks a suspension of testing until promotional procedures are negotiated.

The record does not indicate whether any of the announced tests were given and the grievances reflect that the parties met on at least two occasions between September and December 2000 to discuss the promotional issues raised by the grievances.

On August 8, 2001, Jean Di Gennaro, a Township employee or official, wrote a memorandum to Paul Martin, one of several unit members signing the grievances, denying Grievance 2001-5 (presumably Grievance 2000-5). DiGennaro stated that the sidebar

agreement was not legally binding. On September 10, the PBA demanded arbitration. This petition ensued, and the Township advises that the arbitration has been stayed pending its disposition.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we cannot consider the merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Paterson PBA No. 1 v. Paterson, 87 N.J. 78 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). In Paterson, the Court stated:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute

or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

This dispute centers on the legal arbitrability of grievances that protest the announcement of dates for promotional tests; contest the adequacy of those notices; and also seek compliance with a sidebar agreement that addresses a broad range of promotional and testing issues. The Township contends that most of the sidebar agreement substantially limits its ability to establish and apply promotional criteria. The PBA counters that the sidebar consists of mandatorily negotiable notice and other procedural provisions. The framework for considering such a dispute is well established.

Public employers have a non-negotiable right to fill vacancies and make promotions to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. Promotional criteria are not mandatorily negotiable, although the procedural aspects of promotions are. Bethlehem Ed. Ass'n v. Bethlehem Bd. of Ed., 91 N.J. 38 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). Indeed, the opportunity to apply for a promotion intimately and directly affects the work and welfare of employees and is itself a mandatorily negotiable term and condition of employment. State Supervisory at 90-91; State of New Jersey, Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n, of N.J. 179 N.J. Super. 80, 94 (App. Div. 1981).

The line between a substantive and procedural matter is sometimes indistinct, and giving a matter a particular label may not resolve the issue. See, Bethlehem, 91 N.J. at 50. However, mandatorily negotiable procedures include notice of promotional criteria and changes in such, State Troopers NCO Ass'n; guarantees that employees meeting all of the employer's promotional criteria will be considered, Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997); and requirements that employees be informed of their scores on oral examinations, Montclair Tp., P.E.R.C. No. 90-9, 15 NJPER 499 (¶20206 1989).

Among the promotion-related provisions found not to be mandatorily negotiable are those requiring an employer to promote

based primarily on seniority, Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 2001-26, 27 NJPER 11 (¶32006 2000), or to change criteria to improve examinations and promote professionalism and fair treatment. Montclair. Also not mandatorily negotiable are provisions setting the components of promotional examinations and the weight to be give to each. Piscataway Tp., P.E.R.C. No. 89-32, 14 NJPER 644 (¶19270 1988).

In addition, the type, administration and scoring of an examination, and whether an examination shall be given at all, are a "necessary extension" of the managerial function of establishing criteria. State NCO Troopers Ass'n; Jersey City Bd. of Ed., P.E.R.C. No. 82-110, 8 NJPER 318 (¶13144 1982). Similarly, in the context of determining mandatory negotiability, we have held that an employer has the right to determine what weight to place on seniority as a criterion for promotion, Franklin Tp. Bd. of Ed., P.E.R.C. No. 90-82, 16 NJPER 181 (¶21077 1990), and to determine what constitutes relevant professional experience for purposes of assessing whether candidates meet minimum qualifications for promotion to associate professor. Sussex Cty. Community College, P.E.R.C. No. 98-61, 23 NJPER 633 (¶28309 1997).

Absent preemption, an employer may normally agree to promote employees in the order they are ranked on a promotional list developed by applying its own unilaterally-set criteria to the eligible candidates. State Supervisory, 78 N.J. at 92; State Troopers NCO Ass'n; Wall Tp. P.E.R.C. No. 2002-22, 28 NJPER 19

(¶33005 2001), app. pending App. Div. Dkt. No. A-001640-01-T2; State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-61, 26 NJPER 98 (¶31040 2000), recon. den. P.E.R.C. No. 2000-80, 26 NJPER 206 (¶31083 2000); Howell Tp., P.E.R.C. No. 96-59, 22 NJPER 101 (¶27052 1996). Unless an employer has announced a change in its promotional criteria, it may remain obligated to fill positions from such a list. State Troopers NCO Ass'n. However, the employer remains free during a contract's life to alter the criteria given proper notice to employees. Wall Tp. Further, an employer cannot be compelled to make promotions if it finds that no candidates are qualified. State Troopers NCO Ass'n. It can announce new criteria and begin the promotional process anew. Ibid. An employer also has a prerogative to decide that promotional vacancies will not be filled. Paterson. Finally, the Appellate Division has specifically disapproved automatic promotions, State of New Jersey (Dept. of Human Services), P.E.R.C. No. 97-136, 23 NJPER 343 (¶28157 1997) rev'd 24 NJPER 432 (¶29200 App. Div. 1998); see also Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-120, 23 NJPER 291 (¶28132 1997) (restraining arbitration over alleged violation of clause that required employer both to promote employee based primarily on seniority, and to keep employee in position unless it could show that employee was unqualified).

