

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

POLICE BENEVOLENT ASSOCIATION (Local 816, St. Thomas Chapter)	)	CIVIL NO. ST-14-CV-490
	)	
	)	
POLICE BENEVOLENT ASSOCIATION (Local 1910, St. Croix Chapter),	)	ACTION FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF
	)	
Plaintiffs,	)	
vs.	)	
	)	
GOVERNMENT OF THE VIRGIN ISLANDS	)	
JOHN P. DeJONGH , (in his official capacity)	)	
RODNEY QUERRARD, SR. (in his official capacity as Commissioner of Virgin Islands Police Department),	)	
VIRGIN ISLANDS POLICE DEPARTMENT,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

THIS MATTER came on for hearing on December 3, 2014 on the Motion for Preliminary Injunction Pursuant to Fed. R. Civ. P. 65(a) and (b)¹ filed by Plaintiffs Police Benevolent Association (Local 816, St. Thomas Chapter) and Police Benevolent Association (Local 1910, St. Croix Chapter). Plaintiffs, who were present through representatives Lisa Plaskett-Samuel (Local 816) and Arthur Joseph (Local 1910), were represented by Nizar A. DeWood, Esq. Defendants Government of the Virgin Islands, John P. DeJongh, in his official capacity, Rodney Querrard, Sr., in his official capacity, and Virgin Islands Police Department were present through Rodney Querrard, Sr., Police Commissioner. All Defendants (collectively “the Government”) were represented by Joss

¹ Filed on November 7, 2014. Defendants filed an Opposition on December 2, 2014.

N. Springette, Assistant Attorney General-Labor. For reasons explained below, the Court will grant PBA's Motion for Preliminary Injunction.

I. Background

The Complaint was filed on October 28, 2014. On November 7, 2014, PBA filed a Motion for Temporary Restraining Order and/or Preliminary Injunction Pursuant to Fed. R. Civ. P. 65(a) and (b) to stop the Government from promoting any Virgin Islands police officers to the rank of corporal. The Court entered a Temporary Restraining Order on November 19, 2014. A hearing on PBA's Motion for Preliminary Injunction was held on December 3, 2014, and upon consent of the parties, the TRO was twice extended to December 29, 2014.

II. Facts

Plaintiffs, Police Benevolent Association (Local 816, St. Thomas chapter) and Police Benevolent Association (Local 1910, St. Croix chapter) (collectively, "PBA"), are unions representing hundreds of police officers and corporals in the Virgin Islands. The PBA Complaint seeks to stop promotions of certain police officers to corporal rank² that were scheduled to take place in November 2014. PBA alleges the planned promotions violate Virgin Islands law and the Collective Bargaining Agreement between PBA and the Virgin Islands Police Department. Additionally, Plaintiffs allege the Governor of the Virgin

² The Virgin Islands Police Department has five ranks, in escalating order: Police Officer, Corporal, Sergeant, Lieutenant, and Captain. Promotions to Sergeant, Lieutenant and Captain are done by competitive examination and those ranks are not covered by the Police Benevolent Association Collective Bargaining Agreement and are not involved in this dispute.

Islands and management in the Virgin Islands Police Department (VIPD) promote only those police officers they personally favor and the planned promotions are unlawful, secretive, discriminatory and in violation of their Collective Bargaining Agreement and local law.³

Twenty-four (24) police officers in the two island districts were identified as eligible for promotion to corporal rank. Defendants' Ex. 13, December 3, 2014 Hearing. Due to financial constraints, only eleven police officers were scheduled for promotion in November 2014. Three of the St. Thomas/St. John officers and one of the St. Croix officers are assigned to the Executive Security Unit which provides security services to the Governor.

At the December 3, 2014 hearing, PBA proffered four witnesses with terms of service with VIPD ranging from 10 to 18 years⁴, who each testified that there exists no mechanism to apply for a promotion to corporal, no corporal vacancies have ever been announced, no competitive test has ever been administered for promotion to corporal, and the officers who were designated for promotion in November 2014 did not submit to a competitive test. This testimony is undisputed. Those witnesses also testified,

³ At the December 3, 2014 hearing, PBA stressed that it does not question the merit of the police officers nominated for promotion to corporal rank. Instead, it asserts that the promotion decisions were not made in accordance with Virgin Islands law.

