

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SELINGSGROVE POLICE OFFICERS ASSOCIATION :
 :
 v. : Case No. PF-C-23-8-E
 :
 SELINGSGROVE BOROUGH :

PROPOSED DECISION AND ORDER

On January 13, 2023, the Selingsgrove Police Officers Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Selingsgrove Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally implementing a Borough Police Department Disciplinary Code on December 2, 2022, which established new rules and regulations related to disciplinary offenses, penalties, and reckoning periods, without bargaining with the Association.

On April 12, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on May 19, 2023, if necessary. By letter dated May 1, 2023, the hearing was continued to June 26, 2023, at the Association's request and without objection by the Borough. The hearing ensued on June 26, 2023, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties thereafter each filed separate post-hearing briefs in support of their respective positions on August 14, 2023.

The Hearing 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 Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)
3. The Association is the exclusive bargaining representative for a unit of police employees working at the Borough. (Borough Exhibit 3)
4. The Association and the Borough are parties to a collective bargaining agreement (CBA) effective January 1, 2022 through December 31, 2026. (Borough Exhibit 3)
5. Article 2.01 of the CBA, which is entitled "Management Rights and Responsibilities," provides in relevant part as follows:

The parties agree that except for the limitations or other provisions of this agreement, there are functions, powers, responsibilities and authority belonging solely to the Borough and to the Mayor of the Borough. Some of these as pertain to the

Borough are the hiring of employees; the advancement of Police Officers to higher rank; the determination of the number of Police Officers to be employed or retained in employment in the manner provided by the Police Civil Service of the Borough Code; the suspension, demotion or discharge of Police Officers for just cause; the temporary appointment of an acting Chief or Officer-In-Charge; the award of meritorious pay raises; change or consolidation of jobs; the reduction of the work force because of a lack of work or for administrative reasons; the establishment of a budget or long range plans for the police consistent with other provisions of this agreement; and the abolition of the Police Force pursuant to a plan for Regional Police. The Borough, acting through its Council, may delegate some of its functions, powers, responsibilities and authority to the Police Chief under supervision of the Mayor as allowed by the Pennsylvania Consolidated [Statutes] (hereinafter known as the Borough Code). The section shall not be interpreted so as to imply that a non-uniform employee has authority over a Police Officer, nor to take away the discretion of a Police Officer.

(Borough Exhibit 3)

6. Article 2.02 of the CBA further provides, in relevant part, as follows:

The Mayor has oversight responsibility for policy and planning matters and is responsible for the Police to the Council. Under the oversight of the Mayor, the Chief of Police is delegated primary supervisory responsibility for day-to-day management of the Police Department including, but not limited to: developing and implementing Standard Operating Procedures, determining the police work to be performed, and directing the time during which, the place where, and the manner in which uniformed personnel assigned to the Police Department shall perform their duties. The Chief shall also be responsible for developing an effective performance review system for the Department, establishing an appropriate training schedule and grading system for uniformed personnel, and formulating all operational policies.

(Borough Exhibit 3)

7. Article 21.01 of the CBA, which is entitled "Effect of the Agreement," provides in relevant part as follows:

The parties acknowledge that during the negotiations which resulted in this agreement each had the unlimited right and opportunity to make such demands with respect to any subject or matter nor [sic] removed by law from the areas of collective bargaining, and that such understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Borough and the Police Officers, for the life of this agreement, each voluntarily and unqualifiedly waived the right, and each agreed that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement even though such subjects or matters may not have been within the knowledge or contemplation of either or both

of the parties at the time they negotiated or signed this agreement.

