

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF TRANSIT POLICE, :
FOP LODGE 109 :
 :
v. : CASE NO. PERA-C-20-150-E
 :
SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :

PROPOSED DECISION AND ORDER

On July 28, 2020, the Fraternal Order of Transit Police, FOP Lodge 109 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Southeastern Pennsylvania Transportation Authority (SEPTA) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that SEPTA repudiated the parties' collective bargaining agreement (CBA) by violating a 10-day notice provision for policy changes when it unilaterally implemented a uniform change requiring officers to wear their names on their exterior vests. The Union additionally alleged that SEPTA violated its bargaining obligation when it unilaterally implemented the policy after reaching an agreement with the Union to rescind the policy and that the post-agreement implementation of the name on the vest also violated the 10-day notice requirement.

On October 27, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of April 14, 2021, in Harrisburg. Due to the closure of Commonwealth property to the public as a result of the COVID pandemic, the parties agreed to conduct the hearing by video conference. During the video hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On June 2, 2021, the Union filed its post-hearing brief. On July 9, 2021, SEPTA filed its post-hearing brief.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. SEPTA is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)

3. Omari Bervine is a SEPTA patrol officer, and he is the President of the Union. (N.T. 14-16; Union Exhibit 3)

4. Thomas Nestel is the Chief of Police for the SEPTA Transit Police Department. (N.T. 19)

5. Inspector Charles Lawson is in charge of the patrol division for the SEPTA Transit Police Department and oversees its daily operations. (N.T. 71)

6. Chad Cuneo is the Chief Labor Relations Officer for the SEPTA Transit Police Department. (N.T. 22; Union Exhibit 3)

7. Heather Morris, at all times relevant hereto, was a Labor Relations Manager for SEPTA. (N.T. 23-24; Exhibit 7)

8. Troy Parham is the Union Vice President, and he is a patrol officer currently assigned to police radio dispatch. (N.T. 26-27, 61, 66)

9. Article 5.3 of the parties' CBA provides as follows:

The Authority shall make a good faith effort to notify the Union of any new Department issued permanent policy or directive, or change in any such policy or directive affecting it or its members at least ten (10) days before the effective date of such policy or directive.

(Joint Exhibit 1)

10. SEPTA issues vest carriers to officers as part of officers' uniforms, and all officers are required to wear them. All officers, except detectives, are required to wear uniforms. A vest carrier is a vest that allows the insertion of ballistic panels and permits the secure distribution of police officer equipment instead of having all the equipment around the officer's waist. The patrol officer's badge number and "Transit Police" are printed on the back of the vest. The officer's last name is printed on the front upper right of the vest over the officer's breast. A name tag identifying the officer has been a uniform requirement since the beginning of the Department. (N.T. 17-18, 73-78; Union Exhibit 1)

11. Chief Nestel sent the following email to police supervisors:

UNIFORM CHANGE

Effective at 0700 hours on Monday, 30 March 2020, all personnel who are on patrol will wear their exterior vest with ballistic panels as the outermost garment. The "TRANSIT POLICE" patch will be displayed on the back and the badge and nametag will be displayed without obstructions on the front. If the weather changes and winter parkas have to be worn, then this will not apply. Supervisors are responsible for ensuring that all personnel are notified and in compliance.

(Union Exhibit 2) (emphasis original)

12. The Chief's email is undated and the parties do not know the issuance date of the email. The email directive to police supervisors does not refer to detectives or names on the back of the vest. The uniform change as a result of the email is the requirement that the vest be worn as the outermost garment, unless officers are wearing winter jackets, whereas previously the vest did not have to be the outermost garment. (N.T. 20-21, 45, 53, 74)

13. The Chief's email was not sent directly to the Union. The Union did not receive notice of the uniform change prior to the issuance of the email directive or the effective date of March 30, 2020. Union President Bervine learned of the policy change from his supervisor because President

Bervine was not wearing his vest as his outermost garment. President Bervine then investigated further and learned of the Chief's directive requiring the exterior vest. (N.T. 20-22, 53, 92-93)

14. On May 1, 2020, President Bervine sent a letter to Chad Cuneo and Heather Morris, via email attachment, regarding the new vest policy. (N.T. 22)

15. The letter provides, in relevant part, as follows:

I recently became aware of a new policy change which states, "Effective at 0700 hours on Monday, 30 March 2020, all personnel who are on patrol will wear their exterior vest with ballistic panels as the outermost garment. The "TRANSIT POLICE" patch will be displayed on the back and the badge and nametag will be displayed without obstructions on the front."

