COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE RANGERS ASSOCIATION	:	
	:	
v.	:	Case No. PF-C-25-3-E
	:	
COMMONWEALTH OF PA	:	

PROPOSED DECISION AND ORDER

On January 21, 2025, the Pennsylvania State Rangers Association (PSRA or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources (Commonwealth or DCNR), alleging that the Commonwealth violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by refusing to process a grievance, alleging a violation of an August 29, 2014 side letter between the parties, to arbitration on December 13, 2024.

On February 20, 2025, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on April 17, 2025, if necessary. After two continuances, the parties eventually agreed to enter joint stipulations of fact in lieu of appearing for an evidentiary hearing. On May 22, 2025, the Board received the duly executed joint stipulations of fact, along with several attached exhibits. The parties each filed separate post-hearing briefs in support of their respective positions on July 3, 2025.

The Hearing Examiner, on the basis of all matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is the employer of the DCNR bargaining unit employes under Act 111, as read *in pari materia* with the PLRA. (Joint Exhibit O)[1]

2. The PSRA is a labor organization under Act 111, as read *in pari materia* with the PLRA. (Joint Exhibit O)

3. The PSRA is the exclusive bargaining representative for a unit of police employes at the DCNR. (Joint Exhibit A, O)

4. The PSRA and the Commonwealth are parties to a collective bargaining agreement (CBA) effective July 1, 2021 to June 30, 2024. The parties have since engaged in interest arbitration over the terms of a successor CBA and are currently awaiting an award. (Joint Exhibit A, O)

5. Article 1, Section 1, of the CBA provides that "[t]he Union is recognized as the exclusive representative for collective bargaining purposes for employees within the classifications included under the certification of

[1] The Joint Stipulations of Fact have been identified as Joint Exhibit O because the parties have already marked the other accompanying exhibits as Joint Exhibits A through N).

the Pennsylvania Labor Relations Board, specifically referred to as PF-R-85-70-E." (Joint Exhibit A, O)

6. On August 29, 2014, DCNR sent a letter to then-PSRA President, Paul Ashford, requesting PSRA's agreement in filing a Joint Petition for Unit Clarification with the Board to remove the Ranger Operations Specialist (RSO) job classification from the bargaining unit and designate the position as management on the basis that the position performs managerial duties. At the time, President Ashford was the only ROS in DCNR. (Joint Exhibit B, O)

7. The 2014 letter contained seven enumerated conditions that would be applicable to the ROS position in the event that PSRA agreed to the joint petition. (Joint Exhibit B, O)

8. One of those conditions stated that the RSO position shall be headquartered in Harrisburg and assigned a vehicle for commuting and for work purposes. Another condition included the option for the RSO incumbent to revert into an available position in the bargaining unit prior to retirement with the intent to allow the employe to receive the benefits in place for the PSRA at the time of separation. (Joint Exhibit B, O)

9. The 2014 letter concluded by requesting that PSRA indicate its agreement by signing the attached joint petition for unit clarification and returning a copy for submission to the Board. (Joint Exhibit B, O)

10. The parties met and agreed to the seven enumerated conditions. PSRA President Ashford signed the joint petition on September 7, 2014. (Joint Exhibit C, O)

11. On September 12, 2014, the parties filed the Joint Petition for Unit Clarification with the Board, which was docketed at PF-U-14-105-E. (Joint Exhibit C, O)

12. On September 29, 2014, the Board issued a Nisi Order of Unit Clarification (NOUC), amending the Nisi Order of Certification in PF-R-85-70-E to exclude the ROS position from the unit. (Joint Exhibit D, O)

13. The parties received the Board's NOUC and did not file exceptions thereto. The NOUC subsequently became final, and the ROS position was removed from the bargaining unit and designated as management. (Joint Exhibit O)

14. Upon removal of the ROS job classification from the bargaining unit, PSRA's representation of the ROS job classification ceased. (Joint Exhibit O)

15. In 2017, the Union filed a grievance contending that the Commonwealth violated the 2014 letter by not complying with one of the seven enumerated conditions. The matter proceeded to grievance arbitration in Case Number 17-CI-749 and resulted in a grievance arbitration award issued by Arbitrator Timothy Tietze. (Joint Exhibit E, O)