Against this backdrop, we turn to the grievances at issue here. Preliminarily, we find that the grievances are legally arbitrable to the extent they allege that the Township had an

obligation to provide timely notice of promotional examinations to eligible candidates and to provide the PBA with a list of eligible candidates (Grievance 2000-6). The Township does not address these facets of the grievance and they are procedural in nature. See State Troopers NCO Ass'n, P.E.R.C. No. 79-68, 5 NJPER 160, 163-164 (¶10089 1979), aff'd sub nom. Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981).

Grievance 2000-6 also protests the Chief's failure to advise candidates of study materials and specific sections of recommended texts. That claim implicates the candidates' interest in being able to prepare for examinations, and the Township has not suggested any basis to conclude that arbitration would substantially limit its ability to make promotional decisions.

However, Grievance 2000-5 is not legally arbitrable to the extent it alleges that the Township was required to negotiate with the PBA concerning the content of test questions. The type, administration and scoring of an examination, and whether an examination shall be given at all, are a "necessary extension" of the managerial function of establishing criteria. State NCO Troopers Ass'n; Jersey City Bd. of Ed., P.E.R.C. No. 82-110, 8 NJPER 318 (¶13144 1982). Given these principles, we conclude that an alleged obligation to negotiate over examination content would substantially limit the Township's ability to develop criteria and is not permissively negotiable.

We turn now to the sidebar agreement. The inter-related provisions of that document establish one promotional system for individuals on the current list (current eligibles) and another for individuals not on the list. While the agreement includes some legally arbitrable provisions, much of it is not enforceable within the case law framework we have outlined.

We first discuss the agreement's requirements with respect to current eligibles and then address the provisions governing other individuals. We make one preliminary observation. Although much of the precedent we have summarized pertains to the mandatory negotiability of promotion-related provisions, that precedent is relevant here. The elements of the agreement that we find are not legally arbitrable directly and straightforwardly impose substantial limitations on the Township's promotion-related decision-making. They are therefore neither mandatorily nor permissively negotiable.

With respect to current eligibles, the agreement obligates the Township to make six promotions to corporal in 2001 and requires it to move all other eligibles into specialty positions, where they will receive corporal rank within 24 months. By mandating promotions or requiring that some officers automatically receive a higher rank, the agreement negates the Township's prerogative to decide whether to fill promotional vacancies or create promotional slots. Paterson. It also contravenes the prohibition against automatic promotions. State of New Jersey (Dept. of Human Services).

Similarly, by grandfathering current eligibles from any new examination requirement, the agreement negates the Township's right to announce new criteria and to determine that a promotional examination will be required. State Troopers NCO Ass'n; Jersey City Bd. of Ed. And by directing that three new individuals be added to the current list, it supplants the Township's authority to establish eligibility requirements that might not include these individuals. Compare Town of Westfield, P.E.R.C. No. 94-5, 19 NJPER 413 (¶24184 1993) (clause setting minimum qualifications not mandatorily negotiable). Finally, by specifying that these individuals will be promoted virtually automatically, based on seniority and satisfactory performance, the agreement substantially limits the Township's ability to make promotional decisions with respect to these individuals. Compare State of New Jersey (Dept. of Human Services); Franklin Tp. Bd. of Ed.

However, the agreement also states at several points that the Township is obligated to use the current list. That requirement is legally arbitrable, with the caveat that it cannot preclude the Township either from changing promotional criteria, upon proper notice to employees, or from deciding not to fill vacancies or create promotional slots. Paterson; State Troopers NCO Ass'n; Wall Tp.; State of New Jersey (Division of State Police); Howell Tp.

