COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| LOWER MORELAND TOWNSHIP<br>POLICE BENEVOLENT ASSOCIATION | : | |
| v. | : | Case No. PF-C-25-4-E |
| LOWER MORELAND TOWNSHIP | : | |

**PROPOSED DECISION AND ORDER**

On January 28, 2025, the Lower Moreland Township Police Benevolent Association (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Lower Moreland Township (Township), alleging that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that, on or about December 19, 2024, the Chief of the Lower Moreland Township Police Department (LMPD) unilaterally issued an evaluation policy which introduced vague and arbitrary provisions, performance improvement plans (PIPs), and new discipline, as part of the evaluation process, which allegedly constitutes a departure from past practice and affects working conditions.

On February 21, 2025, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of June 13, 2025, in Harrisburg. On March 7, 2025, the Township filed a Motion to Dismiss Complainant's Unfair Labor Practice Charge. On April 3, 2025, the Union filed a Memorandum of Law in Opposition to the Township's Motion. On April 4, 2025, I issued an Order Denying Township's Motion. After several continuances, the hearing was held on Wednesday, October 8, 2025. During the hearing on that date, the parties were afforded a full and fair opportunity to present testimony, documents and cross-examination. On January 5, 2026, both parties filed post-hearing briefs in support of their respective positions.

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 Township is a first-class Township, a public employer, and a political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 99-101; JX-1; Lower Moreland Township, 57 PPER 28 (PDO, 2025))

2. The Union is a labor organization under Act 111, as read with the PLRA. The Union is the exclusive collective bargaining representative for the bargaining unit of police officers employed by the LMPD. (N.T. JX-1; Lower Moreland Township, 57 PPER 28 (PDO, 2025))

3. Scott Smith is the LMPD Chief of Police. Chief Smith has been with the LMPD for 23 years and, at the time of the hearing, he had been Chief for approximately 1.5 years. Chief Smith has 1 Lieutenant, 5 sergeants, and 5 corporals. The sergeants are supervisors who evaluate their officers. The Lieutenant evaluates the sergeants, and the Chief evaluates the Lieutenant. (N.T. 99-101)

4. Matthew Kolar has been a police officer with the LMPD for 13 years, and he became a Sergeant in 2019. As an officer, Sgt. Kolar received evaluations. As a Sergeant, he gives evaluations. (N.T. 13-14)

5. In the past, the Township did not have a written policy governing the performance evaluations of officers. Performance evaluations were completed by filling out an evaluation form. The rating period for officer evaluations is from January 1st through December 31st of each calendar year, even if an officer joins a sergeant's squad mid-year. (N.T. 16-17; JX-5)

6. The Township did not have an improvement program for officers receiving a Below-Standards rating. Sgt. Kolar discusses performance with his officers quarterly so they can improve throughout the year and avoid a Below-Standards rating. There were no disciplinary or potential disciplinary consequences for an officer receiving a Below-Standards rating. (N.T. 18-21

7. For many years, supervisors gave annual employe performance reviews (EPRs)on a form containing 9 rating categories for which the following ratings could be given: "Outstanding: Significantly Exceeds Standards;" "Meets Standards on Attached Worksheets;" or "Below Standards as Noted on Attached Sheets." The Lieutenant reviews the EPRs done by the sergeants, and the Lieutenant can make changes to those EPRs. EPRs were appealable to the Chief. (N.T. 15-16; JX-5)

8. For the 2022 rating period, Chief Smith evaluated the sergeants on a new evaluation form, while he was still the Lieutenant. For the 2023 rating period, all the officers were evaluated under the new evaluation form. The rating period for 2024 was the second rating period that all officers were evaluated under the latest form. (N.T. 101-104; JX-3)

9. In March 2024, the LMPD received provisional accreditation from the Pennsylvania Law Enforcement Accreditation Commission or PLEAC. The accreditation standards imposed different requirements for an evaluation policy that included a PIP when an officer is not meeting performance standards. This accreditation requirement triggered Township management's development of a new policy for performance evaluations. Obtaining the accreditation is a three-year process. The Township will be re-evaluated every year for 3 years. The PLEAC accreditation requires the LMPD to demonstrate that it has implemented a PIP for officers who receive a Needs-Improvement rating on their evaluations. (N.T. 104-106, 128)

