

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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

**PROPOSED DECISION AND ORDER**

On December 3, 2024, the Lower Moreland Township Police Benevolent Association (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Lower Moreland Township (Township), alleging that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that, on or about October 22, 2024, the Township changed the past practice of promoting officers from the active eligibility list based on highest test scores when it announced its plan to promote an officer with the second highest score to the rank of corporal.

On December 10, 2024, the Secretary of the Board issued a letter dismissing the charge as premature. On December 30, 2024, the Complainant filed exceptions stating that, at a regularly scheduled public meeting on December 10, 2024, the Township Board of Commissioners voted to promote the second highest test scorer thereby passing over the highest test scorer on the list. On January 21, 2025, the Board issued an Order Directing Remand to the Secretary for Further Proceedings. On February 3, 2025, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of May 23, 2025, in Harrisburg.

On February 24, 2025, the Township filed a Motion to Dismiss the Charge and a Memorandum of Law in support thereof. On March 24, 2025, the Complainant filed a Memorandum of Law in Opposition to the Township's Motion to Dismiss the Charge and an Amendment to the Charge. On March 27, 2025, I issued an Order Denying Respondent's Motion to Dismiss Unfair Labor Practice Charge. On April 14, 2025, I granted the Respondent's request to continue the hearing without objection from the Complainant and rescheduled the hearing for July 23, 2025, in Harrisburg. During the hearing on that date, the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. On September 5, 2025, both parties filed post-hearing briefs in support of their respective positions.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The Township is a first-class Township, a public employer, and a political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 6-7, 72; TX-1)
2. The Union is a labor organization under Act 111, as read with the PLRA. The Union is the exclusive collective bargaining representative for the

bargaining unit of police officers employed by the Township Police Department (Department). (N.T. 6-7; JX-1; JX-2)

3. Zachary Heckenswiler was a police officer for the Township from June 2019 to July 2025, when he resigned to accept employment outside of police work.<sup>1</sup> (N.T. 15-16)

4. At some time in late 2023 or early 2024, the Township created a corporal position and there was a vacant sergeant position. The Township administered promotional exams for the 2 positions in January 2024. Also, at around this time, several other corporal positions became vacant causing a total of 5 corporal positions to become available. (N.T. 16-17)

5. Ten officers took the corporal exam, but 2 officers did not pass, leaving 8 officers on the eligibility list in order of highest to lowest test scores. The test scores are based on combining the scores that each officer received on a written, physical, and oral examination. Promotional lists are always posted and certified, and they are a matter of public record at the Department. (N.T. 16-17, 46, 60, 73)

6. In January 2024, the first officer on the corporal list was also first on the sergeant list, and he was promoted to sergeant. The next 5 officers on the corporal list were promoted to corporal, leaving the officers who ranked numbers 7 and 8 on the list, who became numbers 1 and 2 next eligible for a corporal promotion while the list remained unexpired. (N.T. 16-18, 87-91)

7. The Chief of Police at the time was Chief Sciroto. Sometime in 2024, Chief Sciroto left the Township. Lieutenant Scott Smith became Chief of Police in June 2024, which created a domino effect of promotions in the Department. Chief Smith's lieutenant position became vacant, the Township administered a lieutenant exam, and the highest-ranking scorer was a sergeant who was promoted to lieutenant, thereby opening a sergeant position that was filled by a corporal, thereby opening another corporal position. (N.T. 17-18, 65)

8. Officer Heckenswiler was the higher-ranking officer of the remaining 2 officers on the unexpired eligibility list for corporal. On or about October 20, 2024, Chief Smith informed Officer Heckenswiler that he was skipping over him and promoting Officer Anthony Peronace to the position of corporal because, in the Chief's opinion, Peronace was more decisive and confident. The Chief also informed Officer Heckenswiler that he was a good and proactive officer, that he was the number 1 arresting officer in 2021 and 2024, and that he conducted more follow up investigations than most other officers. (N.T. 18-22, 99)

9. On October 23, 2024, Chief Smith sent an email to the officers in the Department addressing a variety of matters including the promotion of Officer Peronace to corporal, which would officially obtain approval at the December 10, 2024 Township meeting. Officer Peronace was indeed promoted on December 10, 2024, by the Board of Commissioners. (N.T. 23-24; UX-1)

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<sup>1</sup> Although he is no longer a police officer, I will hereinafter refer to him as "Officer Heckenswiler" because he was a police officer at all times relevant to this case.