In a related vein, the agreement also directs that a current eligible who transfers to a specialty position reverts to a

number one position on the current and any future promotional list when that lateral position is abolished or he is transferred by the Township. This provision is not legally arbitrable to the extent it mandates placement on any future list: that requirement is inconsistent with the Township's right to develop new criteria and new lists. However, the requirement is legally arbitrable to the extent it provides for an individual to revert to the current list, in the circumstances noted, if the Township has not announced new criteria. State Troopers NCO Ass'n; Wall Tp.; Howell Tp. We add that, to be consistent with State Troopers NCO Ass'n, the individual must revert to the position on the list he or she would have had absent the transfer, after taking into account any transfers of higher-ranked candidates that occurred while he or she was in a specialty position. The reversion requirement, as we have narrowed it, does not substantially limit the Township's ability to make promotional decisions any more than does an alleged agreement to promote candidates in the order ranked.

Finally, we find to be legally arbitrable the requirement that current eligibles submit an updated resume. While we have held to be not mandatorily negotiable a requirement that an employer make changes in examination criteria to promote professionalism and fair treatment, see Montclair, this section does not mandate that any changes in criteria be made. The Township offers no particularized arguments as to why the clause substantially limits the Township's ability to set and apply

promotional criteria and we are not persuaded that it has this effect.^{1/}

We turn to the agreement's provisions concerning individuals not on the list. Under the case law we have discussed, most of the provisions relating to future promotions substantially limit the Township's ability to set and apply promotional criteria. For example, the agreement does so by mandating that promotional examinations be given, see State Troopers NCO Ass'n, and by setting parameters that substantially limit the Township's ability to select the individuals or entities who will prepare, administer and evaluate examinations -- functions which are an integral part of the establishment of promotional criteria. Compare Borough of Fair Lawn, P.E.R.C. No. 90-93, 16 NJPER 263 (¶21111 1990) (holding to be not mandatorily negotiable a provision requiring union agreement as to who would prepare, administer and score a promotional exam and interview, including agreement as to whether the test would be prepared internally or by a consultant).

The agreement also directs that there be a threshold examination score and virtually sets that score; prescribes the content of interview questions; and goes on to state that departmental seniority, time in grade, and experience within a

^{1/} The Township agrees with the PBA that the last underscored sentence in Section 8, stating that no individual shall be denied promotion to corporal without reasonable and just cause, is legally arbitrable. Therefore, we do not discuss this provision.

division will be given significant weight in future promotions. These requirements go to the heart of the Township's ability to set and apply promotional criteria. While, as the PBA notes, the agreement does not assign numerical weight to seniority or time in grade, it still prevents the Township from deciding to disregard or give minimal weight to these factors. Finally, the agreement also substantially limits the Township's promotional decision-making by establishing criteria and qualifications for future promotions by specifying what officers may apply for what positions.

The PBA argues, and we agree, that clauses requiring that employees be notified of promotional criteria are mandatorily negotiable. State Troopers NCO Ass'n. But the negotiated provisions we have summarized establish or set parameters for criteria. They are not notice provisions within the meaning of State Troopers by virtue of the fact that they may also inform unit members of those criteria.

Finally, we find to be mandatorily negotiable the requirement that the Chief interview all eligible candidates. See Englewood (clause requiring that superintendent interview all qualified candidates, while cumbersome, did not significantly interfere with the Board's ability to select the person it believed was the most qualified candidate).

ORDER


The request of the Township of Washington for a restraint of binding arbitration is granted to the extent the grievances

allege that that Township is required to negotiate with the PBA concerning the content of test questions. It is also granted to the extent the grievances seek to enforce provisions of the June 7, 2000 sidebar agreement that mandate promotions; grandfather current eligibles from any new examination requirement; direct that three individuals be added to the current list; and specify the promotional process for those individuals. Similarly unenforceable are any provisions that require future promotional examinations; set parameters for who may prepare, administer and evaluate examinations; require a threshold examination score; direct the content of interview questions; and specify that weight be given to departmental seniority, time in grade, and seniority within a division. Also unenforceable are clauses specifying what officers may apply for what positions.

