

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA LIQUOR ENFORCEMENT ASSOCIATION :
: :
v. : Case No. PERA-C-13-1-E
: :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :
BUREAU OF LIQUOR CONTROL ENFORCEMENT :

PROPOSED DECISION AND ORDER

On January 2, 2013, the Pennsylvania Liquor Enforcement Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement (Commonwealth or PSP) alleging that the Commonwealth violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On January 18, 2013, the Secretary of the Board issued a Complaint and Notice of Hearing establishing June 26, 2013 in Harrisburg as the time and place of hearing if necessary.

A hearing was held as scheduled before Thomas P. Leonard, Esquire at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. On or about December 2, 2013, the Chief Counsel reassigned the instant matter to the undersigned Hearing Examiner for decision. The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth of Pennsylvania, Pennsylvania State Police, is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. Liquor Enforcement Officers (LEO's) employed by the Commonwealth conduct both undercover and uniform or non-undercover investigations dealing with alcohol offenses on licensed establishments, such as bars, restaurants, and clubs, as well as unlicensed establishments. LEO's attend the Pennsylvania State Police Academy for approximately 14 weeks of training in the Liquor Code, along with weapons, handcuffing, and take-down techniques. LEO's are provided defensive equipment to utilize in the performance of their duties, including firearms. (N.T. 18-19)
4. LEO's who are members of the bargaining unit are provided with take-home vehicles, which are not just unmarked law enforcement vehicles. Instead, the LEO's have everything from Malibu's to Camry's to Subaru's. LEO's are permitted to use the vehicles for commuting to and from work, in addition to utilizing them throughout the workday. Prior to December 2012, the Commonwealth did not have access to any sort of monitoring devices within the take-home vehicles. (N.T. 19-20)
5. In January 2010, the Commonwealth notified the Association of a meet and discuss session regarding Automatic Vehicle Locators (AVL's), which would monitor location in real time, speed, and driving habits, such as fast starts, hard turns, and erratic driving. However, the AVL's were not installed at that time. (N.T. 20-22, 194)

6. On October 31, 2012, the Commonwealth held another meet and discuss session with the Association, during which the AVL's were discussed again. The Commonwealth indicated that the AVL's would be used for accountability. Essentially, the Commonwealth wanted to be able to know where the LEO's were and what they were doing. The Commonwealth also advised that the AVL's could be used for disciplinary actions. (N.T. 22-23, Commonwealth Exhibit 5)
7. As a result of that meeting, the Association President had concerns about how the AVL's would be used for discipline, who would have access to the system, and uniformity in the enforcement of the rules. Although the PSP utilizes multiple orders, directives, manuals, and regulations with regard to the implementation of new programs, the Association was not presented with any type of policy or rules in any form relative to the AVL's. (N.T. 23-25)
8. On or about December 4, 2012, the Commonwealth began implementing the AVL's. The Association immediately demanded impact bargaining on December 5, 2012 relative to their concerns about personal security and the disciplinary process. By the end of December 2012, all of the vehicles utilized by LEO's had AVL's in them. The Association was concerned because they did not even know who the third party was installing these devices. (N.T. 25-28, Association Exhibit 1)
9. As of January 2, 2013, the Association had not received any response to its demand for impact bargaining. As a result, the Association filed the instant unfair practices charge. (N.T. 28-29)
10. Prior to the installation of the AVL's, the LEO's had been permitted to use the take-home cars for at least 18 years. Before starting a shift, LEO's are required to check their vehicle for damage that may have occurred overnight and to note their mileage. However, they are not required to notify anyone if they are going straight into the office. There are no rules about calling in if an LEO has to stop on the way to work to pick up lunch, which is permissible. (N.T. 29-31)
11. After beginning a shift, LEO's are not required to notify anyone as to when they arrive at or leave a particular location. LEO's are permitted to end their shift in the field, meaning that they can go straight home from the site of an investigation instead of going back into the office and utilize a travel time allotment for the corresponding distance. In doing so, LEO's must obtain approval from their supervisor beforehand. However, they are not required to notify their supervisor upon arriving home. Likewise, LEO's are permitted to stop at the store or a restaurant as long as it is on the way. (N.T. 32-35)
12. During their shifts, LEO's are required to keep track of what they do by using an activity log, which tracks the day, shift, equipment number, starting and ending mileage, starting and ending times for each location, and an incident number. The times noted on the activity logs are not expected to be precise, but rather the LEO's are permitted to round to the nearest 5 minute increment. It can be difficult to keep precise times for these investigations considering the nature of the undercover work, as LEO's are not always able to take immediate notes regarding what they observe. (N.T. 35-39; Association Exhibit 2)
13. LEO's, by nature of their undercover work, typically want to remain anonymous and are sometimes involved in very tense situations. (N.T. 41-43)
14. Prior to the AVL installation, the Commonwealth did not monitor the driving habits of LEO's. The only monitoring of driving habits occurred if an LEO was stopped by a local or state police officer. If so, the LEO was provided with an opportunity to be questioned and explain things immediately. (N.T. 43)
15. Since the AVL's were implemented, LEO's have not had any changes with regard to notifications. LEO's still have to notify their supervisor when starting or ending their shift in the field. However, the Association President who works

