

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE  
TROOPERS ASSOCIATION

v.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE

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Case No. PF-C-11-143-E

**PROPOSED DECISION AND ORDER**

On October 27, 2011, the Pennsylvania State Troopers Association (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that the Commonwealth of Pennsylvania, Pennsylvania State Police (State Police, Department of Commonwealth), violated Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that the Commonwealth repudiated the parties' collective bargaining agreement (CBA) and unilaterally changed terms and conditions of employment when it amended Operations Manual 7-18.

On November 22, 2011, the Secretary of the Board issued a complaint and notice of hearing scheduling a hearing for Friday, June 1, 2012, in Harrisburg. After two continuances, a hearing was held on August 21, 2012. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

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

**FINDINGS OF FACT**

1. The Commonwealth Department of State Police is a public employer under Act 111, as read in **pari materia** with the PLRA. (N.T. 3).
2. The Union is a labor organization under Act 111, as read in **pari materia** with the PLRA. (N.T. 3).
3. David M. Bova is a corporal with the State Police, and he is released to a full-time position with the Union. Currently, he is the Second Vice-president and Grievance Board Chairman. (N.T. 12-13).
4. Christian Fow is a Crime Corporal stationed in Gettysburg. He is also a member of the Special Emergency Response Team, also known as "SERT." (N.T. 50-51).
5. SERT was formed in 1986 to respond in an organized manner to any high-risk incident in the Commonwealth such as barricaded gunman, hostage situations, high-risk warrant service, dignitary protection, such as guarding the President and governors, and anything else that exceeds normal trooper capabilities. SERT provides SWAT coverage to other agencies throughout the Commonwealth, in addition to the State Police, that lack their own SWAT capabilities. SERT members travel to every corner of the Commonwealth to respond to emergencies. SERT is divided into two teams, one in the eastern part of the Commonwealth and one in the western part. There is a tactical side and a negotiation side. (N.T. 52, 56, 59, 63-64, 97).
6. Each SERT team has twenty-five members, a coordinator and then six four-man teams with a total of approximately fifty members throughout the Commonwealth. Two of the four-man teams are snipers. The other four teams are entry teams.

Entry teams have a point person, a cover person and utility persons. Each four-man team has a team leader and an assistant team leader. The snipers work in sniper-spotter pairs. The East Team has a full time Coordinator and Training Officer as does the West Team. There is also a full-time Negotiation Section member, currently vacant, for a total of five full-time SERT members. All other SERT members serve on the SERT on a part-time basis, and they are assigned full-time to a particular troop and station. A SERT member could be activated and removed from his assigned post for days or weeks at a time. (N.T. 56-59, 61, 98-99).

7. Keith Stone is a Captain at the State Police. In 2007, he left SERT as a sergeant to accept a position at the Bureau of Criminal Investigations, Intelligence Division. After two years at the Intelligence Division, Captain Stone was promoted to Lieutenant and accepted a position at the Office of Domestic Security as the Homeland Security Liaison Officer for the State Police. In April 2011, he was promoted to Captain and assigned to his current position of Director of Tactical Operations in the Bureau of Emergency and Special Operations (BESO). Captain Stone is in command of both SERT teams (i.e., East and West), the Hazardous Devise Explosives Section (AKA "Bomb Squad"), and the K-9 Section. (N.T. 95-96).
8. SERT members carry a pager on a 24/7 basis. Once a SERT member is paged and activated, he moves to the BESO. SERT members accumulate a lot of overtime. SERT members are activated approximately 85 to 100 times per year above and beyond training and protective details. Training is a minimum of three to four days per month. Some activations span more than one day. SERT members are assigned their own state car for business and personal use. (N.T. 62-63, 67, 71, 74-75, 100, 105, 112-113, 123, 130-131).
9. Article 37 of the parties' CBA addresses specialized positions. SERT is a specialized position covered by Article 37. (N.T. 91; Joint Exhibit 1).
10. Section 4 of Article 37 addresses removal from specialized positions and provides as follows:

Section 4. Reduction in Position

- a. Removal from a specialized position in a Troop/Bureau because of a reduction of personnel in that position or elimination of the specialty shall be by least seniority in that specialty in the affected station, unit or work locations providing all factors are equal.
- b. Removal from a specialized position for reasons other than as stated in subsection a. above shall be for reasonable grounds. Notice of such removal shall be accompanied by a written explanation setting forth the reasons. If a member wishes to appeal such decision to remove, he she may use the grievance and arbitration procedures set forth in Section 10 of this Article. If a removal is for disciplinary purposes, the issue in the case shall be whether the Department had just cause for removal. If a removal is for non-disciplinary purposes (for example, performance in or non-suitability for the position), the issue in the case shall be whether the Department had reasonable grounds for removal.

