

1
2
3
4
5 **CITY OF SEATTLE**
PUBLIC SAFETY CIVIL SERVICE COMMISSION

6 IN RE THE APPEAL OF:

7 GREGORY SCHMIDT
8 Appellant,

9 vs.

10 SEATTLE POLICE DEPARTMENT,
11 CITY OF SEATTLE

12 Respondent/Employer.

PSCSC No. 12-002

DECISION AND ORDER

13
14 **I. INTRODUCTION**

15 This case is before the Commission because of a notice of appeal filed by Lieutenant
16 Schmidt on March 12, 2012. Lt Schmidt argues that he was improperly demoted from the rank
17 of director to that of lieutenant.

18 The Commission held a full evidentiary hearing on October 24th and 25th, 2013, before
19 Commissioners Terrence Carroll, Christian M. Halliburton, and Joel A. Nark. The Commission
20 received and reviewed exhibits from the parties, all of which were admitted into evidence except
21 for Appellant's Exhibit 2. The Commission heard the concluding arguments of the parties and
22 enters the following Findings of Fact, Decision and Order.
23

II. Findings of Fact

1
2 1. In December 1983, the Seattle Police Department and the Seattle Police Management
3 Association (SPMA)(the bargaining representative for police lieutenants and captains) agreed to
4 accrete the position of Director of Communications into the SPMA bargaining unit. The pay rate
5 for the Communications Director was set as the same as that of a captain.

6 2. The practice from that point forward was to appoint either a lieutenant or a captain to that
7 position.

8 3. No promotional exam for a director position has ever been developed or approved.

9 4. Lt. Gregory Schmidt was assigned to the position of Director of Communications on
10 April 2, 2008.

11 5. A promotional ceremony was held, and Lt. Schmidt was given a certificate of
12 appointment to “the Appointed Rank of Director of Police Communications.”

13 6. On May 28, 2010, the Police Department and SPMA entered into a memorandum of
14 agreement (“Agreement”) that reflected the their understanding that the two Director positions in
15 the Police Department, the Communications Director and the Community Relations Director,
16 could be filled by a lieutenant or a captain. The Department argued that there was a common
17 understanding that while the Director position could be filled with either a lieutenant or captain,
18 the person filling the position would retain their original rank. This understanding was supported
19 by the testimony of all witnesses with knowledge of the bargaining between the Department and
20 SPMA.

21 4. The Agreement also mandated that one of the two Director positions become a permanent
22 captain position.

23 5. The Department later requested that both positions be restructured as permanent captain

1 positions.

2 6. Subsequently, Lt. Schmidt was removed as Communications Director. On February 28,
3 2012 his salary was reduced from the equivalent of a captain's salary to a lieutenant's salary.

4 III. DECISION

5 Lt. Schmidt argues that he was unlawfully demoted without cause from the classified
6 rank of Police Director, and in the alternative, that he was transferred for disciplinary reasons.
7 The Seattle Police Department maintains that Lt. Schmidt's removal from his position as the
8 Communications Director was a transfer for operational, not disciplinary, reasons and not a
9 demotion.

10 The Commission may "hear appeals or complaints respecting the administration of the . .
11 . [Public Safety Civil Service System]." SMC 4.08.070(J). The Commission's rules interpret the
12 extent of this power to hear appeals. *See* SMC 4.08.070(A). Rule 6.01(a) provides that, "Any
13 regular employee who is demoted, suspended, or terminated may appeal such action to the
14 Commission." In *Charles v. Seattle Police Department*, PSCSC No. 05-008, this Commission
15 extended the right of appeal to disciplinary transfers. Thus, in order for this Commission to have
16 jurisdiction over this appeal, Lt. Schmidt must show that he has either been demoted or
17 subjected to a disciplinary transfer.