10. On December 19, 2024, Chief Smith issued Policy 1.9.1. The Township's Accreditation Manager and Training Coordinator, Richard Worthington, emailed the Policy to all the officers. Sgt. Kolar signed the Policy on December 30, 2024. Policy 1.9.1 includes a PIP, which is new to the LMPD. (N.T. 21-23, 107-108; JX-2)

11. Policy 1.9.1 provides, in Section IV (D)(1)(b), that "[i]f the evaluating supervisor determines the overall rating of the officer to be Needs Improvement, the supervisor shall request to place the evaluated officer on a Performance Improvement Program (PIP) to improve the deficiency or correct the conduct. This request shall be documented on the Employe Performance Review for review and approval by the Chief of Police or designee." (N.T. 95-96; JX-2)

12. Section IV (D)(1)(b)(1) provides that "[i]f the evaluating supervisor identifies an area or areas with sufficient deficiencies or patterns of problematic conduct, the supervisor may request to place the evaluated officer on a Performance Improvement Program (PIP) to improve the deficiency or correct the conduct. This request shall be documented on the Employee Performance Review for review and approval by the Chief of Police or designee." (N.T. 95-96; JX-2)

13. Policy 1.9.1 also provides, in part, as follows:

IV(G) Performance Improvement Programs

1. Whenever the work performance of an officer is not meeting the expectations of the Department the officer may be subject to placement on a Performance Improvement Plan (PIP).

a. The purpose of a PIP is to address work performance or conduct and define serious areas of concern, reiterate the Department's standards and expectations, and allow for an officer to demonstrate improvement and commitment. The instructions listed on the PIP form shall be followed by the evaluated officer.

2. Supervisors of officers are responsible for implementing a PIP for the officer they supervise after approval by the Chief of Police or designee.

a. The PIP will outline the performance objectives and expectations the officer must achieve in order to succeed in their position.

b. The PIP will be documented on a Performance Improvement Plan form.

c. The Chief of Police or designee shall advise/assist supervisors as needed in the implementation of a PIP.

(JX-2)

14. Policy 1.9.1 also provides that the supervisor shall meet with the officer and document the officer's work performance at 30, 60, and 90 days from the issuance of the PIP. (JX-2 at IV (G)(6)(c))

15. Section IV (G)(10) of the Policy further provides that "[i]f after the completion of the PIP, the officers' work performance in the identified area(s) is not rated satisfactory, the Chief of Police may take further action in compliance with the Department[']s Code of Conduct and disciplinary policy." Section IV (G) (11) provides: "The Chief of Police or designee shall be responsible for filing the final results of the PIP in the officer's personnel file." (JX-2)

16. Policy 1.9.1 issued in December 2024, which contains the PIP policy, is the first time that the PIPs were employed at the LMPD. Under the Policy, PIPs become part of an officer's permanent personnel file. (N.T. 26, 37, 122-123; JX-2)

17. Chief Smith did Sgt. Kolar's evaluation for the 2024 period on the latest evaluation form. On January 8, 2025, Chief Smith placed Sgt.

Kolar's evaluation form on his desk and met with Sgt. Kolar to review the EPR later that day.[1] (N.T. 27-30)

18. On Sgt. Kolar's January 8, 2025 EPR, Chief Smith rated Sgt. Kolar as Meets Requirements in 7 categories. The Chief rated Sgt. Kolar an Exceeds Requirements in 1 category, and he rated Sgt. Kolar as Needs Improvement in 1 category, i.e., verbal and non-verbal communications. The EPR form does not have an Overall rating category. (N.T. 28-29, 95-96, 138-141; JX-3; UX-1; UX-2)

19. On January 9, 2025, Chief Smith again met with Sgt. Kolar and presented him with a PIP, effective January 8, 2025, for his Needs Improvement rating in the communications category. (N.T. 29-31, 41; UX-2)