10. Officer John Pasqueal has been a police officer in the Department since 2005. In 2017, he ranked number 2 on the eligibility list for promotion to sergeant. The Township promoted the officer ranked number 1 on that list. In 2019, Officer Pasqueal took a written and oral examination for promotion to sergeant, along with 6 or 7 other officers, for 3 vacant sergeant positions. The top 3 officers on the sergeant eligibility list were promoted including Officer Pasqueal. There was no physical exam at the time. The Township on that occasion did not skip down to lower ranking scorers on the list. (N.T. 27-31)

11. In 2008, the Township administered an exam for 1 vacant sergeant position. The Township promoted the top scoring candidate. In 2012, the Township administered a test for 1 sergeant position, and 6 or 7 officers took the written and oral exam. The Township promoted the officer with the highest combined score. (N.T. 28-31)

12. Since at least 1980, the Township administered tests for promotional eligibility and posted lists ranking the officers from highest combined scorer to lowest combined scorer. Prior to October 2024, the Township consistently promoted the highest scorer on the list and no higher-ranking officer had been skipped over to a lower scoring officer until Officer Heckenswiler was passed over. (N.T. 32-36, 48-49, 61)

13. The Township did not bargain with the Union over bypassing the highest scorer on the eligibility list for a promotion and promoting the lower scoring officer, in October 2024. (N.T. 39-42)

14. Stephen Neufer was a police officer for the Township from September 1, 1980 until April 30, 2011. In 1984, Officer Neufer was number 2 on a promotional list for detective, and the Township promoted the number 1 ranking officer. (N.T. 46, 48-49, 53)

15. In 1992, the Township administered an exam for sergeant, and Officer Neufer was the only officer who passed. Officers must receive a score of 70% on the written exam to advance to the oral exam. Officer Neufer agreed to allow the Township to re-score the exams on a bell curve rather than re-administer the exam. After re-adjusting the written exam scores and administering the oral exams, Officer Neufer dropped to number 2 on the list. The officer who became number 1 was offered the promotion, but he declined, and Officer Neufer received the promotion being next on the list. In that same year, a second sergeant position became available, and the Township promoted the third ranking officer on the same list which was still active. (N.T. 51-55)

16. Again, in 1997, the Township promoted the number 1 ranking officer on the sergeant eligibility list. In 2001, the Township promoted the top 3 highest scorers on the sergeant eligibility list for 3 sergeant positions. Also, in 2001, the Township administered a test for the position of lieutenant. Sergeant Beck ranked number 1, and the Township promoted him to lieutenant. Sergeant Dillon ranked number 2, and Sergeant Neufer ranked number 3. (N.T. 56-58)

17. Christopher Hoffman served as the Township's Assistant Manager from 2010 to 2013. Mr. Hoffman has been the Township Manager since 2013. He serves on the Township's collective bargaining negotiation team with either legal counsel or elected officials. The issue of promotions has not ever been raised during that time nor has the Union filed grievances related to

promotions. The parties' collective bargaining agreement (CBA) does not contain any provisions relating to promotions. (N.T. 68-71; JX-1; JX-2)

18. The Township's Board of Commissioners adopted an updated version of its Civil Service Regulations on July 11, 2023. 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;

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.

