

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP PA CONSERVATION POLICE OFFICERS :
LODGE 114 :
v. : Case No. PF-C-23-91-E
COMMONWEALTH OF PA, FISH AND BOAT :
COMMISSION :

PROPOSED DECISION AND ORDER

On October 6, 2023, the Fraternal Order of Police, Pennsylvania Conservation Police Officers Lodge 114 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Pennsylvania Fish and Boat Commission (Commonwealth or PFBC), alleging that the Commonwealth violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally changing scheduling practices for the bargaining unit employees on September 5, 2023.

On December 6, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on January 29, 2024, if necessary. After a continuance, the hearing ensued on June 17, 2024, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed separate post-hearing briefs in support of their respective positions on September 9, 2024.

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 Commonwealth is the employer of the PFBC bargaining unit employees under Act 111, as read *in pari materia* with the PLRA. (N.T. 5)
2. The FOP is a labor organization under Act 111, as read *in pari materia* with the PLRA. (N.T. 5)
3. The FOP is the exclusive bargaining representative for a unit of police employees at the PFBC. (Joint Exhibit 1)
4. The FOP and the Commonwealth are parties to a collective bargaining agreement (CBA) effective July 1, 2021 to June 30, 2024. (Joint Exhibit 1)
5. Article 2, Section 1 of the CBA, which is entitled "Management Rights," provides, in relevant part, as follows:

It is understood and agreed that the Employer, at its sound discretion, possesses the right, in accordance with applicable laws, to manage all operations, including the direction of the working force and the right to plan, direct, and control the

operation of all equipment and other property of the Employer, except as modified by this or unit agreements.

Matters of inherent managerial policy are reserved exclusively to the Employer. These include but shall not be limited to such areas of discretion or policy as the functions and programs of the Employer, standards of service, its overall budget, utilization of technology, the organizational structure, and selection and direction of personnel...

(Joint Exhibit 1, Commonwealth Exhibit 4)

6. Article 6, Section 5(a) of the CBA provides, in relevant part, as follows:

Waterways Conservation Officers and Water Conservation Officer Special Investigators will submit to their supervisor a proposed work schedule showing workdays, hours, and off days at least four (4) weeks prior to the start of the work week. The proposed schedule will be submitted for at least a four-week period.

1. The Employer will approve or modify the schedule as deemed necessary and advise the officer of the approved schedule not less than 14 calendar days prior to the start of the work week.
2. Changes to the approved schedule made less than 14 calendar days prior to the start of the work week shall be dealt with as set forth in this sub-section. It is understood that officers will work only those hours approved or initiated by the Employer...

(Joint Exhibit 1, Commonwealth Exhibit 1)

7. Walter Buckman served as a Waterways Conservation Officer (WCO) for the PFBC for 25 years. For his last three years, he then served as a Sergeant or Assistant Regional Supervisor in the Northeast Region. He described spending 27 of his 28 years of service in the Northeast region. He also spent his first year with the PFBC in the Northcentral Region. He has been Vice President of the FOP for the last five years. (N.T. 15-16)

8. The PFBC is entrusted with enforcing all Commonwealth laws related to fishing and boating. The PFBC also enforces environmental law, as well as portions of the Crimes Code and Vehicle Code. (N.T. 16-17)

9. The PFBC is divided into six regions, the Northwest, Northcentral, Northeast, Southwest, Southcentral, and Southeast regions, each of which is run by a Captain, who is not a member of the bargaining unit. The bargaining unit consists of approximately 78 or 79 WCOs across the entire state, along with two sergeants located in each region. There are also special investigator positions, which are included in the unit. (N.T. 17-18)

10. Buckman testified that the WCOs are essentially the face of the PFBC, as they go out and enforce the fishing and boating laws. The WCOs wear law enforcement uniforms, operate patrol vehicles, and generally work 40 hours per week, in addition to some overtime opportunities. The WCOs are extremely busy in the spring and summer seasons. (N.T. 18-19)

11. Buckman described how every WCO and sergeant submits a monthly work schedule to the region office one month in advance. For example, the WCOs put together and submit their schedules for the month of August in July, at which time the Captain reviews the schedule. Buckman testified that the schedules are approved, as submitted, the vast majority of the time, which he estimated to be 98 or 99 percent of the time. (N.T. 19-20)