The request of the Township of Washington for a restraint of binding arbitration is denied to the extent the grievances seek to enforce alleged obligations to provide timely notice of promotional examinations to eligible candidates; provide the PBA with a list of eligible candidates; and advise candidates of study material and specific sections of recommended texts. It is also denied to the extent the grievances seek to enforce an alleged obligation under the June 7, 2000 sidebar that, absent notice of a change in promotional criteria, the Township is obligated to use the current promotional list to fill those vacancies that it chooses to fill. It is also denied to the extent to the grievances

maintain that an individual is entitled, absent a change in promotional criteria and in the circumstances outlined in the agreement, to revert to his prior position on the promotional list, as that position might be modified by promotions of other candidates. Finally, the request for a restraint of binding arbitration is denied to the extent the grievances seek to enforce alleged obligations under the last sentence of Section 8 or requirements that the chief interview all eligible candidates and to require current eligibles to submit an updated resume.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: June 27, 2002
Trenton, New Jersey
ISSUED: June 28, 2002

APPENDIX

1. The parties hereby agree to establish new promotional procedures for future promotional examinations for the ranks of Corporal and Sergeant. It has further been agreed that the parties will utilize the services of an independent professional agency comprised of experts the caliber of Jeff Bernstein to establish new promotional procedures that will be fair and equitable and will be conducted on a fair and equitable basis.
2. The parties hereby agree to utilize the services of the professional agency to act as a consultant to assist the parties, insofar, as establishing the new promotional procedures for the rank of Corporal and Sergeant for any and all future promotional examinations regarding those specific ranks.
3. The parties also agree that any and all individual evaluators that shall be retained and whose services shall be utilized in any and all future promotional procedures, with the exception of the Chief of Police, shall be individuals possessing credentials from outside the Washington Township Police Department, of which two of any number of evaluators must be from outside of Gloucester County.
4. The parties further agree that any and all individuals (police officers) who wish to be promoted in the future, outside of the present Corporal's list, shall take a promotional examination which shall further be negotiated pursuant to the above. In other words, any and all individuals outside of the present promotional list for Corporal shall not be automatically promoted to the next rank, either to Corporal or to Sergeant, without a promotional examination. It is the intent of the parties to do away with automatic promotions as a result of placement in specialty areas, (i.e. Detective, Community Policing, D.A.R.E., Traffic, etc.) but this

agreement shall neither effect those individuals on the present Corporal's list at present nor in the future per the four corners of this agreement.

5. The parties agree that all individuals on the present promotional list shall be eligible for promotion pursuant to the list and will remain eligible for promotion to the next highest rank without further testing and shall be grandfathered within the confines of the present promotional system of being promoted from a specialty area without formal testing. It is the intent of the parties to only grandfather those individuals included in the present promotional list for Corporal, otherwise paragraph four above applies.

6. The parties have further agreed that all future promotional procedures shall involve a threshold score that will most likely be seventy (70), but shall be agreed to upon finalization through further negotiations to arrive at the future promotional process. It is noted with extreme clarity that the present promotional list for Corporal did not define a threshold score of any kind whatsoever and there was no delineated eligible score required to pass the test.

7. The parties have further agreed that the present list is effective and shall remain effective and shall be followed in order of ranking unless, an individual eligible for promotion chooses to laterally move into a specialty unit. At which time they will be promoted to Corporal within twenty-four (24) months from the date of transfer to the lateral specialty position, and grandfathered for such promotional purposes as stated above.

8. The parties have further agreed that those individuals eligible to take the test for Corporal and did not take it for reasons of unfairness, inequities and other associated problems should be included in the equation of eligibles to be promoted from various specialty positions as they currently exist. Those individuals specifically are: Charles Wisely, Charles Price and Patty Sherry. Those

individuals have now been placed in specialty positions who will thereafter be able to be promoted to the rank of Corporal within twenty-four (24) months of their specialty position by virtue of the fact that they will have held a specialty position. It is important to note that the parties have further agreed that those individuals will undergo an evaluatory procedure formulated by the Chief of Police which shall procedurally demonstrate competency in their present position. The parties intend to develop a criteria to evaluate those individuals who are holding specialty positions and thereafter use said criteria in order to evaluate their performance. While it is a managerial prerogative to formulate the criteria, the intent and purpose of this portion of the agreement is to simply demonstrate competency on the part of the individual eligible to be promoted within twenty-four (24) months of their transfer into the lateral specialty position, so as to prevent such an individual who has demonstrated less than acceptable performance from being promoted to that of the next higher rank. Procedurally, this evaluation process shall be nothing more than an updated resume, superior's evaluation and the Chief's evaluation along with a statement of accomplishment by the employee. No individual eligible to be promoted to the next highest rank (Corporal) shall be denied such promotion without reasonable and just cause.

9. This evaluation process as discussed above will be a simple procedure comprised of an analysis concerning basic performance, time in grade, seniority, and supervisory evaluations along with the evaluation and interview of the Chief of Police. Seniority in this portion of the agreement will certainly weigh heavily and disproportionately in favor of the officer seeking to be promoted to the next higher position (Corporal). This section specifies that three individuals will be promoted within 24 months, provided they have demonstrated competence.