(N.T. 74-76; TX-1)

19. The July 2023 amendments to the Civil Service Regulations did not change Section 5.2(b). Mr. Hoffman testified that, since 2010, when he began his tenure with the Township, the Township had not promoted an officer with a lower test score and lower rank on the eligibility list until December 2024, when the Township passed over Officer Heckenswiler. Mr. Hoffman meets with the Chief and the Lieutenant to discuss the list and recommendations for promotion. Mr. Hoffman credibly testified that, throughout this consultation process and discussing the candidates, the Township always applied the rule of 3, even though in the past they promoted the highest-ranking officer on the list. (N.T. 69-70, 73, 78-79, 84-85)

20. Chief Smith credibly 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. The Chief credibly testified that a candidate's fitness for the position is not revealed by test scores alone. The Chief also discusses the candidate with his/her active supervisor prior to deciding who to promote. (N.T. 94-95)

21. Chief Smith had known Officer Heckenswiler since he started his police career with the Township, and the Chief has personally observed him since then. Heckenswiler was hired around the same time that Chief Smith became a lieutenant. When he was a lieutenant, Chief Smith reviewed all of Heckenswiler's annual performance evaluations that were completed by the sergeants. (N.T. 96-98)

22. 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. Corporal 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 corporal, i.e., a supervisor. The Chief credibly testified that supervisors do not need to be aggressive, productive officers. (N.T. 98-100)

#### **DISCUSSION**

The Union contends that the Township unilaterally changed a longstanding past practice of always promoting the highest scoring officer on

the posted eligibility list. The Union posits that the practice constitutes a promotional procedure and a mandatory subject of bargaining. The Township parries that it has the managerial prerogative and discretion to follow the "Choice of 3 Rule" or "Rule of 3" in selecting the most qualified candidate for promotion as required by the First-Class Township Code (Code), its Civil Service Regulations, and caselaw. The Township also contends that, although it historically promoted the highest-ranking officer on the list, it was always following the Rule of 3.<sup>2</sup>

The Union certainly established on the record, and the Township admitted, that the Township has consistently promoted the highest-ranking officer on a promotional eligibility list until the Township promoted Officer Peronace over Officer Heckenswiler. However, a change in a past practice does not have to be bargained if the practice relates to a managerial prerogative and not a mandatory subject of bargaining. South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002) (opining that to conclude otherwise "would bind an employer to virtually all practices including matters of managerial prerogative . . . and arbitrarily expand the parameters of the Act 111").

In Borough of Ellwood City v. PLRB, 998 A.2d 589, 600 (Pa. 2010), the Supreme Court of Pennsylvania ruled that, in determining whether a matter is a managerial prerogative or a mandatory subject of bargaining, the inquiry is whether the managerial decision is germane to the work environment or rationally related to terms and conditions of employment. If so, the inquiry becomes whether collective bargaining over the topic would unduly infringe upon the employer's essential managerial responsibilities or its core function. Id. Promotions and promotional opportunities are certainly germane to the work environment impacting terms and conditions of employment, such as rates of pay, job duties and responsibilities, and direction of subordinate personnel. The question remains whether bargaining over the application of the Rule of 3 would be unduly burdensome for the Township.

The Township is a first-class Township governed by the Code. In Higgins v. Lower Merion Township, 24 A.3d 476 (Pa. Cmwlth. 2014), the Commonwealth Court of Pennsylvania held that, under the Code, a first-class township has the managerial discretion to appoint anyone of the top 3 candidates on a promotional eligibility list. Section 638 of the Code provides, in relevant part, as follows:

(b) Except as provided under subsection (c), an original position or employment in the police force or as a paid firefighter, except for the chief of police or chief of the fire department or an equivalent official, shall be filled only in the following manner:

(1) The [township] board of commissioners shall notify the [civil service] commission of a vacancy which is to be filled and shall request the certification of an eligibility list.

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<sup>2</sup> The Township also argues that the Board lacks jurisdiction to entertain the charge in this case because it involves the application of the Code, which is beyond the Board's authority and expertise. However, I already rejected this argument in the March 27, 2025 Order Denying Respondent's Motion to Dismiss Unfair Labor Practice Charge, and that prior ruling remains the law of the case at this time.

(2) For each vacancy, the commission shall certify three individuals from the eligibility list, or a fewer number of individuals if three individuals are not available, who have received the highest average for the vacancy.

(3) The board of commissioners shall make a conditional appointment from the certified individuals by the commission based solely on the merits and fitness of the certified individuals, unless the board of commissioners objects to the commission regarding one or more of the certified individuals for a cause specified under section 637.