12. Buckman testified that the WCOs base their work schedules off the 2017 Report Guide, which was adopted statewide by the PFBC, and which dictates how WCOs and sergeants do their scheduling. The Report Guide provides, in relevant part, as follows:

WCO Work Schedule

These are required monthly to the region by the 5th. Due "...at least 4 weeks prior to the start of the work week." (Collective Bargaining Agreement, Article 6, Section 5). Please also note the information regarding the weekend work. (Collective Bargaining Agreement, Article 6, Section 6). The newest form provides for a monthly schedule format and Captain signature. Special instructions: When planning your work schedules, schedule office hours during weekdays, at the beginning of your workweek and again at the end of your workweek. Office hours should be noted on the work schedule you submit. Schedules should contain varied shift hours all year. Additionally, during the months of March through September, plan your schedules to include shifts starting at 1300 hours or later, especially for the "weekend" days of Friday, Saturday and Sunday. Target a minimum of three evening shifts per month to conduct law enforcement patrols. Additional evening shifts may be needed to meet your patrol and public relation goals.

(N.T. 19, 21-23) (Emphasis in original)

13. Buckman testified that the PFBC adopted the Report Guide in 2017. He described how the FOP followed the Report Guide with regard to scheduling since it was adopted in 2017. He explained that the WCOs in the Northeast region where he worked were never required to work more than three evening shifts during the months of March through September, which he characterized as their busiest time of year. (N.T. 23-25)

14. Buckman testified that WCOs were never required to work any evening shifts for the months of October through February, even though they varied their starting times between 7 am, 8 am, 9 am, and 10 am. He described how there is no requirement for evening shifts during the offseason months in the Report Guide. (N.T. 25-26)

15. Buckman testified that he became aware of a Captains meeting in August 2023 when the bargaining unit employes started making complaints to him as Vice President of the Union that the PFBC was now requiring evening shifts during the offseason months. He conducted an investigation to see what exactly the PFBC was allegedly changing. (N.T. 26-27)

16. As part of his investigation, Buckman obtained a September 5, 2023 email from Emmett Kyler, who is the Captain or manager of the Northeast Region, to the bargaining unit employes, which provides in relevant part, as follows:

ALCON,

Per Harrisburg's direction and reference to the BLE Report Guide, a start time of 1300 hours or later is what is needed for the 3 evening shifts. Kindly review your outlook schedules and make the necessary adjustments. Most of what I have seen would be adjusting a 1200 start to the 1300.

If you have any questions, please reach out...

(N.T. 27-28; Union Exhibit 2)

17. Buckman testified that the subject line of the September 5, 2023 email from Kyler stated "October schedule[s]," which was an offseason month. Buckman described how this represented a change from what the WCOs were previously required to do and was contrary to the Report Guide, which they had followed since 2017. (N.T. 28-29; Union Exhibit 2)

18. By email dated September 27, 2023, WCO and FOP Trustee for the Northeast Region, John Cummings, indicated the following, in relevant part, to Captain Kyler:

Emmett,

Just wanted to clarify on the changes made to the requirements for evening shifts in the off season. Officers are now being required to work a minimum of how many evening shifts? And, it is my understanding that an evening shift must end no earlier than 2100 hours instead of the 1100-1900 shifts that had been required in the past in the [Northeast] Region. Is that correct?

Just wanted to clarify what is now being required...

(N.T. 29-30; Union Exhibit 2)

19. By email dated September 27, 2023, Captain Kyler replied to FOP Trustee Cummings stating, as follows:

The latest guidance I have from Harrisburg is what you stated. Evening shifts will end at 2100. If working more than 8 hours, the officer can start earlier[,] [i.e.,] 11-21.