20. The PIP form, pursuant to Policy 1.9.1, provides in part as follows:

> You are being given this **Performance Improvement Plan** because your job performance is deemed "Needs Improvement" or deficient in an area(s) as noted below.
>
> The performance Improvement Plan provides you with 90 days to improve your job performance in the specific area(s) identified below. This 90-day period begins on and ends on the dates listed above.
>
> After the end of this time period, a determination will be made regarding whether you have met the requirements of this Performance Improvement Plan. The determination will be documented in writing by memorandum.
>
> If you fail to improve your job performance to a "Meets Requirements" level in the identified area(s) below, you may be subject to disciplinary action as outlined in the Department[']s Code of Conduct.

(JX-4)(emphasis original)

21. After reviewing the PIP form, Sgt. Kolar understood that he could be disciplined if Chief Smith did not think that he improved after 90 days. Sgt. Kolar testified that, under Policy 1.9.1, a PIP could lead to discipline in a subjective manner. A supervisor could subjectively rate an officer as Needs Improvement and place the officer on a PIP that becomes part of the officer's permanent personnel record, thereby affecting future promotions and opportunities for desirable assignments. Sgt Kolar testified that resulting undefined discipline could affect employment with other employers in the future. (N.T. 30-31, 33-37, 70, 122-123)

[1] Chief Smith was promoted from Lieutenant to become Chief of Police in 2024, leaving a vacancy in the Lieutenant position. Chief Smith, therefore, did Sgt. Kolar's evaluation because Chief Smith was Sgt. Kolar's supervising Lieutenant for part of 2024 and, without a replacement Lieutenant, Chief Smith was the direct supervisor of the Sergeants for some time in, and perhaps the remainder of, 2024. (N.T. 100-101, 138-139)

22. Chief Smith acknowledged that a different evaluator could decide not to place someone on a PIP for a Needs Improvement in 1 category. The individual evaluating supervisor has discretion. (N.T. 138-141)

23. On January 10, 2025, as result of their meeting, Chief Smith informed Sgt. Kolar that he was withdrawing Sgt. Kolar's PIP, that he would not apply the new PIP policy retroactively to the 2024 rating period, and that he would apply it for 2025. Chief Smith shredded the Kolar PIP. The Chief also emailed all the officers informing them that he would not apply the new PIP policy to the 2024 rating period and instead begin applying the Policy to the 2025 rating period. The Policy thus became and remained effective January 1, 2025 for the 2025 rating period. The Township did not bargain the implementation of Policy 1.9.1 and the PIP with the Union. Policy 1.9.1 was not raised during contract negotiations. (N.T. 36-38, 50, 58, 65, 82, 107-109, 119, 135-136)[2]

24. Article 6 of the parties' CBA provides as follows:

> 6.1 It is understood and agreed that the Board of Commissioners of Lower Moreland Township does not hereby waive or forego the right and/or responsibility regarding any matter pertaining to this contract which matter is administrative in nature.
>
> 6.2 Except as otherwise set forth above, all rights and obligations of the Township and of the Police Department and all practices shall continue as heretofore.

(N.T. 42-43, 91-92; JX-1, Art. 6)

25. On March 12, 2025, Chief Smith gave a PowerPoint presentation, which he created, at a supervisors staff meeting to train them on conducting evaluations. Rich Worthington provided technical assistance in setting up the PowerPoint presentation. Sgt. Kolar attended that meeting. (N.T. 24-25, 45-47, 51-57, 74-75, 112-113; TX-1; TX-2)

26. The PowerPoint training did not address discipline as a consequence for failing to meet the goals of the PIP. Prior to the 2025 rating period, discipline had been imposed at the LMPD for violating a specific rule or policy. Under Policy 1.9.1, officers could be disciplined for generally not meeting expectations. (N.T. 74-76, 132)

27. Chief Smith does not know whether PLEAC requires that discipline be a part of the PIP policy. The disciplinary provisions were already written into the PIP policy by the Township's private accreditation consulting firm (the Law Enforcement Accreditation Service) when the Chief received it for review. The Chief approved the PIP policy as presented to him after making minor adjustments to fit the LMPD. (N.T. 129-131)

