COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 397	:	
	:	CASE NO. PERA-C-13-69-W
v.	:	
	:	
CITY OF ERIE	:	

PROPOSED DECISION AND ORDER

On April 3, 2013, Teamsters, Local 397 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Erie (City) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the City violated its duty to bargain a mid-contract change to the negotiated uniform policy when it required bargaining unit members to wear safety boots.

On May 2, 2013, the Secretary of the Board issued a letter to the Union that the Board was unable to process the charge. On May 13, 2013, the Union filed an amended charge, and the Board preserved the original filing date. On June 14, 2013, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of January 22, 2014, in Pittsburgh. After two continuances, the hearing was held on August 6, 2014. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The parties presented closing arguments on the record in lieu of filing post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3-4)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3-4)

3. The parties' collective bargaining agreement (CBA) contains a Uniform allowance. (N.T. 8; Union Exhibit 1)

4. Section 2600 of the CBA provides, in relevant part, as follows:

> The Employer will provide a yearly uniform allowance to blue-collar employees. The employees will be responsible for washing and maintaining [their] uniforms. Employees who are supplied uniforms are required to wear those uniforms while performing their job duties. The standard uniform is a work shirt and work pants, or equivalent options. The yearly allowance dollar amount will be determined each year by adding the cost of one long sleeve navy work shirt and one pair of navy work pants and multiplying that total by six.
>
> The Employer will provide the Union with a list of prices the Employer is paying for all uniform items whenever there is a change.
>
> The uniform allowance may be used by the employee to order any combination of the following:
>
> | | |
> |---|---|
> | Short sleeve navy work shirt | Long sleeve navy work shirt |
> | Navy work pants | Coveralls heavy, navy or Orange |
> | Coveralls light, navy or orange | Tee Shirt, Navy or orange |
> | Hooded pullover sweatshirt | Hooded zipper sweatshirt |

Ballcaps, navy or orange	Carhartt jackets
Crewneck seat shirt	Carhartt artic coat
Work shoes	

The Union representative can meet with the Bureau Chief to discuss additional options. Employees will be permitted to wear steel-toed sneakers.

5. The total annual uniform allowance is $237. The uniform allowance can be used to purchase any combination of work clothes approved by the City, including shoes. The employe has a choice to spend his allowance any way he wishes. Every single item of work clothing in the allowed uniform list was negotiated. (N.T. 15, 23-24, 30-31, 36-37)

6. 11% of work-related injuries of City employes occur below the ankle. Over a three-year period, 63 of 561 injuries were below the ankle. (N.T. 42)

7. The City is self-insured. The City must adhere to Commonwealth safety requirements or it could lose its self-insured designation. The City sought to reduce the number of injuries and instituted a safety shoe policy. (N.T. 43, 46-47)

8. On February 7, 2013, City management met with Mr. Getz, the Secretary/Treasurer of the Union, Mr. Wegelin, a Union steward and Mr. Ellis, also a Union Steward, regarding the safety-shoe policy. Mr. Getz informed management that he would look into it and confer with Mr. Rush, the Union President. There was no specific written policy presented to the Union officials that day. (N.T. 13-14, 50-51, 54-55, 59)

9. On February 21, 2013, Human Resources Manager, Connie Cook issued a safety boot policy. The policy provides in relevant part, as follows:

Protective Footwear Policy

1. All Teamster employees will be required to wear protective footwear meeting ASTM F2413-05 guidelines as of April 1, 2013.
2. Employees will be required to report to work with protective footwear. Failure to wear the protective footwear to work will be grounds to have the employee sent home on that day without pay and may further be subject to progressive disciplinary action.
3. Protective footwear order forms will be provided to each bureau the week of February 25th.
4. The City of Erie, using its current uniform contract, will fund the purchase of one pair of approved protective footwear for each Teamster employee between the dates of February 25, 2013, and March 29, 2013. The protective footwear purchase will not be deducted from the employee's annual uniform allowance. All protective footwear purchases made after March 29, 2013 and each year thereafter are the responsibility of the employee utilizing their annual uniform allowance or personal funds.
5. Employees, who need to try on their protective footwear prior to purchasing, must do so outside of work hours.
6. Seasonal employees must purchase their own protective footwear meeting the ASTM F2413-05 standard. Failure to wear protective footwear at work will be grounds to have the employee sent home on that day without pay.