10. Additional weight shall be given to those individuals seeking promotion to the next

higher rank from their existing field and or specialty field by virtue of the fact that they have held the position in that particular area and have thus accumulated experience in that particular area.

11. The parties have further agreed that those individuals on the current promotional list shall remain eligible to be promoted in order of their existing position on the list. Moreover, any individual who takes a voluntary assignment to a specialty field shall be promoted within twenty-four (24) months of their assignment to the specialty field pursuant to the above. The next person eligible on the list shall then be eligible per the rule of three, be promoted to the next higher rank (Corporal) and shall be promoted upon a Corporal's position becoming available. Those individuals who are currently on the list shall be promoted to Corporal or continue in their specialty assignment with the opportunity to be promoted in the future pursuant to the above stated process.

12. All future promotional procedures shall provide for all eligible candidates to be promoted through a formal examination procedure as stated above pursuant to guidelines and procedure so negotiated between the Chief of Police and PBA Local 318 and instituted with the assistance of a promotional expert as defined by law.

13. In arriving at this particular agreement the parties have discussed the need for as many as six (6) promotions in the 2001 budget year. Two (2) individuals shall be promoted immediately to the rank of Corporal and four (4) individuals shall be promoted to the rank of Corporal within the next five (5) months from the date of this agreement. All other eligibles on the current list shall be placed in specialty positions and promoted, pursuant to the above within twenty-four (24) months.

14. All individuals on the current promotional list shall provide the Chief of Police with an updated resume forthwith as that shall be, in part, determinative of the evaluatory mechanism utilized by the Chief of Police to ensure that

competent officers are being promoted to the rank of Corporal.

15. The parties have further agreed that a new testing procedure that shall be finalized with further negotiation will be comprised of time and grade and departmental seniority. Those two portions of the promotional process will be a significant portion of the score for said test along with other portions so developed with the assistance of an expert consultant.

16. The parties have further agreed that the grandfathering process as stated above shall be related to the specialty positions. Candidates seeking promotion from their specialty positions most certainly shall involve the process as already stated above and to show competency and personal qualifications to continue to hold their specialty position and obtain the rank of Corporal.

Section 17 states that both parties have agreed that the title of investigator shall be eliminated and replaced with the title Detective II. This section is not in dispute.

18. All candidates seeking promotion in the future, with the exception of those individuals so named above and those individuals included in the current promotional list for Corporal, who shall receive certain grandfathered rights as stated above, shall be deemed eligible and available to be promoted in any area of the Department to the next higher rank. In other words, a Detective First Class can test for the position of Sergeant and obtain said position as a Patrol Sergeant. Conversely, a Patrol Corporal can test for the position of Sergeant and be promoted to the position of Detective Sergeant, providing said employee has at least three years of investigative experience. The same scenario shall hold true for the promotion to Corporal. It is the intent of the parties that those individuals testing from within their particular division, seeking promotion to the next higher rank within their division, will be given greater weight due to any seniority and/or time in grade that may be

involved in so holding their present position from which they are testing but they nevertheless, can seek promotion in any area of the Police Department, as defined above.

19. The parties further agree, and very importantly so, that if any individual has passed on a promotion to Corporal in favor of taking a specialty position with the expectation of being promoted within twenty-four (24) months from their specialty position to Corporal by virtue of this agreement, and said specialty position is either eliminated or said individual is transferred due to some sort of managerial prerogative to a non-specialty position, that individual will revert to the number one position on the existing promotional list or any future list. Further, said individual shall be number one for the next promotional availability notwithstanding, the existence of any other promotional list so negotiated in the future. In other words, it is the intent of the parties to promote all individuals pursuant to the above agreement and all individuals, that have accepted a speciality position in lieu of the Corporal's position at present, notwithstanding any promotional examination that may be given in the future.

20. The parties have further agreed that before anyone is promoted, Chief Giordano will interview all eligible candidates from the present promotional list. The positions of the candidates on the current list will not be altered. The interview process will be general questions comprised of the following:

1. Basic responsibility of the position.
2. Direct supervisory responsibilities of the position.
3. Indirect supervisory responsibilities of the position.
4. Ability to work individually and within the spirit of a team in order to accomplish the following:
 - a. Supervision of a squad
 - b. Supervision of crime scenes.
 - c. Qualifications to do so.
 - d. Career expectation.