(N.T. 29-30; Union Exhibit 2)

20. Buckman testified that this directive from Captain Kyler was also contrary to the Report Guide and what WCOs had been doing since 2017. (N.T. 30)

21. Buckman also obtained an email exchange between Michael Blair, who is a WCO in the Southeast Region, and Chase Rhoades, who is the Captain or manager of the Southeast region. (N.T. 30-31; Union Exhibit 2)

22. By email dated September 25, 2023, WCO Blair indicated the following to Captain Rhoades, in relevant part:

Chase,

I wanted to clarify the conversation we had about the evening shifts. Are we being mandated by Harrisburg to work 3 evening shifts in the "off month[s]" of October through February? Evening shifts are considered working between the hours of 1300-2100, on a Friday, Saturday, and Sunday? Thank you...

(N.T. 31; Union Exhibit 2)

23. By email dated October 4, 2023, Captain Rhoades replied to WCO Blair and stated that yes, the WCOs were now being mandated to work three evening shifts during the "off months" of October through February. (N.T. 31; Union Exhibit 2)

24. Buckman also obtained a September 6, 2023 email from Captain Anthony Quarracino of the Northcentral Region to the bargaining unit employes, indicating the following:

All,

Just a quick note because I forgot to say it yesterday when we were all very tired, sweaty, and wanting to go home, thanks for the effort that went into yesterday's long qualifications day. Despite the heat and humidity, you all stayed focused and accomplished the task at hand with the highest regards given to safety as always!

P.S. even after I boosted your moral [sic] with scheduling! - We will continue to work thru [sic] it and make the best of it we can. Get out with your PGC counterparts for some late light patrols, get together with neighboring officers for property details and don't forget those club meetings.

(N.T. 32-34; Union Exhibit 2)

25. Buckman testified that the first paragraph was a reference to a firearms qualification. He indicated that the second paragraph was a reference to the schedule change. (N.T. 32-34; Union Exhibit 2)

26. Buckman also obtained an August 29, 2023 email from John Hopkins, who is the PFBC Captain of the Southwest Region, to the bargaining unit employes, which indicated the following, in relevant part:

All,

Listed below are some of the meeting highlights from the Captain's [sic] Meeting last week...

Report Guide: Latest version is online with SOP

Will be getting updated in the future

Start time for the required minimum 3 late shifts per month is 1300, so [an] 8 hr. day is 1300-2100 and a 10 hr. day is 1300-2300

The three late shifts will apply each month all year, want everyone to be on the same across [sic] the state!

Good to continue how we handle COMP time...

(N.T. 34-35; Union Exhibit 2) (Emphasis in original)

27. Buckman testified that this was contrary to the Report Guide and what the WCOs had been doing since 2017. (N.T. 35)

28. Buckman additionally obtained a September 9, 2020 email from Captain Hopkins to the bargaining unit employees, which indicated the following, in relevant part:

All,

This email is to server [sic] as a reminder for some and to get everyone on the same page. I do not believe all of this was covered with the new officers when they arrived to region. So here it goes, as discussed at the region meeting last December, remember to schedule at least 3 late shifts until 2000 or later during the months of September and October. During the months of November, December, January, and February[,] make sure to schedule at least 3 late shifts until 1900 or later. All other months the 3 late shifts will be to 2100 or later. Moving forward the three late shifts will only apply to the current schedule you are submitting for approval. Also, everyone needs to flex their shifts, the repeated 7-15 on every Monday or not working past 1600 or 1700 all week is not acceptable. If you have court, stocking, or meetings[,] please note on your schedules...

(N.T. 35-36; Union Exhibit 2)

29. Buckman testified that the FOP is willing to negotiate the evening shift times with the Commonwealth and that the FOP wants the evening shift times to be the same across all six regions, which was the same goal the PFBC conveyed to him in late August or early September of 2023. (N.T. 36-37)

30. On cross-examination, Buckman admitted that the various PFBC regions appear to have been doing things differently in the past with regard to the evening shifts. He acknowledged that management has the contractual right to modify a WCO's schedule after the WCO submits it a month in advance. He agreed that the CBA does not indicate what time evening shifts need to start. (N.T. 38-39, 43-44)

31. On cross-examination, Buckman conceded that the Northwest Region was not included in the emails he obtained as part of his investigation. (N.T. 48-49)¹

32. The Commonwealth offered the testimony of Thomas Edwards in support of its position. Edwards has been the Lieutenant Colonel for the Bureau of Law Enforcement for the PFBC since March 2023. He was a WCO in Erie County from 2002 until 2005, after which he served as the Sergeant or Assistant Regional Supervisor in the Northwest Region from 2005 to 2015. He then served as Captain or Region Manager for the Northwest Region from 2015