(Joint Exhibit 1, Article 37, § 4 at 40).

11. In 2004, changes were made to Article 37 thereafter requiring that removal from specialized positions be based on reasonable grounds for non-disciplinary removals and just cause for disciplinary removals to be determined on a case-

by-case basis through the parties' grievance arbitration procedure. (N.T. 15-16).

12. The State Police has operations manuals regulating each particular unit of the State Police. It has operations manuals, for example, for patrol, communications and SERT. Operations manuals are designated with the prefix "OM." (N.T. 16-17).
13. OM 7-18 is the operations manual containing the "administrative provisions" for SERT. OM 7-18 was amended on May 1, 2009 ("09-Version") and again on September 15, 2011 ("11-Version"). OM 7-18 is available to all Department members. (N.T. 17, 106, 108-109; Joint Exhibits 2 & 3).
14. There are also standard operating procedures (SOPs) that apply to the SERT Tactical Unit. The SOPs "are designed as guidelines for SERT training and tactical operations." OMs are mandatory regulations whereas SOPs are guidelines without the same authority as OMs. The OMs are governed by mandatory terms such as "shall" whereas the SOPs have flexibility built into them and are more of a guideline or "play book." The amendments to OM 7-18 are reviewed and approved by the "front office," labor relations and human resources. SOPs are internal documents that are not reviewed and approved outside of BESO and lack the level of scrutiny given to an OM. The personnel provisions of the SERT SOPs have remained the same since July 2007, through yearly updates in 2008, 2009 and 2010. (N.T. 42, 54, 79-80, 108, 137-138; Commonwealth Exhibit 2).
15. Section C (3) (e) of the 09-Version provides as follows:
  - e. Members of the Tactical Unit or the Negotiation Unit who attain the rank of Lieutenant are no longer eligible to serve as members of these units.(Joint Exhibit 2, § C (3) (e) at 6.7).
16. The 09-Version does not provide that members are to be removed from SERT based on a promotion to the rank of sergeant. (N.T. 18).
17. When Captain Stone returned to BESO in April 2011, he reviewed the Operations Manual and realized that there were changes made with which he did not agree. Captain Stone moved language from the SOPs to OM 7-18. Also, Captain Stone was instructed by his superiors to restrict SERT membership such that upon promotion to sergeant, not just Lieutenant, the member was required to choose between SERT and the promotion. (N.T. 109-110, 122, 133).
18. Changes to the operations manuals are made in boldface type. The 11-Version of OM 7-18 contains boldface type reflecting changes to Section C. The Title of Section C was changed from "TRANSFERS" to "PROMOTIONS AND TRANSFERS." (N.T. 19-20; Joint Exhibits 1 & 2).
19. When Captain Stone revised OM 7-18, he incorporated into Section C (2) the language from the SERT SOPs. (N.T. 111-112).
20. The incorporated SERT SOP language added to the 11-Version of OM 7-18 is as follows:
  2. All SERT members are expected to maintain professional levels of conduct and performance within the team and at their permanent duty assignment. Tactical Unit members must also maintain acceptable levels of fitness and shooting skills. Failure to maintain appropriate levels of conduct and performance may result in restricted SERT duty status or dismissal from the team. The Director, BESO may place a SERT

member in permanent restriction in accordance with this regulation.

3. Attitudes, statements, and demeanor which may create the impression of elitism or self-serving motivations are damaging to the team's reputation and could create conflict with other members and units and within the team. Conduct which creates these impressions cannot be justified and will not be tolerated. SERT members must maintain professional levels of conduct and deportment, especially when in the presence of other law enforcement officers, civilians, and the news media.
4. The Department and/or the Director, BESO, may grant inactive status to a SERT member due to promotion, transfer, injury, or for other appropriate reasons. Members in an inactive status may be returned to active status by the Department and/or the Director, BESO, upon a change in their situation.