in the Pittsburgh office received an email alert for erratic driving for going 83 mph in a 55 mph zone. His supervisor received a similar notification and told him to slow down. The Association President could not specifically recall speeding on that day and had to reason about where and why it might have occurred. The Association Vice President who works in the Wilkes-Barre office has received similar notifications. (N.T. 43-46, 79-80)

16. The Association President has concerns regarding alleged inaccuracies of the AVL's, which have been reported to him. In addition, he has arrested people throughout his career, who have threatened him. He does not want these people to know his home address. He is also concerned about the vendor who implemented the AVL's because he has no idea if any of these people work there or have friends that work there. The Association Vice President has similar concerns. The AVL's are accessed via a web-based system. (N.T. 59-62, 82-83, 106-107)
17. When an LEO fills out an activity log, he or she is not given an opportunity to review the AVL data to note any discrepancies. The Association does not receive any AVL data, nor is there any process being implemented for them to do so. The Commonwealth has not provided any specific instruction, rules, or policies concerning erratic driving. (N.T. 63)
18. The Commonwealth did not bargain with the Association prior to implementing the AVL's, nor did they bargain the impact of the AVL program. (N.T. 66)
19. LEO's are required by administrative regulation to abide by all traffic laws. LEO's are not required, however, to take their department vehicle home. The vehicles are only to be used for work purposes; once it gets home, it does not go anywhere until the next shift. (N.T. 68-73)
20. Since the installation of the AVL devices, no discipline has been issued to any LEO based on any information obtained through the AVL system. However, the Commonwealth has issued discipline in the past when it discovered that LEO's were doing non-LEO work during work time, which was inaccurately reflected in their activity logs. There have been several instances of discipline where LEO's were allegedly not where they said they were in their activity logs. (N.T. 74-75, 164; Commonwealth Exhibits 1 & 2)
21. The vendor for the AVL program is called Sage Quest. Given that it is a web-based system, users can access it with the requisite log-in information from a computer. There is a tiered system of access, such that Enforcement Officer 3's and District Office Commanders only have access to the vehicles in their regional office, while a Lieutenant who is in charge of three stations could access each of the stations under his authority. The Captains and Majors have complete access to all the vehicles throughout the Commonwealth. (N.T. 106-109)
22. Although the AVL's monitor real time location, speed, hard stops, hard accelerations, and hard cornering, there are tolerances built into the system. However, it was not clear what the tolerances actually are. Major Butler has advised the Section Supervisors and District Office Commanders that hard starts, hard stops, and hard cornering are not to be taken at face value, meaning that they need to be investigated, which might include going out to the scene. Speeding, on the other hand, presents a different situation where there is less latitude for that type of conduct. (N.T. 109-111)
23. The current tolerances within the AVL program came with the system and were part of the software package that Sage Quest provided. The alerts, however, are not automatically sent out. Instead, the supervisor puts in the criteria or specifications, of which he or she wants to be notified. Major Butler suggested 20 mph over the speed limit or 85 mph, but the District Office Commanders have discretion. He wants officers with three or four wrecks to be monitored more closely than officers who have never had an accident. There is no policy regarding notifications of any set speed; the Major has simply set the minimum

at 20 mph over the limit. There could be supervisors who set their alerts to 20 mph over the limit, while others might have zero tolerance and want alerts for anything at all over the limit. (N.T. 111-114, 116)