In reviewing the current SEPTA Transit Police Directives, it is clear to the FOTP that this new policy/procedure results in significant changes to existing policies/procedures, and intimately impacts mandatorily negotiable terms and conditions of employment, including but not limited to officer discipline. As such, the FOTP hereby formally demands to bargain over the substantive, as well as any impact/implementation, issues associated with the aforementioned policy.

(Union Exhibit 3)

16. President Bervine's letter to Mr. Cuneo was a demand to bargain the vest policy, and not a request to meet and discuss. (NT. 23, 45)

17. Ms. Morris responded to President Bervine's May 1, 2020 letter to Mr. Cuneo in an email dated May 4, 2020. In her response, Ms. Morris stated the following:

Respectfully, the Authority maintains the right to implement policy and there is no identified change to the discipline process. However, we agree to meet and discuss any concerns you may have on this matter. Please provide your earliest availability and I will schedule a conference call.

(Union Exhibit 4)

18. On May 6, 2020, President Bervine emailed his response to Ms. Morris and stated as follows:

Good Afternoon. We are available to meet any weekday, preferably before 2pm. Please be advised that by no means are we waiving our right to bargain by agreeing to meet. However, we look forward to discussing our concerns on this matter with the Authority and/or the Department. Thank you for your attention on this matter.

(Union Exhibit 4)

19. SEPTA has always made clear to the Union that "meet and discuss" is different than negotiations or bargaining. (N.T. 25-26)

20. On May 8, 2020, the parties held a video meeting to discuss the change to the vest policy. Participating in the video meeting were President Bervine, Vice President Parham, Inspector Lawson and Ms. Morris. (N.T. 26-27, 46, 62, 76)

21. During the meeting the parties discussed the lack of notice of the uniform change to the Union. Union officials expressed their concerns that placing officers' names on the rear of the vest during a time of civil unrest was more dangerous for officers because the public could too easily identify the home address of officers through the internet. If the vest as outermost garment was not mandatory, then the name on the rear of the vest would not be a concern for the Union. Vice President Parham expressed his opinion that having the officer's name on the front of the vest and his/her badge number on the rear provides sufficient transparency for anyone to lodge a complaint against the officer. SEPTA management agreed with the Union officials to not require patrol officers' names on the rear of the vest. (N.T. 27, 46, 56-57, 68-69)

22. The Union opposes only the name on the rear of the vest, not on the front of the vest. The person the officer is interacting with will see the name on the front and identify the officer. The Union's concern over names on the rear of the vest is that uninvolved individuals or passersby could record the officer's name and learn the officer's full identity and home address from the internet. The Union believes that names on the rear of the vest adds another element of danger to an already dangerous job. (N.T. 40-41, 47-48, 76-77, 83-84)

23. During the May 8, 2020 video conference, the parties did not discuss the detectives or make a distinction between patrol officers and detectives. From President Bervine's perspective, the parties were discussing everyone in the bargaining unit, including special units. None of the other specific units were referenced at the meeting either (e.g., SORT, bicycle or K-9 units), and SEPTA eliminated the rear name requirement for them. Inspector Lawson believed that only patrol officers were at issue during the May 8, 2020 meeting because President Bervine provided scenarios related only to patrol officers and their safety. Inspector Lawson understood that supervisors and detectives would have their names on the back of the vest. Any officer from any type of unit within the Department, including detectives, can be assigned patrol duties, at any time, which has happened on numerous occasions. Inspector Lawson's name is on the back of his vest. (N.T. 28-29, 46-47, 69, 76-77, 79-81; Union Exhibit 5)

