

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LOWER MORELAND TOWNSHIP POLICE :  
BENEVOLENT ASSOCIATION :  
v. : Case No. PF-C-24-100-E  
LOWER MORELAND TOWNSHIP :

**FINAL ORDER**

On September 29, 2025, the Lower Moreland Township Police Benevolent Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) challenging a Proposed Decision and Order (PDO) issued on September 10, 2025. In the PDO, the Board's Hearing Examiner concluded that Lower Moreland Township (Township) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, when the Township promoted the officer with the second highest test score on the promotion eligibility list instead of the officer with the highest test score. The Township filed a brief in opposition to the exceptions on October 17, 2025.

The relevant facts of this case are summarized as follows. In January 2024, the Township administered promotional exams for a newly created corporal position and a vacant sergeant position. Several other corporal positions subsequently became vacant causing a total of five corporal positions to become available. (FF 4). Out of ten officers that took the corporal exam, eight officers passed the exam and were placed on the eligibility list in order of highest to lowest test score. The test scores are based on combining the scores that each officer received on the written, physical, and oral examinations. (FF 5).

The officer with the highest score on the corporal list also had the highest score on the sergeant list and, therefore, that officer was promoted to sergeant. The next five officers with the highest scores on the corporal list were promoted to corporal leaving Officer Zachary Heckenswiler<sup>1</sup> and Officer Anthony Peronace on the eligibility list for corporal. (FF 6). Officer Heckenswiler had the higher score of the remaining two officers on the unexpired eligibility list for corporal. (FF 8).

The Chief of Police left the Township sometime after the January 2024 promotions and Lieutenant Scott Smith became the Chief in June 2024. The promotion of Lieutenant Smith to Chief created numerous vacant promotional positions, including a corporal position. (FF 7). On or around October 20, 2024, Chief Smith informed Officer Heckenswiler that, although he had the highest score on the eligibility list for corporal, the Chief was going to promote Officer Peronace instead. The Chief explained that he was choosing Officer Peronace for the promotion because Officer Peronace was more decisive and confident than Officer Heckenswiler. (FF 8). The Township Board of Commissioners approved the promotion of Officer Peronace to corporal at the Township meeting on December 10, 2024. (FF 9).

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<sup>1</sup> Officer Heckenswiler was a police officer for the Township from June 2019 until July 2025 when he resigned to accept other employment. (FF 3).

Since at least 1980, the Township has administered tests for promotional eligibility and posted lists ranking the officers from highest combined score to lowest combined score. (FF 12). The parties' collective bargaining agreement does not contain any provisions relating to promotions. (FF 17). Rather, the Township's promotional process is contained in its Civil Service Regulations. Section 5.2(b) of the Township's Civil Service Regulations provides, in relevant part, as follows:

1. The Appointing Authority of the Township shall fill any vacancy which is to be filled from the certified eligibility list from the top three (3) names on that list of eligible candidates that have passed the Background Investigation;

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3. The Township Board of Commissioners shall make an appointment from one of the three names certified with reference to the merits and fitness of the candidates.

(FF 18).

Christopher Hoffman, the Township Manager, testified that he meets with the Chief and Lieutenant to discuss the eligibility list and recommendations for promotion. Mr. Hoffman stated that throughout the consultation process and discussion of the candidates, the Township always applied the "Rule of 3"<sup>2</sup> even though they have promoted the highest scoring officer on the list in the past. (FF 19).

Chief Smith testified that, when evaluating a candidate for promotion, he assesses test scores as well as the candidate's merits and fitness for the position based on his knowledge and experience of working with the candidates for many years. Chief Smith indicated that a candidate's fitness for the position is not revealed by test scores alone. The Chief also discusses the candidate with their active supervisor prior to deciding who to promote. (FF 20).