(Joint Exhibit 3).

21. Section C (5) (e) was added to the 11-Version of OM 7-18. That subsection provides as follows:

Members of the Tactical Unit or the Negotiation Unit who serve on a part-time basis must resign their position with SERT upon accepting a promotion to the rank of sergeant.

NOTE: Tactical Unit or Negotiation Unit members assigned to BESO on a full-time basis and current Tactical Unit and Negotiation Unit members that attained the rank of Sergeant prior to 9/15/11 are exempt from this requirement.

(Joint Exhibit 3, § C (5) (e) at 6.8).

22. Prior to Captain Stone's September 15, 2011, changes to OM 7-18, sergeants were permitted to serve on the SERT. (N.T. 23; Joint Exhibit 3 at 6.8).
23. The changes to the 11-Version of OM 7-18 were not bargained with or agreed to by the Union. (N.T. 23, 94-95).
24. If a SERT member is removed from SERT for accepting a promotion to sergeant, that person may file a grievance and arbitrate the removal as with any other removal from a specialized position. The Union has filed grievances on behalf of three Negotiators who became sergeants. The grievances were settled and those sergeants were permitted to remain on SERT. (N.T. 25-28).
25. As of the date of the hearing, no one has been required to leave SERT under the 11-Version of OM 7-18 due to a sergeant promotion. (N.T. 87).
26. There are other specialized positions where, if a member takes a promotion, he/she will have to vacate the specialized position, e.g., polygraph examiner, criminal investigator, motorcycle unit, records and identification unit, forensics unit and fire marshals. (N.T. 30-32).
27. The Commonwealth's rationale for requiring SERT members accepting promotions to sergeant to leave SERT is that sergeants are command staff with administrative and managerial responsibilities. Often they are a station commander. SERT members are away and unavailable for their primary assignment for thirty-to-forty percent of the time, as a result of activations, training exercises for SERT, vacations and other days off. A SERT sergeant would not be available to

command his station of operation or to give directives to his staff, which includes corporals, troopers and civilians at those stations. They must be available to make decisions regarding matters of administration, budgets and personnel at their station or barracks. (N.T. 123-125, 134-135).

28. When SERT members retire or leave to accept a promotion, a vacancy must be filled with a less experienced member. SERT members depend on their extensive training and experience for their safety as well as the training and experience of their team members. New members to SERT are not given very dangerous assignments such as high-risk warrant service. (N.T. 125-126, 129-130).
29. Cost savings did not factor into the decision of the State Police requiring SERT members promoted to sergeant to leave SERT. (N.T. 136).
30. The preamble to the July 2007 Standard Operating Procedures for the SERT tactical unit provides as follows:

The following procedures are designed as guidelines for SERT training and tactical operations. Due to the complex and unique nature of tactical operations these procedures may not be all inclusive. They are intended to provide uniformity of operations for SERT Tactical Units during routine tactical situations and are not intended to limit the authority or resourcefulness of Tactical Unit members when confronted with new or unique conditions.

(Commonwealth Exhibit 2 at 1).

31. The July 2007 SOPs provide for the "objectives" and "operational philosophy" of the SERT Tactical Unit. Last among the list of objectives is the objective of "[a]ccomplish[ing] the above tasks within the framework of legal standards and Department policy and regulations." (Commonwealth Exhibit 2).
32. Cadets are taught at the State Police Academy to be type-A personalities and to exert confidence and presence to deter flight or assault. Within the State Police a culture of elitism is fostered. Members of the State Police are taught that they are the "first and the finest." (N.T. 20-21).

## **DISCUSSION**

### **1. The Sergeant Amendment to OM 7-18**

#### **A. Repudiation**

The Union argues that the State Police repudiated the parties' CBA by unilaterally amending OM 7-18 to require SERT members to resign from SERT upon accepting a promotion to sergeant. (Union's Post-hearing Brief at 6-9). The Union contends that Article 37 of the CBA requires that, when the State Police seek to remove a trooper from a special assignment, such as SERT, it must demonstrate just cause, in the case of disciplinary removal, and reasonable grounds, in the case of non-disciplinary removal. The terms "just cause" and "reasonable grounds" are not defined in the CBA and the meaning of those terms are determined by an arbitrator on a case-by-case basis. (Union's Post-hearing Brief at 9-10). The changes to OM 7-18, argues the Union, are an attempt by the State Police to prospectively define the meaning of "just cause" and "reasonable grounds" for the entire bargaining unit rather than having an arbitrator determine the meaning of those terms on a case-by-case basis. (Union's Post-hearing Brief at 10-11).