53 P.S. §55638. Pursuant to the express language of Section 638 of the Code, the Township has the discretion to select any one of the top 3 certified candidates for a vacancy, and the terms "merits and fitness" includes qualifications and skills beyond test scores.

The Rule of 3 has been expressly incorporated into the Township's Civil Service Regulations, and the officers in the Department are, therefore, on notice that the Township is required to follow the Rule of 3. The application of the Rule of 3 was not, on this record, limited by the collective bargaining process. The fact that the highest scoring officer on the eligibility list was historically selected for promotion does not mean that the Township was not applying the Rule of 3, or that it was not considering other attributes and qualifications, beyond test scores, in selecting the best candidate.

Indeed, the Township's Civil Service Regulations, like the Code, make the application of the Rule of 3 mandatory in, not only 1, but 2 separate provisions. Section 5.2(b)(1) provides that "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." (F.F. 18) (emphasis added). Section 5.2(b)(3) again provides that "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." (F.F. 18) (emphasis added). Therefore, the officers in the Department were on notice that the Township is required to follow the Rule of 3 in every case and consider all 3 candidates. Moreover, Mr. Hoffman credibly testified that, from his personal involvement in the selection and promotion process, the Township has been following the Rule of 3 during his 12 years as Township Manager and that there has been no change.<sup>3</sup> The historical selection of the officers with the highest-ranking test score just means that the Township believed that those officers were also the most qualified candidates of the top 3.

If the Rule of 3 means anything, it means that management has the right to look beyond mere test scores in determining qualifications of candidates for promotion, otherwise the Rule would be meaningless. The statutory prerogative, under the Rule of 3, permits a first-class township to consider a candidate's qualifications based on past performance, character traits, annual evaluations, leadership, decision-making skills, seniority, institutional knowledge, and job experience within its police department in deciding which candidate is better qualified for a promotion into a leadership position. Indeed, the Chief in this case testified that test

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<sup>3</sup> The Township has not raised concerns over the timeliness of the instant charge.

scores alone do not provide a full and complete indication of the type of supervisor an officer would be.

The Chief based his selection of Officer Peronace on his experience working with officers Heckenswiler and Peronace as well as discussions with supervisors and Officer Heckenswiler's past performance reviews. Chief Smith determined that Officer Peronace was the better candidate for a leadership/supervisory role than Officer Heckenswiler who, contrary to Officer Peronace, had demonstrated a lack of decisiveness and decision-making ability. This determination goes to the core of ensuring that there is effective supervision in the Department, hence the Rule of 3. The legislature recognized the need to give first-class township management the latitude and discretion to consider these factors, qualities, and attributes in selecting the best candidate for the promotion, beyond mere test scores, by applying the Rule of 3. Significantly, both officers Heckenswiler and Peronace were originally numbers 7 and 8 on the eligibility list for corporal. In this respect, neither one was originally a top candidate for promotion to corporal, which is all the more reason why the Chief had to consider the strengths and weaknesses of both candidates, beyond their test scores, to obtain a full and complete indication of the type of supervisor each officer would be.

In Fraternal Order of Police State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER 32083 (Final Order, 2001) the Board stated that "the ultimate selection of candidates for positions including evaluation of qualifications and standards for promotion remain managerial prerogative within the employer's right to select, direct and discipline personnel." Id. The Board, in that case, further stated:

while the employer is obliged to bargain over matters such as posting notices of job vacancies, bidding procedures, applicant testing, and matters such as employee 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. (emphasis added). Although the Commonwealth case cited above arose under the Public Employee Relations Act, employers of Act 111 employees have the same managerial discretion to select the most qualified candidate for promotion from a group of applicants, especially in an important public safety operation like a police department.