⁴ The following four persons testified as witnesses for PBA: Arthur Joseph, President of the St. Croix PBA and a police officer for ten years; (2) Lisa Plaskett-Samuel, President of the St. Thomas PBA and police officer for eleven years; (3) Charles Gumbs, Vice President of the St. Thomas PBA and police officer for twelve years; and (4) Alphonso Boyce, Sr., a police officer for 18 years and former President, Vice President and Chair of the PBA.

however, that they are unaware of any noncompetitive test ever rendered for promotion to corporal, which is the true subject matter of this case.

The Government's witnesses included Rodney Querrard, Commissioner of the Virgin Islands Police Department and Thomas Hannah, Assistant Commissioner of the Virgin Islands Police Department. Hannah testified that the VIPD requirements for promotion to corporal are set out in General Orders⁵ that date back to 1980.⁶

General Order 80-3, dated June 5, 1980,⁷ "set[s] forth the procedures and establish[es] the criteria for promotion to the rank of Police Corporal."⁸ The Order has four category of factors: (1) Basic Requirements; (2) Additional Requirements; (3) Additional Supportive Factors; and (4) Pay Scale.

The "basic requirements" for promotion to corporal are "long and honorable service" or "exceptional meritorious service." To be promoted by way of long and honorable service, a candidate must have a minimum of ten years⁹ with the VIPD.

⁵ Title 3 of the Virgin Islands Code, at § 258(a) permits the Commissioner of the Virgin Islands Police Department to issue General Orders. The statute provides:

The Commissioner may prescribe rules and regulations, not inconsistent with law or other regulations authorized by law, for the proper administration of the Department, the conduct of its officers and other personnel, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

⁶ See Defendants' Exhibits 3, 6, and 7, December 3, 2014 Hearing.

⁷ Admitted into evidence as Defendants' Ex. 3.

⁸ General Order 80-3A, dated November 2, 1998, amended General Order 80-3 to reduce the number of years required for long and honorable service from fifteen years to ten years. It also amends the language in the "Pay Scale" section. Defendants' Ex. 7.

⁹ General Order 80-3, dated June 5, 1980, states that a candidate must have a minimum of fifteen years with the VIPD, but General Order 80-3A, dated November 2, 1998 reduced this requirement to ten years. Defendants' Ex. 6, December 3, 2104 Hearing.

“Exceptional meritorious service” is defined as “performance of a police duty in an exceptional manner.” To be promoted for exceptional meritorious service, a police officer must have served at least three years with VIPD.

In addition, General Order 80-3 provides that candidates for promotion to corporal must meet four requirements:

1. Candidates must have no record of suspension or serious disciplinary infraction in the past three years;
2. Recommendation for promotion must come from the candidate’s immediate supervisor and all intermediate supervisors up to and including the Deputy Commissioner;
3. Satisfactory record of attendance for the preceeding (sic) twelve months; and
4. Demonstrated job efficiency

In the “Additional Requirements” section, the Order also provides that “the Commissioner may nominate a candidate for promotion to Police Corporal by his own initiative.”

The Order also lists additional supportive factors that will be considered: (1) the candidate’s contribution to the Department and community; (2) letters of Commendation; and (3) departmental awards.

Hannah testified that police officers are promoted to corporal in accordance with General Orders 80-3 and 80-3A. He also testified that an officer might also be promoted if he or she was shot in the line of duty. In agreement with Plaintiffs, Hannah testified that no competitive test was ever given to officers being promoted to corporal, but emphasized

that officers are “tested” every day in carrying out their duties and that supervisors observe officers’ performance on a regular basis as part of their supervisory role. He also testified that factors considered in corporal promotions include an officer’s monthly ratings, performance appraisal and timely filing of reports.