(Borough Exhibit 3)

8. Shanee Mitchell has been the Borough's Chief of Police since August 1, 2022. The position of Chief is excluded from the bargaining unit as a managerial employee. Mitchell came to the Borough after serving 21 years in the Philadelphia Police Department. (N.T. 7-8, 10)

9. Prior to December 2, 2022, the Borough did not have a disciplinary code or policy relative to the Police Department. (N.T. 8)

10. Chief Mitchell implemented a document entitled "Selinsgrove Borough Police Department Disciplinary Code" on December 2, 2022. (N.T. 8-9, 29, 41)

11. Mitchell testified that she distributed by hard copy and email the document entitled "Selinsgrove Borough Police Department Disciplinary Code" to the bargaining unit employees in September 2022. At the time of the hearing, the Borough employed five full-time police officers and one part-time police officer, in addition to the Chief. (N.T. 8-10)

12. At the hearing, Mitchell did not produce a copy of the September 2022 email which she allegedly sent to the bargaining unit employees with the proposed Disciplinary Code. She testified that her September 2022 email essentially stated that "this was the copy of the [Disciplinary Code] taking effect December of '22. Contact me if [you have] any questions or concerns." She indicated that she also distributed it via hard copy by placing the Disciplinary Code in the mailboxes for the bargaining unit employees. (N.T. 9-11)

13. Mitchell testified that she did not receive any response, questions, or concerns of any kind from the bargaining unit employees. She indicated that the bargaining unit did not enter into any type of memorandum of understanding or agreement with regard to the Disciplinary Code. (N.T. 11-12)

14. Mitchell admitted that she did not know who was serving as the Association President in December 2022. (N.T. 13)

15. Mitchell agreed that Section 1-426.1(A) of the Borough Code was in effect at the time she implemented her Disciplinary Code in December 2022. Section 1-426.1(A) provides in relevant part, as follows:

No person appointed to a position in the Police Department pursuant to this Subpart may be suspended without pay or removed, or reduced in rank except for the following reasons:

- (1) Physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from the service.
- (2) Neglect or violation of official duty.
- (3) Violation of any law which provides that such violation constitutes a misdemeanor or felony.
- (4) Inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer.

- (5) Intoxication while on duty.
- (6) Engaging or participating in or conducting of any political or election campaign while on duty or in uniform or while using Borough property otherwise than to exercise a person's own right of suffrage.
- (7) Engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in §1104(F) of the Borough Code, 53 P.S. §46104(F).

(N.T. 16; Borough Exhibit 1)

16. Mitchell testified that she felt the need to implement her Disciplinary Code in December 2022 because the Disciplinary Code outlines specific actions, which are prohibited, whereas the Borough Code is extremely broad. (N.T. 16-17)

17. Mitchell testified that she also felt the need to implement her Disciplinary Code because Officer Elizabeth Shampatore approached her about a disciplinary action, which occurred prior to Mitchell's arrival, and asked how long it stays in her personnel file. Mitchell did not know and asked the Borough Manager for the disciplinary code or policy, but there was none. (N.T. 17)

18. Mitchell testified that there is no major difference between the Borough Code and her Disciplinary Code, which was implemented in December 2022. She stated that her Disciplinary Code from December 2022 is simply more specific. (N.T. 18-19)

19. Scott Grove has been employed as a police officer for the Borough since 1998. He currently holds the rank of Patrol Officer and became President of the Association in November 2022. (N.T. 24-25)

20. Grove testified that Mitchell did put a hard copy of the Disciplinary Policy in each officer's mailbox. However, Grove indicated that Mitchell did so on December 2, 2022, and not in September 2022, as Mitchell claimed in her testimony. (N.T. 25-26)

21. Grove testified that Mitchell did not send a copy of the Disciplinary Policy to the bargaining unit employees by email in September 2022 either. Instead, he explained that the Association members received an email on December 2, 2022, which indicated that the Disciplinary Code was in their mailboxes. (N.T. 26-27)

22. Grove described how, aside from seeing copies of the Disciplinary Code on the clerk's desk in September 2022, the Chief's December 2, 2022 email was the first notice the Association received of the Disciplinary Code. He testified that he looked through the copy he found on the clerk's desk, which contained handwritten changes in pencil throughout the document. But he was adamant that the Chief never distributed copies to him in draft form. (N.T. 27-28, 32-33)

23. Grove testified that he never had any meetings with the Chief regarding the implementation of the Disciplinary Code or changes to any disciplinary policy. He explained how Mitchell emailed him in September 2022 and asked if there was a code in place, to which Grove replied there was not. Grove advised Mitchell that the parties had generally just gone by the Borough's Civil Service Code. (N.T. 28-30)