16. The issue in the 2017 grievance was whether DCNR violated the CBA by not requiring the ROS position to carry a firearm at all times while on duty. DCNR argued that the grievance was not arbitrable, both procedurally and substantively, because the ROS position was not represented by PSRA, and because the grievance was untimely. (Joint Exhibit E, O)

17. On December 26, 2019, DCNR Chief of Employee Relations and Workforce Support Division, Daniel Cramer, sent a letter to then-PSRA President, William Hornberger, who is presently an ROS, providing clarification on the ability of an ROS to demote into the bargaining unit prior to retirement, as per the 2014 letter. (Joint Exhibit F, O)

18. On July 31, 2023, DCNR Chief of Employee Relations Cramer sent another letter to PSRA President, Danica Bange, indicating that both the 2014 and the 2019 letters are also applicable to the Bureau of Forestry. (Joint Exhibit G, O)

19. The 2023 letter also stated that no other changes were being made to either the 2014 or 2019 letters. (Joint Exhibit G, O)

20. On August 15, 2024, Chief Cramer notified President Bange of DCNR's intention to hire an additional ROS that would be headquartered outside of Harrisburg at the Conservation Leadership Training Center in Hickory Run State Park. (Joint Exhibit H, O)

21. On August 15, 2024, President Bange asked Chief Cramer via email if the new ROS position would be assigned a vehicle. (Joint Exhibit O)

22. On August 16, 2024, Chief Cramer responded that the new ROS would not be assigned a vehicle, but that the employe would have access to DCNR pool vehicles for work-related travel. (Joint Exhibit O)

23. Sometime in late August or early September of 2024, the Commonwealth selected Christopher Hall to fill the ROS position at the Training Center with a start date of September 7, 2024. (Joint Exhibit O)

24. The Commonwealth did not assign a work vehicle to ROS Hall and headquartered him outside of Harrisburg. (Joint Exhibit O)

25. On September 4, 2024, PSRA filed a grievance pursuant to the grievance procedure outlined in Article 33, Section 2 of the CBA. (Joint Exhibit I, O)

26. Article 33, Section 2 of the CBA states that "[a]ny grievance or dispute which may arise concerning the application, meaning or interpretation of [the CBA] shall be settled in [accordance with the steps below]." (Joint Exhibit A, O)

27. The grievance alleged that DCNR violated the 2014 letter by failing to provide RSO Hall with a work vehicle and for failing to headquarter him in Harrisburg. (Joint Exhibit I, O)

28. None of the letters referenced above have been incorporated into the CBA. (Joint Exhibit O)

29. On September 26, 2024, Chief Cramer provided President Bange with a combined Step 1, 2, and 3 response, denying the grievance on the basis that PSRA does not have standing to file a grievance over management employes who are not part of the bargaining unit, and reserved the right to raise additional defenses and arguments should the matter be escalated to Steps 4 and 5 of the grievance procedure. (Joint Exhibit J, O)

30. On November 5, 2024, DCNR Human Resources Analyst Jordan Fry denied the grievance at Step 4 on the basis that PSRA lacked standing to file a grievance over management employes who are not part of the bargaining unit and because Article 2 of the CBA gives management the right to direct and control the utilization of vehicles. (Joint Exhibit K, O)

31. On November 27, 2024, President Bange notified HR Analyst Fry of PSRA's intent to proceed to arbitration, pursuant to Step 5 of the grievance process. (Joint Exhibit L, O)

32. On December 13, 2024, DCNR informed PSRA that it was declining to proceed to arbitration. (Joint Exhibit M, O)

33. On January 21, 2025, PSRA filed the instant charge of unfair labor practices alleging that DCNR's refusal to arbitrate the grievance was a violation of Section 6(1)(a) and (e) of the PLRA. (Joint Exhibit N, O)

DISCUSSION

The Union has charged the Commonwealth with violating Section 6(1)(a) and (e) of the PLRA[2] and Act 111 by refusing to process the September 4, 2024 grievance to arbitration on December 13, 2024. The Union contends that the September 4, 2024 grievance was not filed on behalf of the non-bargaining unit ROS position, but rather that the grievance was filed to enforce the terms of the Union's collective bargaining agreement. The Union claims that it is simply attempting to use the contractual dispute resolution process to defend the rights that the Union achieved through collective bargaining. The Union insists that this is solely a matter of contract interpretation and points out that the Union would have essentially no other to way to enforce the rights it achieved through collective bargaining if the Commonwealth were not required to process the grievance to arbitration. The Union maintains that this matter is governed by the typical refusal to arbitrate jurisprudence and relies on the Commonwealth's prior decision to present the issue of arbitrability to the arbitrator in 2017.