Querrard testified that he believes the Police Department can lawfully promote the proposed list of police officers to corporal rank as a list of proposed promotions was submitted to the Governor and the Governor approved the list. Defendants’ Ex. 13, December 3, 2014 Hearing.

Correspondence between PBA’s counsel, Attorney Nizar DeWood, and Commissioner Querrard gave a fuller picture of Querrard’s position. On September 10, 2014, DeWood wrote a one-page letter to Querrard stating that the Virgin Islands Police Department’s promotion procedure is and has been violating 3 V.I.C. § 521¹⁰ with respect to promotions from police officer to corporal. Defendants’ Ex. 9, December 3, 2014 Hearing. Querrard responded by letter on October 6, 2014, stating “Competitive examinations are not undertaken overnight and will not achieve the necessary numbers of supervisors expeditiously.” Defendants’ Ex. 10, December 3, 2014 Hearing. He cites § 522 and emphasizes the clause permitting a noncompetitive test based on an employee’s “special qualifications . . . or special or unusual requirements of the service” Based on that language, Querrard concludes that the Virgin Islands Code “indisputably

¹⁰ Section 521 provides: “Except as otherwise specified in this chapter, all appointments and promotions to positions in the classified service shall be made on the basis of merit and fitness, to be ascertained by competitive examinations.”

provide[s] the Governor with the authority to promote Officers to Corporals as he has in the past.”¹¹

III. Discussion

PBA alleges the proposed promotions of certain police officers to corporal rank violates sections 521, 522, 523, and 526 of Title 3 of the Virgin Islands Code.¹²

Sections 521, 522, 523, and 526 address the procedure for promotion of employees within the Virgin Islands’ Personnel Merit System, which includes police officers and other employees of the executive branch of the Virgin Islands Government. V.I. Code Ann. tit. 3, § 492(a). Section 521 provides:

Except as otherwise specified in this chapter, all appointments and promotions to positions in the classified service shall be made on the basis of merit and fitness, to be ascertained by competitive examinations.

Generally, then, all promotions in the classified service must be based on the results of a competitive examination which evaluates a candidate’s merit and fitness.

Section 522(a) provides more detail about the promotion tests¹³ and provides that in special circumstances, a noncompetitive test may be administered:

¹¹ Over the last 30 or more years, corporal promotions have been made sporadically, at no set intervals, and without competitive testing. This case appears to be the first time the practice has been challenged in the courts.

¹² In its Complaint, PBA alleges two causes of actions. First, it alleges the Government violated sections 521, 522, 523, and 526 of Title 3 of the Virgin Islands Code. Second, it argues that the promotions violate the Collective Bargaining Agreement between itself and the Virgin Islands Police Department because that Agreement incorporates the general Virgin Islands employment statutes. Thus, PBA’s causes of action are based on the same statutory sections, but one cause of action is based solely on the law and the other is based on contract principles. The Court will therefore address PBA’s two causes of action as a single argument: whether Defendants complied with specific statutory sections.

¹³ “[P]romotion test’ means a test for positions in a particular class, admission to which is limited to regular employees in the classified service.” V.I. Code Ann., tit. 3, § 451.

(a) The Director of Personnel shall from time to time conduct such entrance tests and promotion tests as he considers necessary for the purpose of establishing employment lists and promotion lists. The tests shall be competitive and shall be of such character as to determine the relative fitness and ability of the person tested to perform the duties of the class of positions for which a list is to be established, *except that with the approval of the Governor a noncompetitive test may be given to an employee for a promotion on the basis of special qualifications of the employee or special or unusual requirements of the service.* (emphasis added)

The remainder of the statute provides:

Tests may be written, oral, physical or in the form of a demonstration of skill, or any combination of such tests. The tests may take into consideration such factors including education, experience, aptitude, capacity, knowledge, ability, character, physical fitness, and other qualifications, as in the judgment of the Director of Personnel enter into the determination of the relative fitness of the applicant. No part of the examination shall be so framed as to solicit information concerning the political or religious opinions or affiliations of an applicant.