¹ The Commonwealth's attorney admitted that the Commonwealth made a uniform choice to ensure that all regions of the PFBC were in compliance, pursuant to its rights under the CBA, because the regions were all doing things differently. The Commonwealth conceded that this may have been a change for some officers. (N.T. 50).

until October 2022. From October 2022 to March 2023, he was the Captain for the Southcentral Region. (N.T. 76-77)

33. Lieutenant Colonel Edwards described the Report Guide as a quick reference guide for field officers or WCOs and regional office staff. He estimated that the Report Guide was created around 2016. When asked about the Report Guide, he testified that he interprets the language, which states "[t]arget a minimum of three evening shifts per month to conduct law enforcement patrols," as being required each and every month of the year. (N.T. 78-79)

34. Edwards testified that the PFBC held a Captains meeting in August 2023, during which the evening shift start times came up. One captain asked about using 1300 hours as a start time in October, which was different from what other regions were doing. Edwards provided guidance that 1300 hours for the evening shifts was an all-year requirement. (N.T. 80-81)

35. Edwards testified that, when he was Captain of the Northwest Region, there were three evening shifts with a 1300 start time required throughout the entire year when the Report Guide came out. He also described how the three evening shifts with a 1300 start time were required all year in the Southcentral Region when he transferred there, at least as of December 2022, when he first began approving schedules. (N.T. 82-83)

36. On cross-examination, Edwards admitted that he did not know whether the three evening shifts were required all year in the Northcentral, Northeast, Southeast, or Southwest Regions. (N.T. 86-87)

DISCUSSION

The FOP has charged the Commonwealth with violating Section 6(1)(a) and (e) of the PLRA² and Act 111 by unilaterally changing scheduling practices for the bargaining unit employees on September 5, 2023. Specifically, the FOP contends that this matter is controlled by the Commonwealth Court's decision in Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993), which held that the establishment of a shift system is a mandatory subject of bargaining.³ The FOP asserts that the PFBC unilaterally changed the shift

² 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.

³ 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

scheduling system here by requiring more evening shifts during the offseason months of October through February. The Commonwealth, meanwhile, defends the charge on the grounds that it had a managerial prerogative and contractual privilege to modify the schedules of the WCOs pursuant to the CBA.

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.

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 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).

In this case, the FOP has not introduced any evidence regarding the impact of the scheduling change on the bargaining unit employees. Nor does the FOP specifically argue in its post-hearing brief that the Act 111 balancing test favors the bargaining unit employees on these facts. Instead, as detailed above, the FOP relies on the precedential value of Upper Saucon Township. However, that case is readily distinguishable from the instant matter, and therefore, not controlling here.

It is well settled that the bargainable subject of "hours," as set forth in Section 1 of Act 111, includes the shift system for police officers. Nazareth Borough Police Ass'n v. Nazareth Borough, 40 PPER 51 (Final Order, 2009). As such, a change in the length or type (steady or rotating) of shift schedules that affects the bargaining unit police officers is a mandatory subject of bargaining. *Id.* This is not to say, however, that an employer cannot schedule or direct a police officer to work needed hours, so long as it maintains the negotiated regular shift schedule. *Id.* The employer cannot

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).

simply rescind the shift schedules established by contract, interest arbitration, or past practice under the guise of direction of personnel, but must negotiate over any unit-wide change to the employees' shift schedules. *Id.* It is the general framework and creation of shifts that apply to all employees in a bargaining unit, which is the mandatory subject of bargaining. Northern Berks Regional Police Ass'n v. Leesport Borough, Maiden Creek Township, & Ontelaunee Township, 37 PPER 109 (Final Order, 2006). An appropriate balance must be struck between the employees' right to negotiate an overall shift scheduling and compensation system...and the public employer's managerial prerogative to direct the workforce *including the right to assign and direct individual employees to particular shifts within the negotiated and established contractual framework* for the establishment and compensation of shifts. *Id.* (emphasis in original). The public employer's duty to negotiate a framework for the establishment of shifts, compensation, overtime, etc. does not extend to negotiating with the union over every assignment of an employee to work a shift or overtime once the framework is established. *Id.* Once the framework is negotiated and established, the public employer possesses the managerial right to direct its workforce, including the assignment of employees to work a particular shift or perform overtime in response to the needs of the public employer in performing the function at issue. *Id.*