24. As a result of the May 8, 2020 video conference, Inspector Lawson agreed not to print the patrol officers' names on the rear of their vests, but he did not agree with the Union's position that names on the rear of the vest increased the safety risks or dangers to the officers. The Union's reasoning was considered, but it did not make a difference to management. Management placed more emphasis on the level of responsibility associated with detective, supervisor and management duties. (N.T. 84-86)

25. On May 9, 2020, Inspector Lawson wrote an email. The email does not include the names of the individuals to whom he sent the email. Seemingly, President Bervine received the email because he responded. Inspector Lawson's email stated as follows:

Good afternoon, all. I spoke to the Chief yesterday about your concerns surrounding the plan to add name tags to the rear of the

vests. He is not opposed at all to reverting to badge numbers. I wanted to be sure there was no issue with the vendor doing the work before I sent this email[.] They confirmed the changes will not be a problem. The rear of the vest will have Transit Police along with a badge number. Let me know if you have any other concerns. We are planning to move forward with those changes next week starting with inside administrative staff and officers.

(Union Exhibit 5)

26. Also on May 9, 2020, President Bervine responded as follows:

Inspector-Received. Thank You. That addresses the only concern that we felt was a genuine safety issue. The only other logistical issue is, as Troy mentioned on our conference call, that some officers are not still in possession of their older carriers; which would make being without their current vest carrier an issue.

(Union Exhibit 5)

27. Subsequently, President Bervine was notified by a detective that, when their vests arrived, their names were on the rear of their vests without badge numbers. There are 16 detectives. Patrol officers did not have names on the rear of their vests. SEPTA did not notify the Union that detectives would have their names on the rear of their vests. (N.T. 30-31, 47-48, 60, 91; Union Exhibit 8)

28. On June 29, 2020, Vice President Parham emailed Inspector Lawson as follows:

I am following up on the conversation we had last week regarding officers' names being displayed on the rear of their outer vest carriers. Officers who are assigned to the Detectives Unit have informed the Union that their names are in fact added to the rear of the vest carriers, in spite of the understanding reached by the Union and SEPTA Police Administration. Interestingly, the officers['] badge numbers do NOT accompany their names on the rear of these carriers. This is both confusing and concerning to the officers, and the Union. I would like clarification on this matter, as well as the outer vest being required or optional. I am confident that together we can find a resolution that will prove to serve the department well.

(Union Exhibit 6)

29. By email dated July 14, 2020, Inspector Lawson wrote to Ms. Morris the following:

Our position on the vest issue concerning detectives is driven primarily from their increased responsibility and our feeling that the additional responsibility comes with an increased need for transparency. Our detectives are responsible for swearing out affidavit's [sic] of probable cause; obtaining search and arrest warrants, and then serving those warrants where they are legally justified in certain infringements of constitutional guarantees. None of our officers in any other unit carry that same responsibility. The name on the front and rear of the vest offers

additional transparency and we feel our supervisors and the detective division carry extra responsibility that justifies the need of additional transparency.

(Union Exhibit 7)

30. Ms. Morris forwarded Inspector Lawson's July 14, 2020 email to President Bervine. (Union Exhibit 7)

31. Detectives swear out affidavits for warrants at their desk in their cubicle and SEPTA Headquarters. It is not done in the public domain. Detectives do not wear vests when working at their desks. Detectives wear business casual and not uniforms when working, unless reassigned to patrol or special assignment requiring them to wear a uniform. (N.T. 37-38, 46, 66, 77-78)

32. Obtaining search and arrest warrants is work that is done from the Detective's desk, at the District Attorney's Office or before a Judge, none of which is in the public domain. They are probably not wearing vests when doing this work. (N.T. 38-39, 86-87, 94)

33. When serving a warrant at a residence, a detective is facing the recipient(s), and the detective would likely be wearing his/her vest. The detective's name is on the front of his/her vest and the warrant recipient(s) and residence occupants would see the detective's name. (N.T. 39-40, 87-88)