The Commonwealth, meanwhile, contends that the charge should be dismissed because the employes holding the ROS job classification are managers, who allegedly have no statutory right to grievance arbitration. The Commonwealth argues that the CBA only applies to those employes holding job classifications within the bargaining unit, which necessarily excludes the ROS position. The Commonwealth submits that the 2014, 2019, and 2023 letters were not incorporated into the CBA and relies on the Article 31, Section 2 zipper clause of the contract, for the conclusion that the grievance arbitration process in the CBA is inapplicable to the ROS job classification. The Commonwealth claims that the Board need not interpret the CBA to reach this conclusion because the stipulated facts are allegedly enough, standing alone, to remove this matter from the usual refusal to arbitrate jurisprudence. The Commonwealth further relies on Upper Makefield v. PLRB, 753 A.2d 803 (Pa. 2000) for the proposition that probationary police officers have no right to appeal their dismissals under Act 111 or where the relevant CBA fails to include such a right, *Id.* at 807, and extrapolates a

[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 employes in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act." 43 P.S. § 211.6.

rule therefrom that managerial employes are also not afforded the right to grievance arbitration under Act 111.[3]

It is well settled that the question of the scope of the grievance arbitration procedure is for the arbitrator, at least in the first instance. Township of Sugarloaf v. Bowling, 759 A.2d 913 (Pa. 2000); PLRB v. Bald Eagle Area School District, 451 A.2d 671 (Pa. 1982). Indeed, the Commonwealth Court has repeatedly explained the Supreme Court's holding in Bald Eagle to mean that an arbitrator has sole and exclusive jurisdiction to hear disputes related to collective bargaining agreements, including disputes of whether a matter is arbitrable. Abington Heights School District v. PLRB, 709 A.2d 990 (Pa. Cmwlth. 1998); Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995). Even frivolous grievances must be submitted to the arbitrator. Palmerton Area Education Ass'n, PSEA/NEA v. Palmerton Area School District, 41 PPER ¶ 153 (Proposed Decision and Order, 2010) *citing* Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 391 A.2d 1318 (Pa. Cmwlth. 1978). Refusal to submit a grievance to arbitration constitutes a per se bargaining violation. Indiana Area Education Ass'n, PSEA/NEA v. Indiana Area School District, 35 PPER ¶ 56 (Final Order, 2004). To permit the employer to unilaterally refuse to submit a dispute to arbitration would in effect allow the employer's interpretation to control. East Pennsboro Area School District v. PLRB, 467 A.2d 1356 (Pa. Cmwlth. 1983).

In this case, the Union has sustained its burden of proving that the Commonwealth violated Section 6(1)(a) and (e) of the PLRA and Act 111 by refusing to process the September 4, 2024 grievance to arbitration. The record shows that the Union filed the September 4, 2024 grievance, alleging a violation of the 2014 letter, which it processed through the steps contained in the parties' CBA. The Commonwealth subsequently denied the grievance at each step, asserting that the Union does not have standing to file a grievance over management employes, who are not part of the bargaining unit, and that the CBA gives management the right to direct and control the utilization of vehicles. The Union then requested arbitration on November