In Upper Saucon, the Commonwealth Court held that the township employer committed an unfair labor practice by unilaterally implementing a shift system change from rotating shifts to a new steady shift system. Likewise, in Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997), the Commonwealth Court affirmed the Board's finding of an unfair labor practice where the borough employer unilaterally implemented a shift system change from a steady shift system to a new rotating shift schedule. Unlike those cases, the PFBC here has not implemented a new shift scheduling system though. Rather, the PFBC is simply requiring that the bargaining unit employees work the evening 1300-2100 shift for three nights per month all year long. Thus, the PFBC has not changed the general framework of the employees' shifts, nor has the PFBC created a new shift. Indeed, the record shows that the 1300-2100 shift has existed for a long time, as the bargaining unit employees have been working that shift for three evenings per month, for the months of March through September, since the Report Guide was issued in 2016 or 2017. In fact, the credible testimony of Lieutenant Colonel Edwards shows that the bargaining unit employees in the Northwest and Southcentral Regions have been working that shift for three evenings per month all year long. As a result, this case is much more akin to FOP Lodge 9 v. City of Reading, 30 PPER ¶ 30121 (Final Order, 1999) than Upper Saucon or Indiana Borough.

In City of Reading, the Board concluded that the city employer had a managerial prerogative to periodically assign the administrative police sergeants to work an evening shift once per month where the assignments did not increase the officers' regular hours or disrupt their daily 8 am-4 pm shifts Monday through Friday, and where the officers could select the day they wished to work and the hours between 1500-0300. In Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 39 PPER 77 (Final Order, 2008), the Board took note of these critical distinctions and explained as follows:

Notably, City of Reading, Indiana Borough, and Upper Saucon are all consistent in their application of the Act 111 test for determining whether changes to police officers' scheduling is a mandatory subject of bargaining. Each case recognizes that the

employer has a managerial interest in the direction of personnel, which is essential for the proper and efficient provision of police services.

In Indiana Borough, the Board found that the employer's managerial interest in directing its personnel did not outweigh the impact on employees' lifestyle, outside employment, sleep patterns, and ability to effectively work as a team. Given these stated interests of the employees, the Commonwealth Court held that "[w]hile the policy concerns which the [employer] sought to address are legitimate, there are substantial facts of record to support the Board's conclusion that these managerial policy concerns do not substantially outweigh the impact which the change in shift system had on the officers in question.

Similarly, in Upper Saucon Township, the Board hearing examiner found a managerial interest in strengthening the level of police services on Saturdays, but also recognized that there were substantial changes to the officers' work schedules impacting employees. The record established that the shift changes affected the officers' ability to schedule days off, eliminated Saturdays as a regular day off, assigned permanent days based on seniority, assigned permanent shifts, and impacted the officers' safety by assigning two officers per shift instead of three. In Upper Saucon the hearing examiner concluded that "[t]he necessity for added work force on Saturdays does not substantially outweigh the dramatic impact that the schedule changes have on police officers.

City of Reading is distinguishable from Indiana Borough and Upper Saucon in that City of Reading involved periodic assignments as opposed to a change in the shift scheduling system. Nevertheless, the Board applied the same Act 111 test for bargaining, finding that the employer's interest in directing the workforce in order to provide police services substantially outweighed any impact the periodic assignments had on the employees in that case. The Board noted that the employer's direction that administrative officers work one patrol duty per month other than their regularly scheduled shift, did not change the administrative officers' daily shift of 8 a.m. to 4 p.m. on Mondays through Fridays, nor their regularly scheduled hours, and that the administrative officers could schedule the once-per-month assignment at a date of their choosing. The Board also recognized that the impact that these periodic assignments may have had on the officers' personal lives and outside employment generally would not negate the employer's substantial interest in the direction of the workforce.