This section provides that the Director of Personnel shall conduct competitive promotion tests to establish a list of persons eligible for promotion. However, a noncompetitive test may be given with the Governor's approval to an employee if (1) the employee has special qualifications or (2) there are special or unusual requirements of the service.

The Government does not dispute the 2014 promotion candidates did not take a competitive examination. However, it argues that § 522 allows the Government, with the Governor's approval, to promote police officers to corporal without a competitive test.

IV. Preliminary Injunction Factors

To determine whether a preliminary injunction is appropriate, the Court must consider whether

- (1) the movant has shown a reasonable probability of success on the merits;
- (2) the movant will be irreparably injured by denial of the relief;
- (3) granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) granting the preliminary relief will be in the public interest.

Yusuf v. Hamed, No. 2013-0040, 2013 WL 5429498, at *3 (V.I. Sept. 30, 2013). The Supreme Court of the Virgin Islands has yet to opine on whether this is “a sequential injunction test,” where all four factors must be satisfied in full, or a ‘sliding-scale test,’ where the four factors are balanced and weighed. *Appleyard v. Governor Juan F. Luis Hosp. & Med. Ctr.*, No. 2014-0056, 2014 WL 6783132, at *7 (V.I. Dec. 2, 2014); *Tip Top Constr. Corp. v. Gov’t of the Virgin Islands, Dep’t of Prop. & Procurement*, No. 2014-0006, 2014 WL 571905, at *2 (V.I. Feb. 14, 2014). Because PBA can satisfy the more stringent “sequential injunction test,” we need not dwell on which test is applicable. *Yusuf*, 2013 WL 5429498, at *3 n. 3.

A. Reasonable Probability of Success

To satisfy the first factor, reasonable probability of success, PBA need not “show that [it] will actually prevail on the merits at trial, or that [its] success is ‘more likely than not,’ only that [it] has ‘a reasonable chance, or probability, of winning.’” *Yusuf*, 2013 WL 5429498, at *4.

This dispute revolves around the interpretation of certain sections of the Virgin Islands Code. In *Bryan v. Christian*, the Third Circuit Court of Appeals addressed a Virgin Islands police officer's similar claim that he had been unfairly denied a promotion to the rank of sergeant. 550 F.2d 890, 891 (3d Cir. 1977). Bryan argued that the Police Department (then the Department of Public Safety) did not comply with Virgin Islands law, including 3 V.I.C. § 522(a), in making promotions to sergeant. *Id.* at 894. As in the case now before the Court, promotions were made according to requirements developed by the Commissioner of Public Safety. *Id.* at 893. The Third Circuit agreed with Bryan that the promotion procedure was not authorized by statute and "was totally inconsistent with Virgin Islands law." In so finding, however, the Court opined

We concede that there is much to be said for a legislative judgment that the qualities which make for a good police sergeant cannot readily be quantified. But the legislature of the Virgin Islands has made the legislative judgment. It has placed policemen in the classified service, with promotion to be made on the basis of merit "to be ascertained by competitive examinations."

Id. at 895. Like the Third Circuit in *Bryan*, this Court must interpret the relevant statutes and decide whether the statute has been violated.

The law requires promotions in the classified service to "be made on the basis of merit and fitness, to be ascertained by competitive examinations." 3 V.I.C. § 521. Noncompetitive exams may be administered in specific circumstances: with the Governor's approval and on the basis of special qualifications of the employee of special or unusual requirements of the service. 3 V.I.C. § 522(a). The Government argues the existing procedure for promotion from police officer to corporal is lawfully based on letters

of recommendation from supervisors and the Governor's approval, not on a test or examination.¹⁴

The Government relies upon General Orders 80-3 and 80-3A as justification for the corporal promotions. However, it is doubtful whether the procedure laid out in the General Orders comply with § 522(a)'s noncompetitive test exception.