34. SEPTA management believes that more transparency is required for detectives because all members of the residence have a right to know who the detective is while they observe them responsibly executing the warrant. Management believes that the detective's name only on the front is inadequate because other individuals inside the residence would not see that name, but the name on the rear of the vest is readily observable by other occupants and it is not blocked by equipment. Inspector Lawson believes that officers can carry extra magazine holders and other equipment in a manner that could block the name on the front of the vest. (N.T. 88-89)

35. President Bervine testified that there is a pocket below the front name on the vest and that conceivably an item can be placed in that pocket that could extend beyond the top of the pocket and block the front name, but that item would not be properly secured for police activity. President Bervine has never blocked his front name with any pocket items, and he has never observed any other officer who has done so. President Bervine credibly testified that there is no place near the front name to affix items, such as tasers, tourniquets, or cell phones. (N.T. 99-105)

36. The SORT unit (i.e., Special Operations Response Team) is a special unit of police officers similar to a SWAT team trained to use special tactics and equipment, like door breeches. SORT team officers wear vests with their names on the front and not on the rear. The rear of SORT unit officers' vests has a badge number and "Transit Police." (N.T. 42-43, 66, 80-81)

37. When detectives serve warrants, the SORT team officers accompany the detectives to secure the residence and the individuals within. They are the first to enter or breach the residence, secure the perimeter and keep the residents together. (42-43, 80-81)

38. Badge numbers are public information. When requested, SEPTA provides the names associated with badge numbers. (N.T. 82, 90)

DISCUSSION

The primary dispute in this case involves SEPTA's requirement that its 16 detectives wear vest carriers as their outermost garment with their names on the rear of their vests. The Union argues that SEPTA unilaterally changed a mandatory subject of bargaining by requiring detectives to wear their vest carriers as their outermost garment, where the past practice was that officers could choose whether to wear their vests. (Union Brief at 7-9). The Union further contends that SEPTA violated its collective bargaining obligation to honor its alleged agreement "to merely display badge numbers on the back of the vests and its failure to adhere to the 10-day notice of its CBA with the [Union]." (Union Brief at 10-11).

SEPTA argues that the Union acknowledged that it received advanced notice of the uniform change policy well before implementation and that SEPTA did not violate the contractual notice requirements. (SEPTA Brief at 2, 19-21). SEPTA further contends that the uniform policy change in question here is a managerial prerogative under Section 702 of the Act, and not a mandatory subject of bargaining under Section 701 of the Act, pursuant to the balancing test set forth in PLRB v. State College Area School District (State College), 461 Pa. 494, 337 A.2d 262 (1975). (SEPTA Brief 10-15). SEPTA also maintains that, assuming SEPTA had a duty to bargain the uniform change, SEPTA satisfied those bargaining obligations by meeting and compromising with the Union over the policy changes and by implementing the alleged agreement between the parties by not placing officers' names on the back of patrol officers' vests. (SEPTA Brief at 17-18). SEPTA contends that the record lacks evidence that the parties had a meeting of the minds regarding detectives. (SEPTA Brief at 18-19).

The Union bears the burden of proving that SEPTA unilaterally changed a mandatory subject of bargaining under Section 701 of PERA. PSSU, Local 668 of SEIU, AFL-CIO v. PLRB, 763 A.2d 560, 562 (2000). The Board will find a violation of Section 1201(a)(1) and (5) where an employer unilaterally changes a mandatory subject of bargaining. However, an employer may make changes concerning matters of inherent managerial policy, in accordance with Section 702, without committing an unfair practice. Id.

The Commonwealth Court, the Board and Board examiners have held that uniform and dress code requirements, applicable to employees on duty, are managerial prerogatives, not subject to bargaining. In PSSU, Local 668 v. PLRB, supra, the Commonwealth Court affirmed the Board's conclusion that a dress code policy was a managerial prerogative that was not subject to bargaining, under the State College balancing test. The PSSU Court opined as follows: "Based upon employer's substantial interest in providing professional services to the public, the Board 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. Significantly, the PSSU Court emphasized that the record did not support the union's argument that employees have a substantial interest in choosing their own attire and dressing comfortably. Id.