(Union Exhibit 2)

10. The Union and City managers met again on March 15, 2013. The new safety shoe policy remained in effect despite Union objections. (N.T. 13-14, 18 33)

11. The boots required by the City are safety boots with an ASTM number from OSHA. They can be composite toed, and they do not have to be "steel-toed." The City is purchasing the first pair of safety boots for every bargaining unit member. (N.T. 34, 41, 44)

12. The City requires that the City-purchased pair of work shoes be obtained by employes from its contractor, Raven Rock. Subsequently, employe-purchased work shoes can be purchased anywhere. (N.T. 45, 53-54)

13. Injuries have decreased by 35% since instituting the safety policy. (N.T. 46)

DISCUSSION

The Union argues that the City violated its duty to bargain when it unilaterally imposed a safety boot policy on bargaining unit members in violation of the negotiated uniform provisions contained in the CBA. The Union contends that the new policy requires employes to purchase footwear instead of choosing which part of the uniform to buy. The City, however, maintains that the new policy is a non-negotiable managerial prerogative. The City also contends that the policy is within the meaning of the uniform provisions of Section 2600 of the CBA.

An employer commits unfair practices within the meaning of sections 1201(a)(1) and 1201(a)(5) of the Act if the employer unilaterally changes a mandatory subject of bargaining. **Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978).** If the employer changes a matter of inherent managerial policy, then it may not be found to have violated its bargaining obligation enforceable under the Act.

The Board and the Commonwealth Court have held that management has the prerogative to require employes to wear certain attire and dress in the manner that, in management's discretion, properly represents the employer and facilitates the employe's job duties and performance. In this regard, a police dress code has been recognized as a management prerogative and not a mandatory subject of bargaining. **City of Reading**, 26 PPER ¶ 26165 (Proposed Decision and Order, 1995); **City of Chester**, 22 PPER ¶ 22006 (Proposed Decision and Order, 1990). Also, the Commonwealth Court held that the imposition of a dress code for Commonwealth employes at a county assistance office is a managerial prerogative. **PSSU, Local 668 v. PLRB**, 763 A.2d 560 (Pa. Cmwlth. 2000). The Court, in **PSSU**, opined that "[b]ased upon employer's substantial interest in providing professional services to the public, the [B]oard properly concluded that a dress code, which outlines specific minimum standards of appropriate attire, is appropriately within employer's managerial prerogative and is not subject to collective bargaining." **Id.** at 563.

However, the rationale in those cases, of presenting minimum professional standards while representing the employer during the provision of services, does not apply here. In this case, the City imposed a safety shoe requirement to reduce injuries to City employes, the loss of personnel and to limit the self-insured City's dollar-for-dollar payouts for those injuries. To determine if a particular issue is a subject of mandatory bargaining, the Board must apply a balancing test to determine "whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole." **PLRB v. State College Area School District**, 337 A.2d 262, 268 (Pa. 1975).

The record does not clearly establish the wage, hour working condition interest that the employes have in being required to wear safety boots. The bargaining unit members are already required to wear work shoes for their work. The record shows that safety boots do not cost more than non-safety work shoes, and the record does not show that safety boots have to be replaced more often than non-safety boots. Moreover, the first pair of safety boots is being purchased for each employe by the City, and there is no up-front cost for the employes to meet the deadline of wearing safety boots. The Union argues that the safety boot policy removed the employes' free choice to determine how to spend their uniform allowance. But the Union did not explain how free choice was affected simply because the work shoe to be replaced was a safety boot instead of a non-safety

boot, especially when the evidence did not show that the safety boot required replacement sooner or more frequently.

On the other hand, the City clearly established that 11% of all work related injuries occur from the ankle down. As a self-insured employer, the City is required by the Commonwealth to adhere to minimum safety standards and reduce risk to its employes. Moreover, injuries have in fact decreased by 35% since instituting the safety boot policy. I conclude that the City's managerial interest in maintaining workplace safety, reducing injuries which results in the loss of manpower, and reducing injury claims outweighs the employes' interests in choosing the type of work shoe they wish to purchase and wear.