The Commonwealth defends these claims by arguing that the sergeant resignation amendment to OM 7-18 did not effectuate a change in terms and conditions of employment because SERT members were always required to resign upon accepting a promotion to Lieutenant. (Commonwealth's Post-hearing Brief at 10). The Commonwealth further contends

that the resignation requirement exists in other specialized positions such as polygraph examiners, criminal investigation analysts, motorcycle patrol officers and fire marshals. (Commonwealth's Post-hearing Brief at 10). The Commonwealth further maintains that the Union's repudiation argument ignores the fact that, once a Corporal is offered a promotion to sergeant, the Corporal has a choice to accept or decline the promotion. The Corporal, therefore, is not removed from his position. He/she either accepts the position and resigns or he/she declines the promotion and remains. In either situation, argues the Commonwealth, the State Police is not removing the Corporal. Consequently, contends the Commonwealth, contrary to the Union's argument, the resignation amendment to OM 7-18 does not define the terms "just cause" or "reasonable grounds." If a SERT member refuses to resign his/her SERT membership upon being offered a promotion, the State Police will simply refuse to effectuate the promotion and the candidate will remain in SERT as a Corporal.

The sergeant resignation amendment constitutes a change in terms and conditions of employment notwithstanding that it exists in other specialized units and the SERT members have always been required to resign upon accepting a promotion to lieutenant. The resignation requirement in other units did not affect SERT members. Prior to September 15, 2011, SERT members were not required to resign upon accepting a sergeant promotion. Indeed, those SERT members who attained the rank of sergeant prior to September 15, 2011 were grandfathered. The requirement in other units did not require SERT members to resign. If it had, the sergeant amendment to OM 7-18 would have been unnecessary. Also, the lieutenant resignation requirement did not affect the SERT members in the same manner as the sergeant resignation requirement. A lieutenant is a commissioned officer with more command authority and responsibility than a non-commissioned sergeant. The duties, qualifications and selection process is different for the two rankings. (N.T. 143-144). Although SERT members are characteristically driven individuals, some SERT members who may seek and qualify for a sergeant promotion may not seek or qualify for a lieutenant promotion.

In cases involving allegations of contract repudiation, the Commonwealth Court has held that the Board has jurisdiction to review an agreement to determine whether the employer has clearly repudiated the agreement in violation of the PLRA, as read with Act 111. **Wilkes-Barre Township v. PLRB**, 878 A.2d 977, 982 (Pa. Cmwlth 2005). The **Wilkes-Barre** Court further held that an employer unlawfully repudiates a collective bargaining agreement when it unilaterally defines or ascribes a specific meaning to a contractual term left undefined in the agreement. In this respect, the Court, in **Wilkes-Barre** opined as follows:

The Board astutely observed a distinction between an employer's application of terms in a collective bargaining agreement, which must have a sound arguable basis in the contract, and an action that attempts to expand contractual terms through unilateral adoption of managerial policies that are not in response to a specific contractual claim and have unit-wide application. In other words, the Township was not merely applying existing contract language to establish the calculation of pension benefits in its Ordinance. Rather, the Township unilaterally prescribed a certain meaning to the contractual language that is applicable to all bargaining unit members in violation of its bargaining obligations.

**Wilkes-Barre**, 878 A.2d at 983.

Article 37, Section 4 of the CBA provides, in relevant part as follows:

- b. Removal from a specialized position for reasons other than as stated in subsection a. above [i.e., for reduction in personnel or elimination of the special position] shall be for reasonable grounds. Notice of such removal shall be accompanied by a written explanation setting forth the

reasons. If a member wishes to appeal such decision to remove, he/she may use the grievance and arbitration procedures set forth in Section 10 of this Article. If a removal is for disciplinary purposes, the issue in the case shall be whether the Department had just cause for removal. If a removal is for non-disciplinary purposes (for example, performance in or non-suitability for the position), the issue in the case shall be whether the Department had reasonable grounds for removal.