24. Grove testified that the Chief's December 2022 Disciplinary Code sets forth a number of penalties for various offenses. He indicated that the Borough did not bargain with the Association prior to implementing those levels of discipline. (N.T. 30)

25. Grove testified that he had casual conversations with the Borough's Mayor, Jeffrey Reed, prior to December 2, 2022, during which the Mayor acknowledged that the code was being developed. The Mayor indicated to Grove that the code was not put in place yet because the Chief was still supposed to meet with the Mayor, the Solicitor, and the Borough Manager first. (N.T. 30-31, 45-46)

26. The Association never agreed to the implementation of the Disciplinary Code prior to December 2, 2022. (N.T. 31, 49)

DISCUSSION

The Association has charged the Borough with violating Section 6(1)(a) and (e) of the PLRA¹ and Act 111 by unilaterally implementing a Disciplinary Code on December 2, 2022, which established new rules and regulations related to disciplinary offenses, penalties, and reckoning periods, without bargaining with the Association. The Borough, on the other hand, contends that the charge should be dismissed because there has been no change to the employees' terms and conditions of employment, as the December 2022 Disciplinary Code was merely a codification of the already existing disciplinary rules. The Borough also maintains that it had a contractual privilege to implement the Disciplinary Code and that the Association has waived any right to bargain over the same.

Section 1 of Act 111 provides, in pertinent part, as follows:

Policemen or fireman employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the **terms and conditions of their employment**, including compensation, hours, **working conditions**, retirement, pensions, and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

43 P.S. § 217.1 (emphasis added).

As Hearing Examiner Thomas Leonard observed, the Pennsylvania Supreme Court has applied a balancing test when deciding whether a managerial decision is a mandatory subject of bargaining for municipalities in collective bargaining relationships with their police and fire employees under Act 111. Middletown Borough Police Officers Ass'n v. Middletown Borough, 46 PPER 78 (Proposed Decision and Order, 2015). Once it is determined that the

¹ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act... (e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

decision is rationally related to the terms and conditions of employment, or germane to the work environment, the inquiry is 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. *Id.* citing Borough of Ellwood City v. PLRB, 998 A.2d 589, 600 (Pa. 2010); City of Philadelphia v. International Ass'n of Firefighters, Local 22, 999 A.2d 555, 570-571 (Pa. 2010).

It is well settled that the Board properly relies on precedent to determine whether a matter constitutes a mandatory subject of bargaining rather than reinventing the wheel by applying the Act 111 balancing test to arrive at the same result as the established precedent. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Dept. of Corrections, Fayette SCI, 35 PPER 58 (Proposed Decision and Order, 2004) citing Teamsters Local 77 & 250 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001). Although the decision regarding the negotiability of a particular subject is in part fact driven (i.e. balancing the relationship of the issue to Section 1 matters on one hand and core managerial interests on the other), once the Board has conducted this analysis, the result is precedential for future cases on the same or similar facts. Fayette SCI, *supra*. Of course, where a party introduces new or different facts that may alter the weight the matter at issue bears on the interests of the parties, additional analysis may be warranted. The burden is on the party requesting departure from established precedent to demonstrate on the record facts warranting such a departure. *Id.* citing Wilkes-Barre Police Benevolent Ass'n v. City of Wilkes-Barre, 33 PPER ¶ 33087 (Final Order, 2002).

The Board has long held that issues of employe discipline and disciplinary procedures are mandatory subjects of bargaining. Amalgamated Transit Union, Division 1279 v. Cambria County Transit Authority, 21 PPER ¶ 21007 (Final Order, 1989). This has been extended to include the imposition of reckoning periods. Fairview Township Police Ass'n v. Fairview Township, 30 PPER ¶ 30209 (Proposed Decision and Order, 1998), 31 PPER ¶ 31019 (Final Order, 1999). However, the mere codification of an unwritten work rule, where there has been no change to a mandatory subject of bargaining, is not an unfair labor practice. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER 67 (Final Order, 2005).