As a managerial prerogative, the matter of footwear is a permissive subject of bargaining. Even a permissive subject, however, may not be changed unilaterally mid-contract if it has been negotiated and included in the parties' collective bargaining agreement. **Pennsylvania State Police Association v. Commonwealth of Pennsylvania, Pennsylvania State Police**, 41 PPER 32 (Final Order, 2010). The Union claims that the safety shoe policy violates the uniform allowance provisions under Section 2600 of the CBA. I disagree.

The City provides an annual uniform allowance of approximately $237. Section 2600 provides that employes **may** use that money to purchase the items listed in that section, including "work shoes." The specific type of work shoes for which employes may use their allowance is not defined or identified. The policy does not change the fact that employes may still use that allowance to purchase work shoes or any other attire on the list. Employes do not have to use their allowance to buy work shoes at all. The safety boots required by the City are "work shoes," within the meaning of Section 2600 of the parties' CBA.

Additionally, the Board has found that, although the employer's implementation of a work rule may be within its managerial prerogative, consequential matters of employe discipline and procedure are mandatory subjects of negotiation. **Lincoln University**, 37 PPER 173 (Final Order, 2006); **Fairview Police Association v. Fairview Township**, 31 PPER ¶ 31019 (Final Order, 1999). The footwear policy in this case also contains severable disciplinary provisions which must be bargained. In the **PSSU** case, the employer's dress code policy also contained discipline. The Commonwealth Court concluded that the discipline was not bargainable because the parties' collective bargaining agreement contained a disciplinary provision that required the employer only to notify employes of the violations for which they could be disciplined. Accordingly, the dress code policy in that case, which notified employes of the specific discipline resulting from non-compliance of the dress code, did not violate the collective bargaining agreement.

Unlike in **PSSU**, **supra**, the CBA in this case does not contain a disciplinary provision evidencing that the City negotiated the Union's approval to develop new violations subject to discipline. Nor does the CBA evidence that the City can establish undefined levels of discipline, with the only recourse being the just cause provisions of the CBA and the grievance arbitration protections. Absent such a contractually negotiated provision, this Board has held that the disciplinary provisions and procedures of a policy are mandatory subjects of bargaining. **Fairview Township**, **supra**.

The City's footwear policy provides that failure to wear protective footwear will result in an employe being sent home without pay for the day and "may further be subject to progressive disciplinary action." The City is required to negotiate the notice requirements and the level of discipline. The Union, for example, may wish to negotiate whether an employe should be permitted to return to work the same day so as not to lose an entire day's wages. Also, the City does not identify the other "progressive discipline" to which the employe may be subjected. The progressive disciplinary provision is overly broad and arbitrary and must be rescinded.

Accordingly, the City violated Section 1201(a) (1) and (5) by unilaterally implementing a protective footwear policy containing discipline that is undefined, arbitrary and overly broad. The City's unilateral requirement that employes wear protective footwear is not an unfair practice. However, the disciplinary aspects of the policy must be negotiated.

CONCLUSIONS

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

1. The City of Erie is a public employer under PERA.

2. The Union is an employe organization under PERA.

3. The Board has jurisdiction over the parties hereto.

4. The City has committed unfair practices within the meaning of Section 1201(a)(1) and (5).

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the City shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with the employe representative.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

   (a) Rescind any and all disciplinary provisions in the protective footwear policy, including but not limited to any send-home requirement, wage loss and disciplinary record making or records retention.

   (b) To the extent that the City wishes to include discipline, bargain with the Union over any discipline relating to the protective footwear policy, but not the protective footwear requirement.

   (c) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

   (d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-second day of July 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The City of Erie hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has rescinded any and all disciplinary provisions from the protective footwear policy, including but not limited to any send-home requirement, wage loss and disciplinary record making or records retention; that it has made a written offer to bargain the disciplinary provisions of the protective footwear policy with the Union, to the extent that it intends to include discipline, disciplinary procedures or disciplinary records retention; that it has posted a copy of the decision and order as directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public