39 PPER at 259.

Here, the inquiry must also begin with the Act 111 balancing test. As previously set forth above, the FOP has not introduced any evidence of the impact that the scheduling change has had on the bargaining unit employees. In reality, the impact of the scheduling change for the Northeast, Northcentral, Southeast, and Southwest regions appears to be minimal. As in City of Reading, the PFBC has simply required a few periodic weekend evening shifts per month during the offseason months of October through February,

which the bargaining unit employes can schedule at a time of their own choosing. The bargaining unit employes retain their ability to schedule their own hours, albeit subject to management's approval, and there is no evidence of disruptions to their lifestyle, outside employment, sleep patterns, ability to work effectively as a team, ability to schedule regular days off, or safety, as in Upper Saucon and Indiana Borough. Of course, the Commonwealth did introduce evidence of its compelling managerial interests in providing a level of police services and direction of personnel, as Labor Relations Coordinator Linda Flemm specifically cited these concerns when testifying about the Management Rights clause of the CBA. (N.T. 68-69). What is more, FOP Vice President Buckman acknowledged the substantial interest of the Commonwealth in providing a level of police services when he testified that the Commonwealth's goal was for the evening shift times to be the same across all six regions. (N.T. 36-37). On these facts then, it must be concluded that the managerial interests of the Commonwealth substantially outweigh the potential impact on the bargaining unit employes and that collective bargaining over the topic of the offseason evening shift times would unduly infringe upon the Commonwealth's managerial responsibilities in providing a desired level of police services, along with the direction of its personnel. The Commonwealth's ability to timely provide or improve services cannot be hamstrung by delays in bargaining or the Union's potential unwillingness to agree, and thereby prevent the Commonwealth from implementing and improving services.

To be sure, this is consistent with the Board's reasoning in City of Reading, wherein the Board further opined that the interests advanced by the city employer in that case bore a more direct relationship to its core managerial policy concerns, and was therefore, less rationally related, or germane to the work environment, to the potential disruption of the administrative police officers' lives and outside employment. In the same vein here, the proffered interests of the Commonwealth in providing a desired standard of police services and direction of personnel certainly also bear a more direct relationship to its core mission. The Commonwealth's interests are likewise less rationally related, or germane to the work environment, to any purported disruption to the interests of the bargaining unit employes, especially where the record is devoid of any impact whatsoever. As the Board convincingly explained in City of Reading:

Under the FOP's position here, a public employer cannot direct certain officers to work a different shift even though the employer perceives a need for better visibility on the streets and increased police protection. In other words, an employer cannot direct certain officers to patrol the streets during a time of increased criminal activity or time of crisis if those officers do not normally work those hours unless the employer first bargains with the union. Such a position ignores managerial prerogative and ***unduly burdens public employers in fulfilling their obligation to provide citizens with adequate police protection.*** Although an employer certainly has an obligation to bargain with the representative of its employes over the number of hours in a regular shift, the wages paid for those hours, including premium pay for overtime and shift differentials, and its system of scheduling shifts, the employer is not required to bargain over decisions regarding direction of personnel, especially where such decisions have minimal impact on employe interests.

30 PPER at 262 (emphasis added).

In this case, the record shows that the Commonwealth has not changed the number of hours per shift, the wages paid for those hours, or the system of scheduling shifts. To the contrary, the Commonwealth has simply directed the bargaining unit employees to work periodic evening shifts from 1300-2100 during the months of October through February, wherein the employees are already working that shift during the months of March through September. Given that the employees are permitted to choose the days they work these periodic assignments and the lack of any impact on the employees' interests, I am unable to conclude that the Commonwealth was required to bargain the scheduling change with the FOP prior to its implementation. Accordingly, the charge under Section 6(1)(a) and (e) of the PLRA, as read with Act 111, must be dismissed.⁴

CONCLUSIONS

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

1. The Commonwealth is the employer of the PFBC bargaining unit employees under Act 111 as read *in pari materia* with the PLRA.
2. The FOP 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 Commonwealth has not committed unfair labor practices in violation of Section 6(1)(a) or (e) of the PLRA.

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 charge of unfair labor practices is dismissed, and the complaint is rescinded.

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 7th day of October, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

⁴ Based on this disposition, it is unnecessary to reach the Commonwealth's contractual privilege argument.