First, the Government does not argue and has not demonstrated that the police officers slated for promotion in November 2014 have "special qualifications" distinct from their fellow officers. There is also no evidence that the corporal positions to be filled encompass "special or unusual requirements" beyond the duties and requirements imposed on all corporals. Therefore, the 2014 promotion candidates do not qualify for the noncompetitive test exception that permits the administration of noncompetitive tests on the basis of "special qualifications" of the promotion applicant or "special or unusual requirements of the service."

Second, even if the 2014 promotion candidates did qualify for the exception, they are required to take or submit to a noncompetitive test, and there is no evidence that was done.

The statute does not define "noncompetitive test." To "compete" is "[t]o strive for something that someone else is also seeking," "to strive to outdo another for acknowledgement, a prize, etc.; engage in a contest," "to compete emulously; to strive

¹⁴ Hannah's comment that officers are "tested" every day by virtue of performing their jobs cannot satisfy § 522's noncompetitive test requirement. Counsel for the Government did not argue this theory in its filings or orally during the hearing. More significantly, § 522 only permits noncompetitive tests on the basis of special qualifications of an employee or special or unusual requirements of the service. The Government has not argued that either of these conditions apply to the police officers scheduled to be promoted to corporal in November 2014.

for the position, reward, profit, goal, etc., for which another is striving; to contend in rivalry.” West’s Legal Dictionary/Thesaurus 157 (Special Deluxe Ed. 1986); Random House Webster’s College Dictionary 270 (2d ed. 1999); West’s Law & Commercial Dictionary 293 (1985). It follows from these definitions that a “noncompetitive” test does not measure test-takers against one another, but instead against some established threshold or objective standard.

The Legislature’s meaning of a “noncompetitive test” is also open to interpretation. It appears from the statute’s language that the “noncompetitive exception” is meant to be read separately from the rest of the statute. Section 522(a) uses plural language throughout, except when it refers to noncompetitive tests if shifts to the singular form:

The Director of Personnel shall from time to time conduct such entrance tests and promotion tests as he considers necessary for the purpose of establishing employment lists and promotion lists. The tests shall be competitive and shall be of such character as to determine the relative fitness and ability of the person tested to perform the duties of the class of positions for which a list is to be established, *except that with the approval of the Governor a noncompetitive test may be given to an employee for a promotion on the basis of special qualifications of the employee or special or unusual requirements of the service.* Tests may be written, oral, physical or in the form of a demonstration of skill, or any combination of such tests. The tests may take into consideration such factors including education, experience, aptitude, capacity, knowledge, ability, character, physical fitness, and other qualifications, as in the judgment of the Director of Personnel enter into the determination of the relative fitness of the applicant. No part of the examination shall be so framed as to solicit information concerning the political or religious opinions or affiliations of an applicant. (emphasis added).

The Legislature’s adoption of the singular form in the noncompetitive test exception indicates that clause is to be read as an exception and apart from the rest of the statute.

Thus, the language following the exception clause describing “the tests” does not apply to noncompetitive tests.

West’s Legal Dictionary/Thesaurus defines a test as “an inquiry or inspection.” 744 (Special Deluxe Ed. 1986). Random House Webster’s College Dictionary provides a more descriptive definition: “the means by which the presence quality or genuineness of anything is determined,” “the trial of the quality of something,” “a particular process or method for trying or assessing,” or “a set of problems, questions, etc., for evaluating abilities or performance.” 1349 (2d ed. 1999). Similarly, West’s Law & Commercial Dictionary defines “test” as “to bring one to a trial and examination, or to ascertain the truth or the quality or fitness of a thing.” 644 (1985).

The Government has not argued that it administered a “test;” instead, it asserts the General Orders give the Police Department the authority to promote as it planned, based on letters of recommendation from supervisors. Considering these varying definitions, the Police Department’s planned promotions to corporal appear to have been based on procedures and qualifications that cannot be construed as a “test.” The current promotion system, as created under General Order 80-3, as amended, appears logical and fair, and Defendants demonstrated that the corporal promotions were based on merit.¹⁵ Nevertheless, that system does not comport with the legislative judgment set forth in Section 522. *Bryan* at 895.