In City of Chester, 22 PPER 22006 (PDO, 1990), the City's police chief changed the uniform policy for off-duty officers appearing for district justice proceedings. Formerly, officers were permitted to appear without being in uniform, and the chief changed the policy to require officers to don their uniforms for such appearances. Under the Act 111 standard, which is more difficult for management, Examiner Leonard relied on the Board's decision in City of Philadelphia (First Responder), 21 PPER 21075 (Final Order, 1990), where the Board held that the City of Philadelphia had a managerial prerogative to establish a first-responder program without bargaining. Examiner Leonard quoted First Responder as follows: "In this case, the program at issue relates more rationally to the City's ability to establish public services and to establish management standards for the performance of the public service involved." City of Chester, 22 PPER 22006 (quoting 21 PPER 21075 at 192).

Applying the principle that management has the right to unilaterally determine the manner in which it provides public services through the public appearance of its officers, Examiner Leonard concluded that the "manner in which the City's police officers dress and appear to the public certainly bears a stronger relationship to the City's discretionary managerial policy-making than to the employees' concerns." Management, concluded Examiner Leonard, has very strong interests and concerns over the manner in which employees dress for court appearances and, although the employees have some interests, the employer has a far greater interest in the appearance officers make to the courts and the public. Id.

In FOP, Lodge 5 v. City of Philadelphia (Tattoo Case), 51 PPER 28 (Final Order, 2019), the Board affirmed the examiner's conclusion that, under the more burdensome standard for management in Act 111 cases, the City had a managerial right to unilaterally implement a policy requiring officers to cover offensive tattoos, with a multi-tiered review system for determining whether a tattoo was offensive. In the Tattoo case, the Board stated:

a public employer has the managerial right to implement policies that promote the public's confidence and ensure integrity in the government. The City has an interest in its officers, as representatives of the City, having an appearance of providing fair, balanced and non-prejudicial law enforcement. Offensive tattoos undermine the public perception of the integrity and credibility of the officer and the City thereby losing the public's trust.

Id. The police uniform/appearance cases are consistent in concluding that management has a greater interest in officers' appearance to the public and the courts than do the officers.

However, the Union cites FOP Lodge 5 v. City of Philadelphia, 52 PPER 67 (Final Order, 2019), wherein the Board concluded that management must bargain the timeline protocols for releasing officers' names after a shooting. The Board therein relied on IAFF, Local 1803 v. City of Reading, 31 PPER 31151 (Final Order, 2000), and stated that the Board has recognized that "[c]onfidentiality is certainly rationally related to the conditions of employment for employee[s] who are the subjects of investigations. A public employer has a significant interest in maintaining the privacy of its employee[s] and protecting its employees from prejudice in the employment environment and from the public at large.'" Id., (quoting City of Reading, 31 PPER at 358) (emphasis added). The Board in that case further opined:

The officer's interest in confidentiality, and the safety of the police officers, both those involved in the shooting and those providing protection and security details, is at least equally as important and weighty. Upon review of the record, we find that the City's managerial interest involved in releasing the names of police officers within 72 hours of an officer involved shooting would not be unduly burdened by the City having to bargain with the FOP over the policy and protocols for peremptorily releasing the names of officers involved in shootings.

52 PPER 67 (emphasis added).

Although City of Philadelphia provides that police officers have a legitimate interest in the confidentiality of their identity after a shooting, or during an investigation into a shooting, that interest does not indefinitely outweigh the employer's interests in accountably providing those names to the public eventually. The Board applied the Act 111 standard for determining whether a matter is bargainable, which resulted in the conclusion that management would not be unduly burdened by bargaining the timeline for releasing names of officers involved in shootings. The Board, in City of Philadelphia, did not conclude that the City could not release the names indefinitely without bargaining. Eventually, however, transparency and accountability to the public requires that the police employer release the names of officers involved in shootings to the public. Significantly, the record in City of Philadelphia established that officers involved in a shooting had a real safety concern and privacy interest because the City employer recognized those interests by providing a security detail. Such proof of employes' interests is required by PSSU, supra.