[3] It is unclear why the Commonwealth continues to rely on Upper Makefield Township for such a broadly sweeping proposition when that decision has essentially been overruled twice, in Township of Sugarloaf v. Bowling, 759 A.2d 913 (Pa. 2000)(holding that the arbitrability of a probationary officer's grievance, challenging his termination, had to be decided by an arbitrator in the first instance); and in Gehring v. PLRB, 920 A.2d 181 (Pa. 2007)(holding that probationary police officers and fire personnel should not be excluded from the collective bargaining process under Act 111). As discussed in PSTA v. Commonwealth of Pennsylvania, 57 PPER 17 (Proposed Decision and Order, 2025), the Pennsylvania Supreme Court has definitively put to rest any question of whether probationary employes have bargaining rights under Act 111 and affirmatively held that they do have such rights, which may be vindicated by their exclusive bargaining representative, and reaffirmed the longstanding rule of PLRB v. Bald Eagle Area School District, 451 A.2d 671 (Pa. 1982), that the question of the scope of the grievance arbitration procedure is for the arbitrator, at least in the first instance. However, even if Upper Makefield were still intact, that case is readily distinguishable from the instant matter because the CBA in that case did not provide for arbitration, and instead culminated in a hearing before the township board of supervisors, as the final step in the grievance process, whereas the CBA here clearly provides for binding arbitration. Notably, the Commonwealth has not acknowledged Gehring in this matter, nor in PSTA, *supra*.

27, 2024 pursuant to the final step of the process. However, the Commonwealth refused to submit the grievance to arbitration on December 13, 2024. As a result, the Commonwealth has clearly committed an unfair labor practice in violation of the PLRA and Act 111. As previously set forth above, the Commonwealth cannot refuse to submit the dispute to arbitration, but rather must first present its argument regarding arbitrability to a labor arbitrator for decision.

The Commonwealth's arguments to the contrary are unavailing. First of all, it is of no consequence whether the ROS job classification has been removed from the bargaining unit. The Union, by filing the September 4, 2024 grievance, is attempting to enforce the terms of the 2014 letter that it collectively bargained with the Commonwealth. Thus, it is the Union, and not the ROS managerial employes, that is attempting to access the contractual grievance arbitration machinery, which is clearly permissible under Act 111. To be sure, Section 1 of Act 111, provides, in relevant part that:

> 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 the Commonwealth acknowledges in its post-hearing brief, the Pennsylvania Supreme Court has held that the proper forum for resolving grievances under Act 111 is arbitration. Chirico v. Board of Supervisors for Newton Twp., 470 A.2d 470, 475 (Pa. 1983).

Nor does it matter that the 2014 letter seemingly benefits the ROS job classification, which is no longer part of the bargaining unit. The Union, through its role as the exclusive bargaining representative, has collectively bargained an agreement, which it has deemed beneficial to the bargaining unit employes, and which it now seeks to enforce. Whether that agreement incidentally, or even directly, also benefits non-bargaining unit managerial employes is irrelevant, as is the potential wisdom or folly for such a calculation.[4] The Union saw fit to strike a bargain with the Commonwealth to essentially limit the Commonwealth's managerial prerogative with regard to the vehicle assignments and working location for the RSO employes, in exchange for an agreement to jointly file the petition for unit clarification with the Board. The Board and the courts have long held that where a public employer voluntarily negotiates a matter of managerial prerogative, and

[4] It is easy to see how the 2014 letter benefits the bargaining unit employes here, in at least one way, by encouraging them to pursue promotional opportunities and further their police careers outside the unit, while still preserving their ability to revert into an available position in the bargaining unit prior to retirement in order to receive the PSRA benefits in place at the time of separation. However, the result would be no different if the benefit were not so easily discernable, such as an agreement for the Commonwealth to provide certain training to the managerial employes, which the Union believes would provide bargaining unit employes with a more competent level of supervision or greater safety and security on the job.

includes that agreement in the parties' collective bargaining agreement, it shall be bound for the duration of the contract even though the matter was only a permissive subject of bargaining, not subject to a bargaining duty at the time of the agreement. Scranton School Board v. Scranton Federation of Teachers, 365 A.2d 1339 (Pa. Cmwlth. 1976); FOP Delaware Lodge 27 v. Springfield Township, 42 PPER 20 (Final Order, 2011).[5]

What the Commonwealth overlooks yet again, as it did in PSTA, is that there is only one recognized exception to the well-settled rule that arbitrability is for the arbitrator to determine in the first instance. *See* Municipal Employees Organization of Penn Hills v. Municipality of Penn Hills, 876 A.2d 494 (Pa. Cmwlth. 2005)(union waived its right to challenge employe's termination through the grievance arbitration process where it entered into a last chance agreement providing that chronic and excessive absenteeism shall constitute willful misconduct and be sufficient grounds for termination; that the determination of what is chronic or excessive shall be at the sole discretion of the employer; and that the union and the employe release and waive the union's right to challenge the penalty of discharge or the underlying facts for the imposition of the penalty by way of a court action or grievance).