The Township's application of the Rule of 3 to select the most qualified candidate for promotion is a core managerial function, authorized by the Code, Higgins, supra, and by its own Civil Service Regulations. Thus, bargaining over restrictions on that ability 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. Selecting qualified personnel for promotion into a supervisory position is ""essential to [the Township's] managing of its employees and the running of its enterprise . . . [and] strike[s] at the heart of policy decisions that directly implicate the public welfare, and, thus, should be insulated from the give-and-take of collective bargaining." Ellwood City, 998 A.2d at 600.

Requiring the Township to bargain with the Union to exercise its prerogative to apply the Rule of 3 would make the Union a managerial partner in Department operations and restrict the Township's managerial discretion to determine and set promotional criteria and, based on those criteria, to select the best qualified candidate. The whole purpose of the Rule of 3 is to give management the discretion to look beyond test scores. Accordingly, selecting Officer Peronace over then Officer Heckenswiler, who was higher on the eligibility list, did not constitute a change in a past practice that qualified as a mandatory subject of bargaining, nor was the prerogative voluntarily limited by the Township through collective bargaining.

The Union argues that the only way to objectively select the candidate with the most "merit and fitness" for the position, as required by the Code, is to select the candidate with the highest combined test score. Again, that would nullify the Rule of 3. Although the Union may have an interest in objectivity in the selection process, the application of the Rule of 3 contemplates that management can exercise discretion and judgment when determining candidates' "merit and fitness" for promotions.<sup>4</sup>

The Union also argues that Higgins, supra, is inapposite because the case did not involve the violation of a past practice. However, Higgins did conclude that the application of the Rule of 3 was a managerial prerogative authorized by the Code which, when applied to this case, forecloses a past practice analysis. Moreover, in Pennsylvania State Troopers Association (PSTA) v. PLRB, 809 A.2d 422 (Pa. Cmwlth. 2002), the Commonwealth Court held as follows:

Here, the weight afforded the test components, like the changed service requirements in [F.O.P.] Rose of Sharon Lodge [No. 3 v. Pennsylvania Labor Relations Board, 729 A.2d 1278 (Pa.Cmwlth.1999)], pertains to job qualifications, a matter of managerial policy. By altering the weight of test scores, the Commonwealth made a substantive decision regarding the selection of police officers to be promoted to sergeant. "[A]ny regulation which might be considered essential for the proper and efficient functioning of a police force may remain subject to municipal management." Plumstead Township v. Pennsylvania Labor Relations Board, 713 A.2d 730, 735 (Pa.Cmwlth.1998) (citation omitted).

PSTA, 809 A.2d at 426.

In the instant case, and pursuant to PSTA, the Township had the managerial prerogative to give weight to the leadership and decision-making skills of the candidates as substantive promotional criteria to ensure the proper operation of its Department, even though assessing those skills for each candidate in the top 3 is somewhat subjective. Significantly, here, the Chief did not rely solely on his own assessment of Officer Heckenswiler and Officer Peronace. He consulted with their supervisors and had reviewed

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<sup>4</sup> Also, there may be some subjectivity built into the scoring process. The test score for each candidate is a combination of a written exam, an oral exam, and a physical exam. The written exam score seemingly is the only objective component of the combined score. Although not in the record, the oral and physical exams scores may be subject to the judgements and opinions of the examiner(s), as evidenced by the scoring process for the 1992 sergeant exams when Officer Neufer had the highest written exam score but not the highest combined score.



performance evaluations. The cumulative data and opinions demonstrated a consensus that Officer Heckenswiler was deficient in leadership and decision making. The Township should not have had to promote him to the detriment of the Department, simply because he had a higher rank on the list, without considering the type of supervisor he would be, which is the very consideration that is contemplated by the Rule of 3 and constitutes a core managerial function.

#### **CONCLUSIONS**

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The Township is a public employer and a political subdivision within the meaning of the PLRA, as read with Act 111.
2. The Union is a labor organization within the meaning of the PLRA, as read with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Township has not committed unfair labor practices within the meaning of Section 6(1) (a) or (e) of the PLRA, as read with Act 111.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

#### **HEREBY ORDERS AND DIRECTS**

that the charge is dismissed, the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this tenth day of September, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/ JACK E. MARINO

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JACK E. MARINO, Hearing Examiner