Generally speaking, if determining a detective's appearance is a managerial prerogative under Act 111, then it would be a managerial prerogative under PERA. Teamsters 77 & 250 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001), However, the precedent in the uniform and dress code cases does not address the alleged safety or confidentiality concerns involved in identifying a detective by placing the name on the back of a detective, as here, under PERA. Accordingly, I will balance the interests of SEPTA, in this case, as compared to the interests of the detectives in the alleged increased risk to officers if their names appear on the rear of their vests.

In State College, supra, our Supreme Court developed the standard for determining whether a matter constitutes a mandatory subject of bargaining under Section 701 of PERA or a managerial prerogative under Section 702 of PERA. The Court articulated the standard as follows:

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 subjects upon request by the public employe's representative pursuant to section 702.

Id. at 507, 337 A.2d at 268. In order to prevail on its claim that requiring names on the rear of detectives' vests constitutes a mandatory subject of

bargaining, the Union must show that the alleged safety impact on the detectives' conditions of employment caused by this change outweighs SEPTA's interest in promoting transparency, accountability, public confidence and integrity. The Board has clearly stated that, of paramount importance to a public employer providing police services, is the public perception of the integrity and credibility of the officer which transfers to the employer, which has a strong interest in not losing the public's trust. Tattoo Case, 51 PPER 28.

In this case, the Union contends that detectives will experience a higher safety risk if their names are on the rear of their vests because any member of the public who sees the name can google it and locate the officer's home address and personal information. The Union contends that this safety issue related to detectives' employment duties outweighs SEPTA's interests in improving the transparency and accountability of detective operations. It is not for the Board or its examiners to determine whether management has chosen the best way to accomplish its goals. The Board's role is limited to weighing the competing interests.

On the SEPTA side of the scale, having an officer's name readily observable from all sides provides accountability while officers are interacting with the public. Also, a display of officers' names has always been part of the uniform on the front. Even though during the winter months detectives and other officers are permitted to cover their names by wearing jackets and coats, it is within SETPA's discretion to permit exceptions to its policy requiring the exposure of a detective's name. Although currently, the detectives have names and not badge numbers on the back of their vests, the other bargaining unit SEPTA officers do have badge numbers on the back. Any individual can submit a complaint about an officer identified by badge number and SEPTA will identify the officer and provide the name of the officer assigned to that badge number. In this regard, there seems to be little difference between providing the badge number on the back and providing a name on the back. The Union has accepted the rear badge number for the patrol officers and not the back name for the detectives.

Another reason for the Uniform change, according to Inspector Lawson, was that officers could cover up their front name with equipment in the pocket below the name. Inspector Lawson conceded that the Department could issue a directive mandating officers to keep that area of the vest clear to ensure the front name is visible to the public. And President Bervine credibly testified that he never observed any officer with his/her front name obstructed by anything. In fact, the Chief's directive to the supervisors, originally effective March 30, 2020, stated just that. Yet whether the name on the front is covered or not, SEPTA has determined that the name only on front, even if visible, is inadequate transparency for detectives and supervisors, and SEPTA wants the name on the back as well for those personnel.

On the Union side of the scale, the Union's position that the rear name poses an increased safety risk for officers over badge numbers is somewhat speculative and not borne out by the record, as required by PSSU, supra, and City of Philadelphia, supra. Unlike the employer in City of Philadelphia, Inspector Lawson does not agree with the Union that the back name presents an increased safety issue. Inspector Lawson also testified that, when detectives enter a residence with a search or arrest warrant, everyone in the residence has a right to know the name of the officer, not just the recipient of the search or arrest warrant, who may be in front of the detective. Inspector

Lawson stated that everyone should be able to see the detective's name even if he/she is not facing them. This requirement would further management's goal to provide greater accountability to the public, which is a managerial prerogative, and it would increase public confidence in detectives, and SEPTA, by ensuring that the identity of an officer is easily ascertainable. Also, there is no evidence that civilians have threatened SEPTA detectives or tracked down their personal information or home addresses after having worn their names on the front of their vests for many years.