¹⁵ PBA did not prove and the Court makes no finding that nepotism, favoritism, or other similar nefarious activity or intentions was the basis of the planned corporal promotions.

Accordingly, the Court finds that PBA has a reasonable probability of success on the merits on its claim that the Virgin Islands Police Department's promotion procedure for police officers being promoted to corporal violates Virgin Islands law.

B. Irreparable Injury

The next factor the PBA must satisfy for a preliminary injunction is irreparable harm. PBA must demonstrate the existence of a "certain and imminent harm for which a monetary award does not adequately compensate." *Yusuf*, 2013 WL 5429498, at *6. Accordingly, if "a plaintiff's loss is a matter of simple mathematic calculation," [the] plaintiff fails to establish irreparable injury for preliminary injunction purposes." *Id.*

In its Motion for Temporary Restraining Order and/or Preliminary Injunction, PBA alleges that the VIPD planned to promote a secret list of police officers to the rank of corporal in violation of Virgin Islands law. PBA claims the promotions would harm the rights and morale of police officers, violate Virgin Islands law, and promote a nepotistic promotion policy. PBA argues the unlawful promotions would lead officers to conclude that personal connections carry more weight than experience, dedication, and hard work.¹⁶ Additionally, Plaskett-Samuel testified that morale is low and "chaos" would ensue if the promotions were awarded and the newly-promoted corporals were subsequently demoted based on the Court's finding that the promotions were unlawful.

¹⁶ As noted in fn 3, PBA tempered its argument at the hearing and conceded that the officers scheduled for promotion may well be qualified, but were scheduled for promotion via an unlawful process.

The Government counters that PBA will not suffer irreparable harm if injunctive relief is not granted, and argue the Government, not the PBA, will suffer irreparable harm as corporal supervisors are badly needed, particularly in light of the Consent Agreement to which VIPD is subject. Commissioner Querrard testified that vacancies affect performance and VIPD, particularly the St. Thomas-St. John District, is suffering from an insufficient structure.

The harm PBA alleges it will suffer – a decrease in morale, “chaos,” and the appearance of favoritism – is not compensable by monetary damages. The Court agrees the harm that will result if unlawful promotions are allowed is not compensable by money damages. The Court also specifically finds that allowing potentially unlawful promotions to take place will result in irreparable harm if the promotions are later rescinded. PBA has therefore satisfied the irreparable harm factor.

C. Harm to Defendants

The third factor a preliminary injunction requires balancing the harm to the Government resulting from the imposition of a preliminary injunction against the harm PBA would suffer if the injunction is not granted.

PBA alleges that the proposed promotions are unlawful and will reduce morale among police officers and potentially discourage hard work and dedication because those factors are not considered in promotion decisions.¹⁷ Further, PBA adds that demoting

¹⁷ The Court is not persuaded that dedication and hard work were not factors taken into account by the Defendants when the promotion list was created.

recently-promoted officers would further reduce morale and cause strife in the ranks.¹⁸ For those reasons, PBA asserts the balancing of the harms favors issuing a preliminary injunction.

The Government, on the other hand, contends that granting the preliminary injunction will force the VIPD to operate with an insufficient number of supervisors. Corporal is a supervisory rank, and the Police Department is in critical need of supervisors to direct its officers and ensure efficiency of its operations. Virgin Islands law imposes many duties upon the VIPD, including the duty to protect “persons and property within the jurisdiction of the Virgin Islands.” 3 V.I.C. § 257. Further, VIPD is operating under a “Consent Decree,” an agreement between the Police Department, the V.I. Department of Justice and the United States Department of Justice, that imposes additional requirements on VIPD, including the need for supervisors. See Commissioner Querrard’s Letter to DeWood, Defendants’ Ex. 10, December 3, 2014 Hearing (“it is important to point out the critical needs of the department as we move forward while under a Consent Decree”).