24. The Commonwealth issued a Special Order for AVL's directing supervisors to perform random checks. (N.T. 132; Association Exhibit 3)
25. The Commonwealth became seriously interested in installing AVL's following a specific EZPass investigation in 2009 where it learned that several LEO's were not working a full day. In deciding to implement the AVL's, the Commonwealth was interested in accountability for the LEO's such that their activity logs could be verified as truthful. In addition, the Commonwealth was interested in the safety of its officers, as the AVL's would enable them to find the last location of a vehicle in the event of an accident or theft. Further, the AVL's could protect LEO's against false complaints, as the system could easily be checked to verify locations. Similarly, the AVL's would give the Commonwealth the chance to assess travel routes and ascertain resources, as well as availability of LEO's in case of an unfolding incident. (N.T. 155-159)
26. The AVL is a device that tracks the GPS location of the vehicle and downloads the information every 30 seconds through a cellular phone system to a server at Sage Quest. The data is then stored on that server for the Commonwealth to view live or retrieve historically. The AVL's were not installed for someone in an office to continually track the LEO vehicles, but rather as a resource for supervisors who have a concern about one of their subordinates. (N.T. 162)

DISCUSSION

In its charge, the Association alleged that the Commonwealth violated Sections 1201(a)(1) and (5) of PERA by unilaterally changing terms and conditions of employment by subjecting bargaining unit members to minute to minute surveillance for disciplinary purposes without fulfilling its bargaining obligation. Specifically, the Association contends that the effect of the AVL system on employe working conditions outweighs any interest the Commonwealth has in safety or accountability, making the monitoring aspects of the program a mandatory subject of bargaining under PERA. In the alternative, the Association submits that even if the AVL program was a managerial prerogative, the Commonwealth still committed an unfair practice by refusing to bargain over the impact of the program on terms and conditions of employment.

The Commonwealth, on the other hand, argues that managerial interests in fulfilling its statutory mission outweigh any impact of the AVL program on the terms and conditions of employment for LEO's. In fact, the Commonwealth asserts that the AVL program has had absolutely no impact on the terms and conditions of employment for LEO's, and therefore, it could not possibly outweigh the significant interests of management in utilizing this new technology. Further, the Commonwealth posits that the AVL system did not create any severable impact on the terms and conditions of employment, thereby negating any purported obligation for impact bargaining.

Preliminarily, both parties agree that this matter is controlled by the balancing test set forth by the Pennsylvania Supreme Court in **PLRB v. State College Area School District**, 337 A.2d 262 (Pa. 1975), wherein the Court opined:

[W]hen an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours, and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the Courts thereafter 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. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours, and terms and

conditions of employment, the public employer shall be required to meet and discuss such subject upon request by the public employes' representative pursuant to Section 702.

Id. at 268. The complainant in an unfair practices proceeding has the burden of proving the charges alleged. **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977). The Board will find an employer in violation of its bargaining obligation enforceable under Sections 1201(a)(1) and (5) of the Act if the employer unilaterally changes a mandatory subject of bargaining. **PLRB v. Mars Area School District**, 389 A.2d 1073 (Pa. 1978). If, however, the employer changes a matter of inherent managerial policy under Section 702 of the Act, then no refusal to bargain may be found. **State College, supra.**

Based on the record here, I find that the implementation of the AVL devices is a matter of inherent managerial prerogative, as the Commonwealth's interests in fulfilling its statutory mission outweigh the employe interests and impact on wages, hours, and terms and conditions of employment.

First of all, I am unable to conclude that the installation of the AVL system has not had any impact on the terms and conditions of employment for LEO's, as alleged by the Commonwealth. The Association has demonstrated that the AVL's clearly do impact LEO's, as there has been an obvious effect on wages, hours, and job security. As the Association points out, the AVL's have effectively created an expansion of the workday, at least insofar as a supervisor has the ability to monitor the driving habits of LEO's both prior to and after their shifts. The Commonwealth submits that the LEO's do not have to take the department vehicles home and can simply choose to drive to the office and pick up their department vehicle there. However, the record shows that LEO's have been permitted to use the take-home vehicles to commute to and from work for at least the last 18 years. (N.T. 29) What is more, Major Butler acknowledged that he is unaware of anyone who does not take their department vehicle home. (N.T. 92) As such, the AVL system clearly effected a change with regard to supervision both before and after shifts for LEO's. Similarly, as the Association also points out, the fact that there is no pay adjustment to correspond to the expanded hours of supervision directly impacts LEO wages. Further, as set forth below, the AVL system has had a direct impact on job security.