In this case, the Association has sustained its burden of proving the Borough violated the PLRA and Act 111 by unilaterally implementing a Disciplinary Code on December 2, 2022, which established new rules and regulations related to disciplinary offenses, penalties, and reckoning periods, without bargaining with the Association. First of all, the record shows that, prior to December 2, 2022, the parties had always followed the Borough Code with regard to disciplinary matters. Section 1-426(A) of the Borough Code provides that "[n]o person appointed to a position in the Police Department...may be suspended without pay or removed, or reduced in rank except for" a subsequent list of enumerated reasons. Thus, the record shows that the parties had an established disciplinary system consisting only of suspensions without pay, terminations, and demotions. However, the Chief's December 2022 Disciplinary Code includes everything from a reprimand to dismissal, providing the Chief with greater discretion to impose an additional level of discipline not contemplated by the Borough Code, which

constitutes a change from the prior system.² Likewise, the Chief's December 2022 Disciplinary Code, which consists of 17 pages of potential offenses, includes a separate and unilaterally promulgated reckoning period for each offense. However, the record shows that the parties did not have any reckoning periods under the prior disciplinary system, which of course demonstrates an additional change. The record further shows that the Borough did not bargain with the Association prior to implementing the December 2022 Disciplinary Code. As a result, the Borough has clearly violated Section 6(1)(a) and (e) of the PLRA.

In its post-hearing brief, the Borough defends the charge on the grounds that it had a sound arguable basis or contractual privilege to implement the Chief's December 2022 Disciplinary Code. The Board has adopted the sound arguable basis or contractual privilege defense to a claimed refusal to bargain, which calls for the dismissal of a charge when the employer establishes a sound arguable basis in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the employer's action was permissible, i.e. contractually privileged under the terms of that agreement. Temple University Hospital Nurses Ass'n et. al. v. Temple University Health System, 41 PPER ¶ 3 (Final Order, 2010). Where the employer asserts a contractual right to change a mandatory subject of bargaining, it must point to specific, agreed-upon contract language which arguably indicates the union expressly and intentionally authorized the employer to take the precise unilateral action at issue. *Id.* citing Port Authority Transit Police Ass'n v. Port Authority of Allegheny County, 39 PPER 147 (Final Order, 2008). However, a repudiation or alteration of the terms of the collective bargaining agreement is an unfair labor practice. Wilkes-Barre Twp. Police Benevolent Ass'n v. Wilkes-Barre Twp., 35 PPER 137 (Final Order, 2004) *aff'd sub. nom. Wilkes-Barre Twp. v. PLRB*, 878 A.2d 977 (Pa. Cmwlth. 2005).

Specifically, the Borough relies on the Management Rights clause of the CBA for the alleged authority to act unilaterally with regard to employee discipline. However, the Borough's reliance on the Management Rights provisions of the CBA is misplaced.

As previously set forth above, Article 2.01 of the CBA provides, in relevant part, that:

The parties agree that except for the limitations or other provisions of this agreement, there are functions, powers, responsibilities and authority belonging solely to the Borough and to the Mayor of the Borough. Some of these as pertain to the Borough are the hiring of employees; the advancement of Police

² The Borough argues that the Chief's ability to impose a lesser form of discipline not contemplated by the Borough Code is beneficial to the Association since employees may now be reprimanded instead of incurring more serious sanctions, such as suspension, demotion, or discharge. While this may potentially be true in some cases, it nevertheless constitutes a significant change by expanding the Chief's discretion to impose a new level of discipline. Of course, this lesser sanction could also be used to potentially impose more serious sanctions in the future if the Chief were to impose a reprimand for minor disciplinary offenses, which did not previously merit a more serious penalty, such as suspension or demotion, under the prior system, thereby subjecting the employees to increasingly progressive penalties for subsequent minor offenses within the reckoning period.

Officers to higher rank; the determination of the number of Police Officers to be employed or retained in employment in the manner provided by the Police Civil Service of the Borough Code; **the suspension, demotion or discharge of Police Officers for just cause...**

(Borough Exhibit 3) (Emphasis added).