(F.F. 10).

Contrary to the Union's argument that the Commonwealth has unilaterally defined the terms "just cause" and "reasonable grounds," the Union is attempting to define "removal" in a manner that includes resignation from SERT upon voluntarily accepting a promotion. The Union contends that requiring a SERT member's resignation operates as a *per se* removal from SERT, bypassing the grievance arbitration process in Section 4 of Article 37. Although the contract does not define "removal" the Webster's Encyclopedic Dictionary of the English Language defines removal from a position or office in the following relevant manner: "dismissal, as from an office." The relevant definition of remove is "to remove or force from a position or office, discharge." **Webster's Encyclopedic Unabridged Dictionary of the English Language** 1630 (Deluxe Edition 1996). Webster's New International Dictionary Second Edition similarly provides, with respect to the removal from a position, the following: "to force (one) to leave a place or to go away, specif. a. to dismiss from office as to remove a postmaster; b. to assassinate; c. to take away by death." **Webster's New International Dictionary** 2108 (2d Edition 1934).

The term "removal" in Article 37, Section 4 of the CBA describes situations where the State Police involuntarily forces a special unit member from his/her position on the special unit and where the SERT member has no alternative options to stay. It does not apply to the situation at issue here where a SERT member is given the option to remain a SERT member by declining the promotion opportunity. The sergeant amendment does not constitute a repudiation of Article 37, Section 4 of the CBA because allowing SERT members to choose between promotion and remaining on the SERT does not constitute an involuntary removal, as reasonably contemplated by the those contractual provisions. Absent an involuntary removal, it cannot be said that the State Police repudiated or prospectively defined the "just cause" or "reasonable grounds" provisions of Article 37, Section 4 because those provisions were not triggered by the option to accept a promotional opportunity or remain a SERT member.

#### **B. Managerial Prerogative**

The Union next contends that the sergeant promotion amendment is a mandatory subject of bargaining under **Borough of Ellwood City v. PLRB**, 606 Pa. 356, 998 A.2d 589 (2010). The Supreme Court of Pennsylvania, in **Ellwood City**, stated the test for determining whether a matter constitutes a managerial prerogative or a mandatory subject of bargaining. The test is as follows:

[O]nce it is determined that, as here, the topic is rationally related to the terms and conditions of employment, i.e., germane to the work environment, the proper approach is to inquire whether collective bargaining over the topic would unduly infringe upon the public employer's essential managerial responsibilities. If so it will be considered a managerial prerogative and non-bargainable. If not, the topic is subject to mandatory collective bargaining.

**Ellwood City**, 606 Pa. at 375, 598 A.2d at 600.

Earning selection and membership on the prestigious SERT team, ambitiously pursuing the extensive training, receiving extra compensation resulting from significant overtime

from SERT deployments and enjoying a personally assigned state vehicle for work and personal use are all rationally related to SERT members' duties and are germane to their work environment. Also, the additional challenges and responsibilities of procuring a promotion and the concomitant wage increases directly affect members' wages and also relate to their duties and work environment. The question thus becomes whether collective bargaining would "unduly infringe" upon the managerial responsibilities of the State Police.

SERT members are deployed 85 to 100 times per year and can be deployed for several days on one deployment. That amounts to at least one-to-two times per week, sometimes spanning more than one day. In addition, SERT members must attend mandatory training. The Commonwealth's rationale for requiring SERT members accepting promotions to sergeant to resign from the SERT is that sergeants are command staff with administrative and managerial responsibilities. Often they are a station commander. Cumulatively, SERT members are away and unavailable for thirty-to-forty percent of the time, including activations, training exercises, dignitary details and vacations. A SERT sergeant would not be available to command his station of operation or to give directives to his staff which includes corporals, troopers and civilians at those stations. They must be available to make and authorize decisions affecting administration, budgets and personnel.

Over the years since SERT began in 1986, the Commonwealth has learned through experience that deploying sergeants on the SERT team leaves a void in station command and personnel operations. Therefore, bargaining over the issue of sergeant promotions for SERT members and requiring the State Police to compromise its managerial determination that station commanders cannot be absent forty percent of the time while fulfilling SERT obligations would unduly infringe on the effective operations of the State Police. Accordingly, the sergeant promotion amendment to OM 7-18 constitutes a managerial prerogative rather than a mandatory subject of bargaining within the meaning of **Ellwood City, supra**.