Prior to the installation of the AVL system, the Commonwealth did not have any way of monitoring employe driving habits, aside from enforcement of the vehicle code by local or state police on patrol. Thus, if an LEO was stopped on the road for erratic driving, that LEO would have an opportunity to be questioned about the incident immediately following the event by a police officer, who presumably also witnessed the event, and explain his or her conduct. Under the AVL program, however, the Commonwealth not only has the ability, but has also expressed the intention to review historically the information downloaded from the AVL system regarding LEO driving habits. Likewise, there are no rules or policies by which supervisors are required to question LEO's regarding these erratic driving behaviors. As a result, employes could be placed at a significant disadvantage when questioned about incidents, especially considering the confrontation could be weeks or months afterwards, at which time the employe might have no memory of the event. Moreover, there are no uniform rules regarding these erratic driving behaviors, which almost invites disparate treatment as individual supervisors have the authority and discretion to set the tolerances at any level they please. Without a doubt, there has been an impact on the terms and conditions of employment for LEO's, as these factors clearly affect disciplinary procedures. However, it does not follow that this impact necessarily outweighs the legitimate managerial interests of the Commonwealth in fulfilling its statutory mission.

The Commonwealth indicates that the mission of the PSP Bureau of Liquor Law Enforcement is set forth by statute, which essentially gives LEO's the responsibility of enforcing liquor related laws and regulations. The Commonwealth maintains that it had a significant interest in accountability of its LEO's, as the 2009 EZPass investigation revealed that a number of LEO's were not working their full shift, were not doing LEO work during their shift, and were falsifying their activity logs. The Commonwealth cites **Amalgamated Transit Union, Division 1279 v. Cambria County Transit System**, 21 PPER 21007 (Final Order 1989) **aff'd** 22 PPER 22056 (Cambria County Court of Common Pleas 1999) for

the proposition that, if an employer demonstrates it has a significant problem which it is attempting to address with a new policy, the employer may unilaterally implement that program. I find that **Cambria County Transit System** is directly analogous to this case.

In **Cambria County**, the employer was confronted with a very real drug and alcohol problem among its employees prior to its implementation of a drug and alcohol testing program. The Board stressed the record evidence in cases of this sort and noted that the employer's decision was not merely a symbolic or public relations gesture to demonstrate its drivers were clean where no problems actually existed. Instead, the record showed, by occurrences over the previous several years, that the employer experienced drug and alcohol problems among its operators of sufficient magnitude to warrant response to ensure safe and efficient transit services.

In the same vein, the Commonwealth has demonstrated in this case a very significant problem among its LEO's with regard to accountability, as LEO's were not working their entire shift, not doing LEO work during their shift, and falsifying their activity logs. Indeed, the record is replete with numerous examples of LEO's who were disciplined in the past several years for exactly this type of conduct. (See Commonwealth Exhibits 1-3) As such, the record clearly evidences a substantial accountability problem among the Commonwealth's LEO's. Furthermore, the enforcement of liquor related laws and regulations lies at the core of the mission of the PSP Bureau of Liquor Law Enforcement, see 47 P.S. §2-211, such that implementation of the AVL's will allow the PSP Bureau of Liquor Law Enforcement the ability to fulfill its statutory mission.

In addition, the Commonwealth has also demonstrated a significant interest in maintaining the safety of its officers, as the AVL's will enable them to find the last location of a vehicle in the event of an accident or if an officer is missing. The AVL's could also protect the LEO's against false complaints, as the system could easily be checked to verify locations when an LEO is not even in the vicinity of an alleged occurrence. And, the AVL's will provide the Commonwealth with the chance to assess travel routes and ascertain resources, as well as availability of LEO's in case of an unfolding incident which requires a rapid response. In my view, these are all significant interests of the Commonwealth which, especially when coupled with its very real and demonstrated problem of accountability, clearly outweigh the impact of the AVL program on the interest of employees in their wages, hours, and terms and conditions of employment. Accordingly, the AVL program is not a mandatory subject of bargaining, but rather an inherent managerial prerogative under Section 702 of the Act. Therefore, the Commonwealth did not commit an unfair practice when it unilaterally implemented the AVL program without bargaining the issue with the Association.