In addition, Article 2.02 of the Management Rights provision of the CBA provides, in relevant part, that:

The Mayor has oversight responsibility for policy and planning matters and is responsible for the Police to the Council. Under the oversight of the Mayor, **the Chief of Police is delegated primary supervisory responsibility for day-to-day management of the Police Department including, but not limited to: developing and implementing Standard Operating Procedures,** determining the police work to be performed, and directing the time during which, the place where, and the manner in which uniformed personnel assigned to the Police Department shall perform their duties. **The Chief shall also be responsible for developing an effective performance review system for the Department, establishing an appropriate training schedule and grading system for uniformed personnel, and formulating all operational policies.**

(Borough Exhibit 3) (Emphasis added).

However, contrary to the Borough's assertion, neither Article 2.01 nor Article 2.02 of the CBA can support a sound arguable basis or contractual privilege defense here. Indeed, these provisions simply cannot be read as providing the Borough with the authority to issue a bargaining unit wide policy unilaterally establishing additional levels of discipline not contemplated by the Borough Code and entirely new reckoning periods for various potential offenses. By doing so, the Borough was not merely applying the contractual language in Article 2.01 to impose a suspension, demotion, or discharge on an individual bargaining unit member allegedly for just cause. Rather, the Borough has unilaterally prescribed a certain meaning to the contractual language in Article 2.01 that is applicable to all bargaining unit members, in violation of its bargaining obligations. See Wilkes-Barre Twp., *supra*, at 983 (the Board astutely observed a distinction between an employer's application of the terms in a collective bargaining agreement, which must have a sound 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).³ Furthermore, Article 2.02 is also devoid of any language which could arguably be read to permit the Borough to unilaterally impose additional levels of discipline and new reckoning periods in connection with an employe disciplinary policy. While Article 2.02 does authorize the Chief to implement standard operating procedures, performance review systems, and training schedules, as well as the authority to formulate operational policies, this provision nevertheless fails to mention the otherwise

³ In fact, rather than being protected by the CBA here, the Borough has instead arguably repudiated the provisions of Article 2.01 because that section limits the Borough to imposing only the suspension, demotion, and discharge penalties mentioned therein, and not the newly created reprimand penalty found throughout the Chief's December 2022 Disciplinary Code.

bargainable subject of disciplinary penalties and reckoning periods, thus proving that the Association did not expressly and intentionally authorize the Borough to act accordingly. Therefore, the Borough's contractual privilege defense must be rejected.

The Borough's waiver argument is also without merit. In its post-hearing brief, the Borough points to the zipper clause of the CBA in Article 21.01 as support for its claim that the Association has waived the right to bargain over the disciplinary penalties and reckoning periods here. There is no question that the Union can expressly agree that an otherwise negotiable subject matter shall be the sole province of management and thereby waive the bargaining rights on that subject during the contract term. Crawford County v. PLRB, 659 A.2d 1078 (Pa. Cmwlth. 1995). A waiver of bargaining rights will not be lightly inferred and may only be found when the words show a clear and unmistakable waiver. *Id.* at 1082-1083. The Board has long recognized that the inclusion of a zipper clause in a collective bargaining agreement does not in and of itself constitute a waiver of bargaining rights and obligations. Venango County Board of Assistance, 11 PPER ¶ 11223 (Final Order, 1980) *aff'd sub. nom. Commonwealth of Pennsylvania v. PLRB*, 459 A.2d 452 (Pa. Cmwlth. 1983). Waiver was designed for the protection of the party to a collective bargaining agreement who wishes to preserve the status quo as to matters covered therein, not for the party who wishes to change it; waiver was designed to be used as a shield, not as a sword. *Id.* That is to say that such a clause may only be used as a shield by either party to prevent incessant demands during the contract term made by the other party seeking to alter the status quo. Use of the clause as a sword by one seeking to impose unilateral changes without first bargaining is prohibited. Commonwealth of PA, *supra*, at 457.