The Union argues that the low turnover on SERT improves safety for the SERT members and the civilians they protect. The Union contends that, because twenty of the forty-six part-time SERT members are already corporals, the sergeant amendment to the OM would result in nearly half the SERT compliment being forced to leave, thereby compromising team safety with inexperienced new members. However, the record does not support that nearly half the corporals on the SERT are interested in promotion to sergeant, that they have taken the sergeant exam, that they all could obtain scores qualifying them for the sergeant promotion at the same time or that the State Police has enough sergeant vacancies to promote nearly half the SERT members to sergeant. The Union's safety concerns, therefore, are speculative. Moreover, the sporadic loss of a SERT member as a result of a sergeant promotion is no different than the periodic loss of a SERT member as a result of retirement, change of heart or age.<sup>1</sup>

## **2. The Work Rule Changes to OM 7-18**

### **A. Repudiation of Article 37**

Regarding the work-rule changes to OM 7-18, the Union argues as follows:

By providing that "attitudes, statements, and demeanor which may create the impression of elitism or self serving motivations" is "just cause" per se for removal under the Article 37 just cause standard by policy, the Commonwealth seeks to unilaterally define that term that had been heretofore left undefined and subject to the interpretation of a grievance arbitrator. It falls squarely within the repudiation analysis adopted by the Board.

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<sup>1</sup> Captain Stone testified that being on SERT is a "young man's game." There is a lot of physical fitness involved; there is a lot of lack of sleep; there is a lot of driving; there is a lot of being away from your family. (N.T. 127).

(Union's Post-hearing Brief at 16).

The new work rules do not constitute a repudiation of the just cause provision applicable in disciplinary removal cases under Article 37. Anytime a SERT member is removed from SERT, the Union may grieve that removal and an arbitrator will determine whether there was just cause for the disciplinary removal, or reasonable grounds for a non-disciplinary removal, on a case-by-case basis. The State Police will always have reason for removal. Outlining what those reasons are does not prospectively define just cause for the entire bargaining unit; rather the removal, for whatever reason, triggers an arbitrator's jurisdiction to determine whether those reasons provided just cause or reasonable grounds, as the case may be, in each individual case. Accordingly, the work rule changes do not repudiate the just cause or reasonable grounds provisions in Article 37 of the CBA.

#### **B. Overly Broad, Vague or Ambiguous**

The Union further contends that work rule changes were independently bargainable because they are overly broad, vague and ambiguous. (Union's Post-hearing Brief at 16). The Commonwealth defends by arguing that these rules do not constitute a change because the same language has existed in the SOPs since 2007. However, the record is clear that the SOPs do not have the same force and effect as the Operations Manual. The SOPs expressly provide that they are "designed as **guidelines** for SERT training and tactical operations." (emphasis added). The SOPs further provide that one of its primary objectives is to accomplish the other outlined objectives within the framework of legal standards and Department policy and regulations. This language reveals that the SOPs are subordinate to those legal standards and other Department regulations.

The subordinate status of the SOPs to the operations manual for SERT was corroborated by the testimonies of Captain Stone, Corporal Fow and Corporal Bova. Captain Stone credibly testified that the OMs are subject to an external review and approval process in three separate offices in the Department, whereas the SOPs are internal documents that do not receive any external review and approval. Corporal Bova credibly testified that SOPs are matters that SERT puts in place for itself whereas matters included in the OM are officially promulgated by the Department. Corporal Fow credibly testified that the OMs are governed by mandatory terms such as "shall" whereas the SOPs have flexibility built into them and are more of a guideline or "play book." (N.T. 79-80). During the hearing, Corporal Bova persuasively questioned why a change to the OMs would be necessary if the SOPs had the same force and effect. The SOPs are internally produced guidelines without the force and effect of the official, mandatory OMs which are reviewed, approved and issued by the Department. Therefore, incorporating language from the SOPs into OM 7-18 on September 15, 2011, thereby effectuated a change in official work rules. The question remains, however, whether these changes were bargainable.