If transparency, accountability and public confidence are served by providing the officer's name on the front of his uniform, as has always been the case, then those goals are equally served by identifying the officer to more people, including the general public, while executing a warrant, by providing the detective's name on the back. In this manner, the speculative possibility that the public seeing a detective's name can pose a safety risk is insufficient, and it is not the same as the identifiable, increased safety risk to officers involved in a shooting incident, as in City of Philadelphia, supra. The proposed safety risk argued in this case has not been established as a real risk or one that is different than the risks that already exists. Moreover, even if the safety risk was comparable to the one identified in City of Philadelphia, supra, the Board in that case stated that the officer's interest in confidentiality and the safety of the police officers after being involved in a shooting are "equally as important and weighty" as the employer's interest in transparency and integrity in public service. Where employees' interests are "equally as important and weighty," those interests do not outweigh the employer's managerial interests under the State College test, and the Union cannot prevail in establishing a mandatory subject of bargaining on behalf of the detectives.

Accordingly, under State College, supra, the detectives' alleged interest in limiting the exposure of their names on their uniforms does not outweigh SETPA's interest in ensuring accountability and integrity in police operations and maintaining public confidence in SETPA detective operations. In City of Philadelphia, the Board concluded that it would not unduly burden the employer to bargain the identified safety risks to officers involved in shootings to reveal the names of the officers and their security details within 72 hours. Under the Act 111 standard of City of Philadelphia, an equally important and weighty employee interest is bargainable, but under State College, employees' interests cannot overcome the employer's when "equally as important and weighty." In this case, SETPA's policy identifying detectives' names on the rear of their vests without incident does not pose the same identifiable level of safety risk in City of Philadelphia. SEPTA's uniform policy change promotes transparency and accountability in police detective services. The Union's safety concerns have not been established on this record and are, at best, "equally as important and weighty" as SEPTA's interests. In this PERA case, SEPTA did not have to show that it would be unduly burdensome to bargain the uniform policy. The State College standard requires the conclusion that the issue here constitutes a managerial prerogative.

The work of a police officer or a detective is inherently dangerous work. There are many managerial directives that could increase the safety risks to officers. SEPTA command staff cannot reasonably be expected to bargain command decisions simply because they pose a safety risk to officers. Such a requirement would grid-lock command staff, transit police operations and police services, which lie at the core of SEPTA's Transit Police Department's enterprise. Accordingly, I conclude that, on balance, SEPTA's

interests in maintaining integrity, accountability and public confidence in detective's performance of their duties, by requiring their names to be printed on the rear of their vests, outweigh the speculative concerns that those names will increase safety risks for the detectives beyond the many existing safety risks to those detectives.

Next, the Union claims that SEPTA abrogated a negotiated settlement agreement. As already concluded herein, SEPTA's requiring the names on the rear of detectives' vests is a managerial prerogative within SETPA's unilateral decision-making authority. Any discussions about the names on the rear of officers or detective's vests, therefore, was not a collective bargaining negotiation, and Inspector Lawson did not believe he was negotiating with the Union on May 8, 2020. Both parties' witnesses agreed that the detectives were not specifically mentioned during the May 8, 2020 video meeting. The Union's position is that Inspector Lawson should have known that President Bervine was addressing the name issue for the entire bargaining unit that he represents, including detectives. However, Inspector Lawson credibly testified that he understood that detectives were not part of the conversation because the examples of alleged safety risks provided by President Bervine involved patrol officers. I cannot conclude that Inspector Lawson should have known the scope of what President Bervine wanted him to agree to without some mention of the detectives during the discussions, where all the discussions related to patrol officers. Accordingly, there was no meeting of the minds, and therefore no agreement, regarding the names on the rear of the vests of detectives. Additionally, as a result of SETPA's managerial prerogative to require detectives' names on the rear of their vests, SEPTA fulfilled its meet and discuss obligations under Section 702 of PERA. Under the definition of meet and discuss, PERA provides that all final decisions remain with the employer. SEPTA did not have an enforceable collective bargaining obligation to reach an agreement or abide by one after it discharged its duty to meet and discuss the matters in question.