Here, while the parties have agreed on a broadly worded zipper clause in Article 21.01 of the CBA, the Borough's waiver argument must nevertheless fail.⁴ Indeed, there is simply no evidence that disciplinary penalties or reckoning periods were fully discussed or consciously explored during negotiations and that the Association consciously yielded or clearly and unmistakably waived its interest in the matter. To the contrary, the Borough is relying on a provision of the zipper clause which allegedly supports a waiver of subjects not raised during bargaining. But such a purported waiver is contrary to clearly established Board precedent requiring the alleged waiver to be clear and unmistakable. What is more, the Borough is using the zipper clause as a sword and therefore upsetting the status quo, which is

⁴ As set forth above, Article 21.01 provides as follows:

The parties acknowledge that during the negotiations which resulted in this agreement each had the unlimited right and opportunity to make such demands with respect to any subject or matter nor [sic] removed by law from the areas of collective bargaining, and that such understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, ***the Borough and the Police Officers, for the life of this agreement, each voluntarily and unqualifiedly waived the right, and each agreed that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement*** even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement. (Emphasis added).

prohibited. Venango County, supra. Therefore, it must be concluded that the Association has not waived its right to bargain over the disciplinary penalties and reckoning periods contained in the Chief's December 2022 Disciplinary Code.⁵

Finally, the Borough also contends that the charge should be dismissed because the Association knew about the Chief's Disciplinary Code in September 2022 and had ample opportunity to discuss it with her and the Mayor prior to its implementation. The Borough claims that the Association then failed to object to the drafting of the Disciplinary Code during the period between September 2022 and December 2022 prior to its implementation. However, the Board does not recognize a waiver by inaction rule. Instead, the Board has consistently held that an employer seeking to make changes in mandatory subjects of bargaining must affirmatively introduce its proposed changes into the bargaining process and that where it fails to do so, as in this case, it cannot rely on the union's failure to request bargaining as a waiver of the right to bargain. Philadelphia Federation of Teachers, Local 3, AFL-CIO v. Philadelphia School District, 29 PPER ¶ 29085 (Final Order, 1998). Thus, even if the Chief's testimony were to be accepted that she distributed the proposed Disciplinary Code to the bargaining unit employees in September 2022 and invited them to contact her with any questions or concerns, the Borough was still not authorized to act unilaterally, because the Association never agreed to the changes. In any event, the Chief's testimony that she distributed the proposed Disciplinary Code to the bargaining unit in September 2022 has not been credited. As such, the Association, while generally aware of a potential effort on the Borough's part to explore changes to the prior disciplinary system, nevertheless lacked notice of the Borough's proposed course of action. And, the Board has held that a union does not waive its bargaining rights by failing to request bargaining over a fait accompli announced by the employer. PSSU Local 668, SEIU v. Lancaster County, 24 PPER ¶ 24027 (Order, 1993). Accordingly, the Borough has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA, and the Borough will be directed to rescind the December 2022 Disciplinary Code as a result thereof.

CONCLUSIONS

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

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

⁵ During the hearing, the Borough attempted to adduce evidence that the Association waived its right to bargain the disciplinary penalties and reckoning periods through an alleged waiver to bargain certain other changes, such as clothing and uniforms. (N.T. 36-38). However, the Association's objection to this line of questioning was sustained. How the purported changes in clothing or uniforms relates to disciplinary penalties and reckoning periods is unclear. In any case, it is now well settled that an employer's dress code is a managerial prerogative, which need not be bargained with the employe representative. PSSU Local 668, SEIU v. PLRB, 763 A.2d 560 (Pa. Cmwlth. 2000). Thus, such an inquiry could not possibly establish that the Association had waived its right to bargain changes over the disciplinary penalties and reckoning periods at issue here.

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The Borough 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 Borough shall

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111;

2. Cease and desist from refusing to bargain with the representatives of its employees;

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately rescind the December 2022 Disciplinary Code, restore the status quo ante, and make whole any and all affected bargaining unit employees for any losses sustained as a result thereof;

(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 the bargaining unit employees 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 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 26th day of October, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SELINGSGROVE POLICE OFFICERS ASSOCIATION :
 :
 v. : Case No. PF-C-23-8-E
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 SELINGSGROVE BOROUGH :
 AFFIDAVIT OF COMPLIANCE

Selinsgrove Borough hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately rescinding the December 2022 Disciplinary Code, restoring the status quo ante, and making whole any and all affected bargaining unit employees for any losses sustained a result thereof; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed 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