The Union complains that the changes on page 6.6 of OM 7-18 are vague, overly broad and ambiguous requiring bargaining. The Board has held that an employer may unilaterally implement work rules that promote integrity and public confidence in government operations, such as a code of conduct. **Fraternal Order of Police, Lodge No. 9 v. City of Reading**, 29 PPER ¶ 29146 (Final Order, 1998). However, the Board has also held that work rules are bargainable if they are not "narrowly tailored in substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague or ambiguous." **Abington Transportation Association v. Abington School District**, 18 PPER ¶ 18188 at 528 (Proposed Decision and Order, 1987), *aff'd*, 19 PPER ¶ 19067 (Final Order, 1988), *aff'd*, 570 A.2d 108 (Pa. Cmwlth. 1990). In **City of Reading**, *supra*, the Board opined that "vague and overly broad work rules can create a bargaining obligation so that employees are on notice of conduct which may be subject to discipline." **City of Reading**, 29 PPER at 344.

The work-rule changes to OM 7-18 provide that "[f]ailure to maintain appropriate levels of conduct and performance may result in restricted SERT duty status or dismissal from the team. The Director, BESO may place a SERT member in permanent restriction in accordance with this regulation." (F.F. 20; Joint Exhibit 3). The OM further explains the

prohibited conduct that could subject a SERT member to restricted duty status or dismissal from the team, in the following manner:

3. Attitudes, statements, and demeanor which may create the impression of elitism or self-serving motivations are damaging to the team's reputation and could create conflict with other members and units and within the team. Conduct which creates these impressions cannot be justified and will not be tolerated. SERT members must maintain professional levels of conduct and deportment, especially when in the presence of other law enforcement officers, civilians, and the news media.

(F.F. 20; Joint Exhibit 3).

The above-quoted changes are overly broad, vague and ambiguous. They are not narrowly tailored to place a reasonable SERT member on notice of the types of behaviors or offenses that could subject that SERT member to restricted duty or dismissal, which are clearly both forms of discipline. Members of the State Police are an elite group of public servants. The State Police, throughout the Department and at the Academy train cadets and members to believe that they are the "first and the finest." They are taught to exert confidence as a tactic to maintain officer presence when performing their law enforcement duties because it could save their lives by deterring flight or assault. A culture of elitism is fostered at the State Police. Having received this training and worked in this culture, the rule changes embodied in OM 7-18 present SERT members with an inherent internal conflict regarding their conduct. If a SERT member behaves the way he was trained to behave, a third party may conclude that he is behaving inappropriately, and he could be dismissed from the SERT. As argued by the Union, the SERT member has no ability to control the subjective conclusions of a third party based on an undefined, immeasurable standard. One person's impression of elitism or self-serving motivations is another person's officer presence. Accordingly, the work rule changes to OM 7-18, Chapter 6 (C)-Promotions and Transfers-are overly broad and vague. The rule changes fail to define conduct or provide objective criteria that could subject a SERT member to discipline and they make the determination of inappropriate conduct subjective. Therefore, the Commonwealth must bargain the work rule changes to the OM.

#### **CONCLUSION**

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

1. The Commonwealth is an employer within the meaning of the PLRA and Act 111.
2. The Union is a labor organization within the meaning of the PLRA and Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has committed unfair labor practices in violation of Section 6(1) (a) and (e) of the PLRA and Act 111.

#### **ORDER**

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

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

that the Commonwealth shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Section 5 of the PLRA, as read with Act 111.
2. Cease and desist from refusing to bargain collectively with the exclusive bargaining representative of its employes.
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:
  - (a) Rescind the changes to the September 15, 2011, version of OM 7-18 Chapter 6(C) (2) & (3) on page 6.6 and restore the status quo ante;
  - (b) Post a copy of this decision and order within five (5) days from the 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
  - (c) 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-first day of March, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE  
TROOPERS ASSOCIATION

v.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE

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Case No. PF-C-11-143-E

**AFFIDAVIT OF COMPLIANCE**

The Commonwealth of Pennsylvania, Pennsylvania State Police hereby certifies that it has ceased and desisted from violating Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read in **pari materia** with Act 111, by unilaterally implementing vague and overly broad work rules in Chapter 6 (C)(2) & (3) on page 6.6; that it has rescinded the changes to the September 15, 2011, version of OM 7-18 in Chapter 6(C)(2) & (3) on page 6.6 and restored the status quo ante; that it has posted a copy of the proposed decision and order in the manner prescribed 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