

AMERICAN ARBITRATION ASSOCIATION

CASE NO.: 01-15-0003-0323

In the Matter of Arbitration Between

CITY OF PHILADELPHIA

Employer

and

FRATERNAL ORDER OF POLICE,
LODGE NO. 5

Union

OPINION
AND
AWARD

ARBITRATOR:

Robert E. Light, mutually chosen
by the parties pursuant to the rules and regulations
of the American Arbitration Association

HEARING:

October 2, 2017 in Philadelphia, PA.

APPEARANCES:

For the City
Benjamin Patchen, Esq.
Captain G [REDACTED] M [REDACTED]

For the Union
Marc Gelman, Esq.
(Jennings Sigmond, PC)
Michael Paige, Grievant

ISSUES:

Is the matter arbitrable? If arbitrable, did the City
improperly pass over Officer Paige for promotion?
If so, what shall be the remedy?

BACKGROUND

A hearing in this matter was held at the Philadelphia, Pennsylvania offices of the American Arbitration Association on October 2, 2017, with both sides present and duly represented by counsel and with both parties having full and complete opportunity to offer evidence and argument in support of their respective contentions.

The City of Philadelphia (hereinafter the "City" or the "Employer") and Fraternal Order of Police, Lodge No. 5 (hereinafter the "FOP" or the "Union") are signatories to a current collective bargaining agreement. (Joint Exhibit No. 1). A grievance was filed by the FOP on behalf of Police Officer Michael Paige, which grievance concerns "...the selection of personnel for promotion in the Police Department...". The City responded to the grievance by letter dated April 15, 2015 denying the grievant stating that "... The selection of personnel for promotion in the Police Department, which is an inherent management right is specifically recognized in the CBA's Management Rights clause."

The matter proceeded through the course of the grievance procedure and when there was no resolution it was submitted to arbitration for final and binding resolution. The instant arbitrator was selected pursuant to the rules and regulations of the American Arbitration Association.

FACTS

Michael Paige, the grievant herein, is a police officer assigned to the Nineteenth District and has been a police officer in Philadelphia for many years. He took a promotional test in 2014 and finished number eight on the eligibility list. According to the grievance, the City improperly passed Officer Paige over for promotion. At the hearing, the grievant testified, as did Inspector

T [REDACTED] C [REDACTED] a retired Philadelphia Police Officer, HR Employee S [REDACTED] P [REDACTED] and Captain
C [REDACTED] M [REDACTED]

Inspector C [REDACTED] testified that he had interviewed the grievant for promotion. He looked at the grievant's disciplinary history and sick time usage and, in his opinion, the grievant was "not ready to become a supervisor." As regards the grievant's disciplinary record, Inspector C [REDACTED] testified that the grievant blamed others for his discipline, showed no remorse, and that the grievant did have a number of disciplinary actions in his file.

Captain M [REDACTED] testified that the parties utilize a "Rule of Two" and that the grievant was not promoted on that basis. Grievant Michael Paige testified that he took the test, was placed number eight on the list and that there was no mention by the City of his disciplinary record as respects the promotion opportunity.

POSITION OF THE CITY

The City takes the position that this matter is not arbitrable and that this fact has been the subject of other arbitrations decided by a number of arbitrators (several arbitration decisions were introduced into evidence at the hearing). It asserts that a promotion decision is a management right and is simply not arbitrable. Further, as respects the merits, the City cites the disciplinary record of the grievant and that he simply is "not a worthy candidate for promotion." It maintains that the grievant never learned from his mistakes and that had he done so, he probably would be a Sergeant today. It asks that the grievance be denied.

POSITION OF THE FOP

The Union, on the other hand, takes the position, while it acknowledges that the City has broad discretion respecting promotion issues, that right is not absolute. It maintains that what occurred here was an abuse of discretion and that the grievant's disciplinary record which the

City utilized for purposes of not promoting him should not have been utilized for promotion purposes. It asks that the grievance be sustained and that the proper remedy here is that the arbitrator find that the City improperly passed over the grievant for promotion and that he order the City to make the grievant whole as if he was promoted.

DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel, the exhibits, as well as all of the other evidence prior to reaching his decision. In addition, the arbitration decisions cited were helpful to this arbitrator in the proper resolution of this matter. Initially, the arbitrator notes that, quite clearly, this police officer has had an extensive disciplinary record which included one hundred total suspension days since April 27, 1990, among other disciplinary actions. (See Exhibit No. 4). The promotional review panel found on January 8, 2015 that "... when interviewing the officer he stated (for the cases since 1990) there was a double standard of supervision and he wasn't treated fairly. That he was picked on and did not agree with the discipline. He took no responsibility for his actions and showed no remorse." Police Officer Paige was disapproved for promotion. Further, as then Police Commissioner Charles H. Ramsey noted in his letter to Officer Paige dated January 14, 2015, (Employer Exhibit No. 5) "...It was my determination in comparing you with the two eligible candidates ranked before and after you on the list, that they were better candidates for promotion at this time. This is referred to in the collective bargaining agreement as the "Rule of Two"."

As noted above, the parties utilize the so-called "Rule of Two" when evaluating candidates for promotion. This time-tested device was utilized in this instance and, as the Commissioner noted, it was his determination in comparing the grievant with the two eligible

candidates ranked before and below Officer Paige, that they were better candidates for promotion at that time. The arbitrator finds that the City acted properly in applying the "Rule of Two" and that therefore this grievance must be denied.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

AWARD

The matter is not arbitrable based upon the Rule of Two.

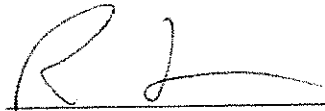


ROBERT E. LIGHT, ARBITRATOR

AFFIRMATION

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: March 25, 2018



Robert E. Light, Arbitrator