Here, the Commonwealth has not identified any provision in the 2014, 2019, or 2023 letters, the CBA, or any other collectively bargained-for agreement, which could even purport to show that the Union waived its right to grieve potential violations of the 2014 letter. While the Commonwealth insists that the CBA is inapplicable to the ROS job classification and that the letters have not been incorporated into the CBA, these are arguments over arbitrability that the Commonwealth must present to the arbitrator. Indeed, as the Union correctly notes, the failure of the parties to incorporate a side agreement into the CBA does not somehow render that side agreement unenforceable as a matter of law. PSTA v. Commonwealth of Pennsylvania, 41 PPER 34 (Final Order, 2010).[6] To the contrary, there must be evidence of a clear, express, and unequivocal waiver by the Union, which is lacking on this record. *See* 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). Even the Article 31, Section 2 zipper clause of the CBA, falls woefully short of this

[5] The Commonwealth has not raised any argument regarding the fact that the bargained-for agreement contained in the 2014 letter lacked an expiration date. In any case, the Board has held that the fact that an agreement does not specify a duration or expiration does not render the agreement nonbinding. FOP Delaware Lodge 27 v. Springfield Township, 42 PPER 20 (Final Order, 2011)(where there is no express expiration, the Board will permit evidence of changed circumstances to establish an intervening event that supersedes the agreement; provided the intervening event was not contemplated by the parties when reaching the agreement). The Commonwealth has not offered any evidence of changed circumstances or an intervening event, which could supersede the bargained-for agreement in the 2014 letter.

[6] Whether the parties negotiate and agree to submit grievances concerning a side agreement to an arbitrator is a matter subject to negotiation between the parties, PSTA v. Commonwealth of Pennsylvania, Pennsylvania State Police, 30 PPER ¶ 30223 (Final Order, 1999), and therefore, subject to interpretation by an arbitrator.

standard.[7] 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). Instead, there must be evidence that negotiations of the particular matter in issue were fully discussed or consciously explored, and that the union consciously yielded or clearly and unmistakably waived its interest in the matter; a boilerplate waiver clause is simply insufficient to demonstrate a union's waiver. Venango County. Of course, the Commonwealth has not even arguably shown that the parties fully discussed the issue, and that the Union consciously yielded its interest in challenging potential violations of the 2014 letter through the grievance procedure. The Commonwealth's reliance on the boilerplate zipper clause in Article 31, Section 2 of the CBA, simply cannot sustain a waiver determination, and therefore, the Commonwealth's argument must be rejected. Accordingly, it must be concluded that the Commonwealth has violated Section 6(1)(a) and (e) of the PLRA and Act 111 by refusing to process the September 4, 2024 grievance to arbitration and to submit the issue of arbitrability to the arbitrator.

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 DCNR bargaining unit employes under Act 111 as read *in pari materia* with the PLRA.

2. The PSRA 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 committed unfair labor practices in violation of Section 6(1)(a) and (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 Commonwealth shall

[7] Article 31, Section 2 of the CBA, provides that "[t]he Commonwealth and the Union acknowledge that this Agreement represents the results of collective negotiations between the parties and constitutes the entire Agreement between the parties for the duration of the life of said Agreement; each party waiving the right to bargain collectively with each other with reference to any other subject, matter, issue, or thing whether specifically covered herein or wholly omitted here from and irrespective of whether said subject was mentioned or discussed during the negotiations preceding the execution of this Agreement." (Joint Exhibit A).

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

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

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

(a) Immediately process the September 4, 2024 grievance to arbitration;

(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 employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed 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 11th day of September, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE RANGERS ASSOCIATION	:	
	:	
v.	:	Case No. PF-C-25-3-E
	:	
COMMONWEALTH OF PA	:	

AFFIDAVIT OF COMPLIANCE

The Commonwealth 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 immediately processed the September 4, 2024 grievance to arbitration; 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