18 A. Demotion

19 Much of the evidentiary hearing centered on documents and testimony concerning
20 whether or not the director position was a classified rank in the Public Safety Civil Service
21 System. It is clear to the Commission that the Police Department has been careless and
22 inconsistent in how it has referred to the Director position and how it has maintained records
23 with respect to that position. The Commission hopes that as a result of this appeal, the

1 Department will take greater care in the future with respect to the manner in which it executes
2 personnel decisions and maintains better records regarding those decisions. Unfortunately, with
3 the record presented here, each side of this case could point to documents and testimony that
4 support their respective positions. On balance, however, the Commission is persuaded that the
5 Director position was never established as a separate rank or classification in the Public Safety
6 Civil Service System.

7 The Police Department at times referred to a “promotion” to Director or used forms that
8 appeared to show that “Director” was a classification. It is undisputed however that there was
9 never a promotional exam for the position that would otherwise be required under state and local
10 law for a merit based promotion. In order to prevail, Lt. Schmidt would need to prove that the
11 labor agreement with SPMA obviated such a requirement. “The Legislature intended the [Labor
12 Relations] Act to prevail over civil service rules. Pursuant to statute, case law, and PERC
13 decisions, the Commission was bound to abide by the [Labor] Agreement.”
14 *City of Spokane v. Spokane Civil Service Com'n*, 98 Wn.App. 574, 585, 989 P.2d 1245, 1250
15 (1999). “The Commission reads the Charter, the PSCSC Ordinance, and its rules together with
16 any applicable CBA language.” *Charles v. Seattle Police Department, supra*.

17 Schmidt was unable to prove that SPMA and the Department had made an agreement that
18 superseded the requirement to have a competitive promotional exam. Both the Department and
19 SPMA representatives that testified stated that there was no intent to make the Director position
20 a separate classification in the Public Safety Civil System. Instead, Assistant Chiefs Clark
21 Kimerer and Nick Metz, former Police Chief John Diaz, former Police Legal Counsel Mark
22 McCarty, and SPMA President Captain Eric Sano all testified that there was an agreement
23 between SPMA and the Department that any lieutenant or captain could be transferred into or out

1 of the Director position. Some testified that the Director position was more comparable to other
2 positions in the Police Department that have premium pay rates, but do not alter the individuals
3 rank. The testimony from these individuals was consistent that the Director position was not a
4 separate rank that once obtained would afford civil service protection.¹ There is no basis here to
5 treat the Director position as a separate rank or classification.

6 **B. Transfer**

7 Lt. Schmidt also asked this Commission to rule that his transfer from the Director
8 position was a disciplinary transfer without cause. The Department readily admitted Lt. Schmidt
9 had no performance issues and that there was no disciplinary reason to transfer him. Lt.
10 Schmidt, therefore, needed to prove that there was a disciplinary motive for the transfer. While
11 Lt. Schmidt testified that the Department handled his transfer badly and with little
12 communication, he was unable to demonstrate a disciplinary motive for the transfer. Instead, Lt.
13 Schmidt alleged that he was removed to satisfy the demands of the SPMA President. Even if
14 true, that is not a disciplinary reason that would confer jurisdiction on this Commission to review
15 the transfer. This commission has no jurisdiction to review a non-disciplinary transfer. *See*
16 *Charles, supra, and Vela v. Seattle Police Department, PSCSC No. 05-002.*

17
18
19
20
21
22
23 ¹ The only labor agreement that impacts this matter is the agreement entered into on May 28, 2010, which mandated that at least one Director position be filled with a captain. Police Exhibit No. 9. Lt. Schmidt was never promoted to the rank of captain.

1 **IV. ORDER**

2 The Commission denies the appeal by Lieutenant Schmidt.

3 Dated this 20th day of December 2013.

4
5 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**
6 **OF THE CITY OF SEATTLE**

7
8 
9 Commissioner Terry Carroll

12-20-13
Date

10 
11 Commissioner Christian Haliburton

12/20/13
Date

12 
13 Commissioner Joel Nark

12.20.13
Date