Chief Smith has known and personally observed Officer Heckenswiler since he started his police career with the Township. When Chief Smith was a lieutenant, he reviewed all of Officer Heckenswiler's annual performance evaluations. (FF 21). Officer Heckenswiler had ratings of "below standards" in his evaluations, which were addressed during the evaluation process. There were specific instances where Officer Heckenswiler's supervisors questioned his decision making and decisiveness. Chief Smith believes that Officer Peronace excels in areas that Officer Heckenswiler does not such as decision making, leadership, and decisiveness, which are areas that Chief Smith wants in a supervisor. (FF 22).

The Association filed its Charge of Unfair Labor Practices on December 3, 2024, alleging that the Township violated Section 6(1)(a) and (e) of the PLRA by promoting the officer with the lower score on the eligibility

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<sup>2</sup> The "Rule of 3" under the First Class Township Code permits a township to choose from the top three candidates on the promotional eligibility list. 53 P.S. § 55638.

list contrary to past practice. On December 10, 2024, the Secretary of the Board issued a letter dismissing the Charge as premature because the Township had not promoted the officer with the lower score on the eligibility list at the time of the filing of the Charge. After the filing of exceptions alleging the Township's subsequent approval of the promotion, the Board issued an Order Directing Remand to the Secretary for Further Proceedings on January 21, 2025.<sup>3</sup>

On February 3, 2025, the Secretary issued a Complaint and Notice of Hearing and assigned this matter to a Hearing Examiner. A hearing was held before the Board's Hearing Examiner on July 23, 2025, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner concluded that the Township's utilization of the "Rule of 3" and ultimate selection of the candidate to promote was within its managerial discretion. Therefore, the Hearing Examiner determined that the Association failed to establish a change in past practice with regard to promotions. Accordingly, the Hearing Examiner held that the Township did not violate its duty to bargain under Section 6(1)(a) or (e) of the PLRA, rescinded the complaint and dismissed the Charge of Unfair Labor Practices.

The Association alleges in its exceptions that the Hearing Examiner erred in concluding that the selection of officers from a promotional eligibility list is a managerial prerogative. Specifically, the Association argues that the Township's past practice of choosing the officer with the highest score on the eligibility list is a promotional procedure subject to bargaining.<sup>4</sup> Where the charge alleges a unilateral change to an established past practice, an employer will be found to have violated its duty to bargain only when the past practice concerns a mandatory subject of bargaining. South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002), *appeal denied*, 806 A.2d 864 (Pa. 2002). Under the balancing test set forth by the Pennsylvania Supreme Court to determine whether a particular subject is negotiable with regard to Act 111 cases, it must first be found that the subject matter in dispute is rationally related to the terms and conditions of employment, or germane to the work environment; if so, the subject matter will nevertheless be found to be a managerial prerogative if collective bargaining over the topic would unduly infringe upon the public employer's essential managerial responsibilities. Borough of Ellwood City v. PLRB, 998 A.2d 589 (Pa. 2010); City of Philadelphia v. International Association of Firefighters, Local 22, 999 A.2d 555 (Pa. 2010). In City of Philadelphia, the Pennsylvania Supreme Court opined that "matters of managerial decision making that are fundamental to public policy or to the public enterprise's direction and functioning do not fall within the scope of bargainable matters under Section 1 [of Act 111.] Such managerial prerogatives include the standards of service, overall budget, use of

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<sup>3</sup> On February 24, 2025, the Township filed a Motion to Dismiss the Charge, which was denied by the Hearing Examiner on March 27, 2025.

<sup>4</sup> The Association does not challenge any of the Hearing Examiner's Findings of Fact in its exceptions and, therefore, the Hearing Examiner's findings are conclusive. FOP Lodge #5 v. City of Philadelphia, 34 PPER 22 n.3 (Final Order, 2003).

technology, organizational structure, and the selection and direction of personnel." 999 A.2d at 569-570.

In Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER ¶ 32083 (Final Order, 2001), the union alleged that the Commonwealth changed its past practice of promoting employes on the eligibility list based on test score when it did not promote the employe that was next on the promotional list due to his temporary disability status and promoted the next employe on the list instead. The Board found that the Commonwealth's decision to pass over the next employe on the eligibility list was not a promotional procedure subject to bargaining, concluding as follows:

[W]hile the employer is obliged to bargain over matters such as posting notices of job vacancies, bidding procedures, applicant testing, and matters such as employe probation terms and periods, it is ultimately the public employer's managerial right, at the conclusion of these processes, to select among candidates and retain qualified candidates based on the public employer's assessment of the qualifications of candidates.

Id., 32 PPER at 216. Therefore, the Board dismissed the union's charge holding that the ultimate selection of a candidate from the promotional list is a managerial prerogative within the employer's right to select and direct personnel.

The Board's decision in Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges is directly on point. Here, the record shows that the Township adopted the "Rule of 3" in its Civil Service Regulations, which gives the Township Commissioners the discretion to make an appointment from the top three candidates on the eligibility list.<sup>5</sup> In picking from the two remaining candidates on the eligibility list, Chief Smith testified that he based his decision upon the fact that Officer Peronace excels in areas that Officer Heckenswiler does not such as decision making, leadership, and decisiveness, which are attributes that the Chief is looking for in a supervisor. It is not within the Board's or Association's authority to substitute its judgment as to who the most qualified officer is for

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<sup>5</sup> The Association asserts that the Hearing Examiner erred in determining that the Township has always utilized the "Rule of 3" when choosing a candidate for promotion from the eligibility list. It is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and weigh the probative value of the evidence presented at the hearing. North Wales Borough Police Department v. North Wales Borough, 38 PPER 181 (Final Order, 2007); E.B. Jermyn Lodge No. 2 of the FOP v. City of Scranton, 38 PPER 104 (Final Order, 2007). A hearing examiner may accept or reject the testimony of any witness in whole or in part. Limerick Township Police Officers v. Limerick Township, 36 PPER 125 (Final Order, 2005). The Board will not disturb a hearing examiner's credibility determinations absent the most compelling of circumstances. City of Scranton, supra. Here, the Hearing Examiner credited the testimony of Township Manager Hoffman that the Township has used the "Rule of 3" in choosing candidates for promotion since at least 2010 when he started working for the Township. The Association has failed to demonstrate any compelling circumstances warranting reversal of the Hearing Examiner's credibility determination on this issue.

promotion. Therefore, the Township's decision to promote Officer Peronace was within its managerial authority to select the most qualified candidate from the promotional list for the position.

Nevertheless, the Association argues that the Board's decision in Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges is inapplicable because it concerns public employes subject to the Public Employee Relations Act. In addressing this argument, the Hearing Examiner aptly stated that "employers of Act 111 employes have the same managerial discretion to select the most qualified candidate for promotion from a group of applicants" and that "bargaining over restrictions [to select the most qualified candidate for promotion] would unduly infringe on the Township's essential responsibilities to determine, in its discretion, how best to safely and effectively provide police services as well as manage its personnel and its police operations." (PDO at 7). The Board agrees with the Hearing Examiner that requiring the Township to bargain with the Union concerning the choice of the most qualified candidate for promotion allows the Union to unduly infringe upon managerial decisions concerning department operations and selection and direction of personnel. As such, the Association's argument on this issue is meritless.

Because the Township's selection of the most qualified candidate from the promotional eligibility list is within its managerial discretion, the Association failed to establish a unilateral change in past practice. Accordingly, the Hearing Examiner properly concluded that the Township did not violate Section 6(1)(a) or (e) of the PLRA when it promoted Officer Peronace instead of Officer Heckenswiler. After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Lower Moreland Township Police Benevolent Association are hereby dismissed, and the September 10, 2025 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Gary Masino, Chairman, and Albert Mezzaroba, Member this sixteenth day of June, 2026. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.