Balancing the harm to PBA in denying injunctive relief and the harm to the Government in granting the same, the balance of harm tips in PBA’s favor. Lisa Plaskett-Samuel testified to the low collective morale of Virgin Islands police officers and opined that allowing the promotion to proceed would further reduce officers’ morale. Officers’

¹⁸ Due to the issuance of the Temporary Restraining Order, no police officers were promoted to corporal in November 2014. However, if the Court denies the request for a preliminary injunction, the Government would then have the right to promote the selected officers to corporal. Should the Court, after considering the matter on the merits, rule in PBA’s favor and grant a permanent injunction, the promoted corporals may suffer demotion back to the rank of police officer.

trust in their managers and supervisors may be impacted, and the possibility of demoting the new corporals back to police officer is a grim one.¹⁹

In concluding that the relative harms favor imposing a preliminary injunction, the Court is mindful of the important role of the Virgin Islands Police Department in the Territory. Certainly, VIPD needs a sufficient number of supervisors to carry out its statutory imposed duties and to properly serve the community. However, the imposition of a preliminary injunction may limit the number of supervisors, but will have no impact on the number of police officers that serve the VIPD.

D. Public Interest

The final factor inquires whether a preliminary injunction is in the public interest. “In considering the public interest, courts should seek to prevent the parties from halting “specific acts presumptively benefiting the public . . . until the merits can be reached and a determination made as to what justice requires.” *Yusuf*, 2013 WL 5429498, at *8 (citing *Cont’l Grp., Inc. v. Amoco Chemicals Corp.*, 614 F.2d 351, 358 (3d Cir. 1980)).

PBA argues that VIPD’s policy of promoting police officers to corporals using a procedure other than those outlined in the Virgin Islands Code does not advance a legitimate or significant public interest. The Government counters that a preliminary injunction would jeopardize the safety of the community.

¹⁹ The Court notes that those intended for promotion will likely suffer from low morale as a result of the preliminary injunction. However, in balancing the harm the Court finds that the low morale that the eleven officers scheduled for promotion will suffer will likely be less than the low morale of several hundred police officers in the injunction is not granted.

The public has an interest in investigating potential unlawful actions of the Virgin Islands Police Department, which itself is charged with enforcing the Territory's laws. See *Reilly v. City of Atl. City*, 532 F.3d 216, 232 (3d Cir. 2008) (in free speech context "public's interest in hearing testimony about police corruption outweighed [city and Chief of Police's] interest in maintaining order by disciplining Reilly for that speech"). On the other hand, the public also has a significant interest in ensuring that the VIPD is able to keep the community safe and carry out its public safety functions. An adequate staff, including a sufficient number of supervisors, is a key component of a functioning police department. However, a preliminary injunction would not impact the number of police officers in the Virgin Islands Police Department; it would only temporarily limit the number of supervisors. A preliminary injunction would not prohibit any police officer from carrying out his/her duties, it would merely stop or delay the Government from awarding promotions to corporal. See *Yusuf*, 2013 WL 5429498, at *7 (citing *Opticians Ass'n of America v. Independent Opticians of America*, 920 F.2d 187, 197 (3d Cir. 1990)) ("[O]ne of the goals of the preliminary injunction analysis is to maintain the status quo, defined as 'the last, peaceable, noncontested status of the parties'"). Therefore, while the Court acknowledges the needs of the VIPD and the challenges it faces, the balance of harms analysis favors the PBA. The Court finds that all four factors of a preliminary injunction have been satisfied. Therefore, the Court need not determine whether the sequential test or sliding scale test should be applied.

V. Conclusion

PBA has shown that it has a reasonable probability of success on the merits, the harm to PBA outweighs the harm to the Government, and PBA will suffer irreparable harm if the preliminary injunction is not granted. Therefore, PBA has demonstrated that it is entitled to a preliminary injunction. Accordingly, PBA's Motion for a Preliminary Injunction will be granted. An Order consistent herewith will be entered.

DATED: December 29, 2014


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


DONNA D. DONOVAN
Court Clerk Supervisor 12/30/2014