This does not, however, end the analysis, as the Association has alleged a failure to bargain the impact of the managerial decision to implement the AVL program. The Commonwealth Court has adopted a four-part test for a prima facie cause of action when a public employee alleges a refusal to bargain over the impact of a matter of managerial prerogative. **Lackawanna County Detectives' Ass'n v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000). First, the employer must lawfully exercise its managerial prerogative. Second, there must be a demonstrable impact on wages, hours, or working conditions, matters that are severable from the managerial decision. Third, the union must demand to negotiate these matters following management's implementation of its prerogative. And fourth, the public employer must refuse the union's demand. *Id.* at 794-795.

Here, the Association has established each of the four elements necessary for an impact bargaining claim relative to the disciplinary process. As previously set forth above, the Commonwealth has lawfully exercised its managerial prerogative in that the AVL program is not a mandatory subject of bargaining. As also set out above, the AVL program has had a demonstrable impact on wages, hours, and working conditions for LEO's. Third, the Association clearly demanded to negotiate these disciplinary matters following management's implementation of its prerogative. The Association immediately demanded impact bargaining relative to its disciplinary and security concerns on December 5, 2012 following the AVL implementation, which began on or about December 4, 2012. (N.T. 25-28, Association Exhibit 1). And fourth, the Commonwealth refused the Association's demand, as

it did not provide any response to the December 5, 2012 impact bargaining demand. (N.T. 28-29).

The Commonwealth contends that there was no severable impact on the terms and conditions of employment for LEO's because no discipline had been issued as of the time of the hearing based on information obtained through the AVL system. Thus, the Commonwealth asserts that the Association is engaged in mere speculation that discipline will increase or change as a result of the AVL system. However, this argument is unavailing, as the Commonwealth's assertion is belied by its own exhibits in the evidentiary record. For example, Commonwealth Exhibit 5 which is a November 9, 2012 letter from Kim Studenroth, Bureau of Human Resources, to Association counsel, expressly states, in relevant part, "...[t]he AVL system will be used to verify LEO activity. In addition, the AVL monitoring system may be used in administrative investigations and used as evidence when issuing disciplinary action." Likewise, Commonwealth Exhibit 4 which is the Project Overview for the AVL program contains several references to appropriate oversight, as well as accountability both on and off duty, which gives rise to the inference that the AVL system will be used in connection with disciplinary procedures. If that were not enough, the record shows that the PSP has confronted bargaining unit members regarding erratic driving notifications and expressed its intent to retrieve historically the information downloaded from the AVL system to compare against LEO activity logs, further leading to the inference that these devices will be utilized as a disciplinary tool. To suggest that the Association is engaged in mere speculation runs counter to the Commonwealth's own evidence in this matter.

In any event, the AVL system has actually changed the disciplinary procedures, despite the Commonwealth's argument to the contrary. As set forth above, the Commonwealth did not monitor the driving habits of LEO's prior to the installation of the AVL's. The only monitoring of driving habits occurred if an LEO was stopped by a local or state police officer, at which time the LEO was immediately provided with an opportunity to be questioned and explain things. In contrast, under the AVL program, the Commonwealth now has the ability to retrieve historically the AVL information and question individual LEO's about erratic driving behaviors at any time the supervisor pleases, which could be weeks or months following the incident, thereby placing the employee at a significant disadvantage. What is worse, there are no actual rules or policies regarding the tolerances for these erratic driving behaviors, placing bargaining unit members at considerable risk of disparate treatment. In essence, the Commonwealth has created a new ground for discipline to the extent the erratic driving behaviors are not covered by the vehicle code. Although LEO's have always been expected to abide by all traffic laws, a fast start, hard stop, or other erratic driving behaviors do not necessarily violate the motor vehicle code. Nevertheless, bargaining unit members could be subject to discipline for these nebulous infractions.