The Union claims that there were two instances related to these claims when SEPTA failed to comply with the contractual 10-day notice requirements. First, when the Chief sent his email to the supervisors directing that they require officers to wear their vest carriers as their outermost garment without covering their front name; and second when SEPTA placed the names on the rear of the vests for the detectives, as it constitutes a uniform policy change for the detectives.

Article 5.3 of the parties' CBA provides as follows:

The Authority shall make a good faith effort to notify the Union of any new Department issued permanent policy or directive, or change in any such policy or directive affecting it or its members at least ten (10) days before the effective date of such policy or directive.

(F.F. 9).

The record shows that SEPTA did not make a good faith effort to notify the Union of Chief Nestel's initial uniform policy change which required that the vest carriers be worn as the outermost garment without obstructing the front name. The email directive was sent only to supervisors in the Department and not any Union officials. President Bervine did not receive notice of the policy change until it became effective and his supervisor told him that he had to wear his vest as the outermost garment. It was after the effective date of the Chief's uniform policy change that President Bervine

investigated and demanded bargaining. The fact that the Union eventually learned of the policy change does not relieve SEPTA from its violation of Article 5.3 of the CBA. SEPTA management, under Article 5.3, is required to notify Union officials 10 days before the policy change or directive is implemented, which did not happen here.

At some point in time, the Chief's initial uniform policy change morphed into not only wearing the vests as outermost garment, but also requiring the officer's name on the rear of the vest. The record suggests that the Union learned of the name change contemporaneously with discussing the initial uniform change in early May 2020, and indeed SEPTA never implemented the rear name requirement for patrol officers.

The Union was aware of SEPTA's position regarding rear names while discussing it with SEPTA in early May and SEPTA did not implement those changes for the detectives until June, which on its face seems to satisfy the 10-day notice requirement. However, as of May 9, 2020, Union officials believed they had an agreement with SEPTA that no one, including detectives, would be required to wear their names on the rear of their vests. In this manner, when the detective vests were delivered to detectives with rear names and detectives notified the Union, it constituted a uniform policy change without notice. For the same reason that Inspector Lawson believed that detectives were not included in the parties' agreement to put only badge numbers on the rear of vests, President Bervine believed that detectives were part of the agreement. If neither party had a clear understanding regarding the uniform change for detectives, then the Union was not on notice about the detective's uniform change and the discussions in May 2020, did not satisfy the 10-day notice requirement under Article 5.3 of the CBA to provide express notice of the uniform policy change for detectives.

Accordingly, SEPTA committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA by repudiating the contractually required 10-day notice requirement to the Union when it unilaterally changed its uniform policy with respect to all bargaining unit members effective March 30, 2020, and again when it unilaterally and without notice changed the uniform policy for detectives by requiring detectives to wear their names on the back of their vests. However, SEPTA did not violate the Act by unilaterally implementing uniform changes with respect to detectives because such changes constituted a managerial prerogative, and there was no meeting of the minds establishing any agreement regarding the detectives.

CONCLUSIONS

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

1. The Authority is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Authority has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA by violating Article 5.3 of the CBA.

5. The Authority has not committed unfair practices in violation of Section 1201(a) (1) and (5) of PERA by unilaterally requiring detectives to wear their names on the rear of their vests.

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 Authority 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 an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative;

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

(a) Cease and desist from violating the 10-day policy/directive notification provision in Article 5.3 of the CBA;

(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; 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 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 fifth day of August 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF TRANSIT POLICE, :
FOP LODGE 109 :
 :
v. : CASE NO. PERA-C-20-150-E
 :
SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :

AFFIDAVIT OF COMPLIANCE

The Authority hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1), and (5); that it has ceased and desisted from violating the 10-day notice requirement for policy/directive changes contained in Article 5.3 of the parties' CBA; that it has posted a copy of this 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