Notably, the Board has recognized that matters of employee discipline and disciplinary procedures in both the public and private sectors are mandatory subjects of bargaining. **Cambria County, supra citing Pontiac Police Officers Ass'n**, 94 LRRM 2175; **PLRB v. City of Erie School District**, 9 PPER § 9031 (Final Order 1978), *aff'd* 10 PPER § 10112 (Court of Common Pleas of Erie County 1979). And the Board has held that prior to the promulgation of a new program, which is a managerial prerogative, the employer still must negotiate matters which more directly affect employee working conditions, which result from the decision to implement the managerial prerogative. **Cambria County, supra** (holding that employee discipline is separately negotiable from the implementation of a drug and alcohol testing program). Thus, the Commonwealth has violated Sections 1201(a)(1) and (5) of the Act by refusing to impact bargain with regard to the disciplinary procedures resulting from the AVL implementation.

Next, the Association avers that the Commonwealth should be required to bargain the impact of the AVL program on security issues. However, the security concerns the Association raises are not severable from the managerial decision to implement the AVL program. The Association contends the impact on terms and conditions for LEO employment include privacy concerns, procedures for storage of and employee access to data, data retention practices, and notice and procedure in the event data is used in conjunction with employee evaluation or discipline. In effect, the Association wants to bargain over

what the Commonwealth does with the information its AVL devices download and how the provider maintains or stores the information. Unfortunately for the Association though, the information and data downloaded from the AVL devices is the property of the Commonwealth, and the Board has held that a public employer has a paramount interest in deciding how its property is used. **East Pennsboro Police Ass'n v. East Pennsboro Township**, 28 PPER § 28015 (PDO 1996) citing **Commonwealth of Pennsylvania, Department of Public Welfare**, 26 PPER § 26051 (Final Order 1995); **Temple University**, 23 PPER § 23118 (PDO 1982), charge dismissed as moot, 25 PPER § 25121 (Final Order 1994) (same). As such, the Commonwealth did not violate the Act when it refused to impact bargain with regard to the Association's security concerns.

Finally, the Association submits that the Commonwealth should be required to bargain the impact of the AVL program on wages and hours for LEO's. In particular, the Association argues that, with the introduction of AVL technology as it relates to speed monitoring, time has essentially become less valuable in terms of wages paid pursuant to the travel time allotments set forth in the collective bargaining agreement. Once again, the Association's argument fails. As the Commonwealth points out, the collective bargaining agreement provides that LEO's are entitled to travel time based on the miles traveled, notwithstanding the speed limits of the roads on which they are traveling. It is the number of miles which determines the amount of pay, not any purported maximum speed, as the Association alleges. See Joint Exhibit No. 1). Thus, the wages and hours for LEO's, although impacted by the implementation of the AVL devices, are not severable from the managerial decision to implement the AVL program. In any case, the Association did not demand impact bargaining with regard to any wage or hour issues in its December 5, 2012 letter to the PSP. As a result, the Association has not satisfied the third prong of the test for impact bargaining relative to the wage and hour claims pursuant to **Lackwanna County Detectives' Ass'n, supra**. Therefore, the Commonwealth did not violate the Act by refusing to impact bargain relative to the LEO wages and hours.

On this record, the Association has raised a number of concerns which clearly affect the terms and conditions of employment for LEO's relative to the disciplinary process that can be bargained without eliminating the Commonwealth's interests in safety and accountability. See **Mt. Lebanon Education Ass'n, PSEA/NEA v. Mt. Lebanon School District**, 30 PPER § 30043 (PDO 1999). Accordingly, the Commonwealth violated the Act when it refused to bargain over the disciplinary process related to the implementation of its decision to install AVL's in the LEO vehicles.

CONCLUSIONS

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

1. The Commonwealth of Pennsylvania, Pennsylvania State Police, is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, 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 Article IV of the Act.
2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:
 - (a) Bargain over the impact of the decision to implement the AVL devices in LEO vehicles relative to disciplinary procedures;
 - (b) 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;
 - (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; and
 - (d) Serve a copy of the attached affidavit of compliance upon the Union.

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 become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this sixth day of January, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA LIQUOR ENFORCEMENT ASSOCIATION :
: :
v. : Case No. PERA-C-13-1-E
: :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :
BUREAU OF LIQUOR CONTROL ENFORCEMENT :

AFFIDAVIT OF COMPLIANCE

The Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement, hereby certifies that it has ceased and desisted from its violations of Sections 1201(a)(1) and (5) of the Public Employee Relations Act; that it has bargained over the impact of the decision to implement the AVL devices in LEO vehicles relative to disciplinary procedures; 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