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[2] During the hearing, the Township objected to the admissibility of the PIP issued to Sgt. Kolar, designated as UX-2, because it was rescinded before the filing of the charge. I deferred my ruling and then later admitted the document. Sgt. Kolar's rescinded PIP was admitted into the record for the limited purpose of corroborating the undisputed fact that Chief Smith issued the PIP. I have not admitted any portion of Sgt. Kolar's rescinded PIP that contains the Chief's comments, identified deficiencies, or the specific PIP program that Chief Smith had developed for Sgt. Kolar before he rescinded it. (N.T. 43-44, 98, 154; UX-2)

28. The LMPD has a Code of Conduct, but it does not have a disciplinary matrix. Discipline is determined by Command Staff pursuant to the First Class Township Code, but there is no set level of discipline for specific violations of the Code of Conduct. (N.T. 71)

29. Sean McCoy has been a police officer at the LMPD for 15 years, and he has been a Corporal for the past 1.5 years. Cpl. McCoy is on Sgt. Kolar's squad. Cpl. McCoy had some years during which he received substandard performance ratings because of difficulties in his personal life. He was not placed on a PIP because the policy did not exist. He was not disciplined for receiving substandard ratings and failing to improve. Back then, the consequences for poor performance reviews included losing opportunities given to other officers, losing out on additional or specialized trainings, and losing out on special work details or assignments. (N.T. 77-81)

30. Cpl. McCoy read Policy 1.9.1 and signed it in Power DMS, a computer application used by the Township for such purposes, on December 27, 2024. Cpl. McCoy is concerned that, based on the subjective determination of a supervisor, an officer who fails to meet expections during the PIP period, could receive discipline. Cpl. McCoy believes that the new PIP policy makes discipline more vague, subjective, and undefined. Cpl. McCoy believes that the Policy lacks an objective requirement triggering objectively defined discipline. (N.T. 81-83, 86-87)

31. Cpl. McCoy believes that undefined discipline that could lead to the loss of pay or demotion affects working conditions and should be bargainable. (N.T. 91-93)

**DISCUSSION**

The Union argues that Policy 1.9.1 is a substantial departure from the past practice and former process of conducting officer evaluations. Prior to the implementation of Policy 1.9.1, the LMPD annually used evaluation forms, and it did not have a written policy governing evaluations or the imposition of PIPs for officers who did not meet expectations. Before January 2025, there were no consequences for Below-Standards ratings and there was no formal follow up or discipline for officers who failed to improve, as an integral part of the evaluation process. (Union Brief at 7-8). The Union further contends that the corrective nature of the PIP itself constitutes discipline in addition to the potential discipline under the Code of Conduct. (Union Brief at 8). The Union posits that Policy 1.9.1 is not simply a method of measuring, evaluating, and tracking objective data regarding officer performance and productivity, which the Commonwealth Court held, in Fraternal Order of Police, Delaware County Lodge No. 27 v. PLRB (Delaware), 722 A.2d 1118 (Pa. Cmwlth. 1998), constitutes a managerial prerogative. (Union Brief at 9).

Additionally, the Union asserts that Policy 1.9.1 is vague and arbitrary and that it lacks objectivity. The Union argues that it objects to the undefined discipline under the Code of Conduct included in the evaluation policy, and it contends that the Board has held that new forms of discipline are bargainable. (Brief at 10-13). The Union also argues that the Policy provides that, where a supervisor determines that the officer receive an overall rating of "Needs Improvement," the supervisor shall request that the officer be placed on a PIP. However, the Union points out that the evaluation form does not have an overall rating category and is inconsistent with the

PIP program and the Policy. The Union claims that the subjective determination of a supervisor could lead to discipline and damage an officer's career opportunities. The Policy creates a broader basis for discipline, and the record does not establish that any such discipline is required for accreditation. The Union also contends that the Township violated a past practice of evaluating officers without PIPs or the imposition of discipline for poor work performance, both of which are mandatory subjects of bargaining and a violation of a CBA provision preserving past practices. (Union Brief at 14).

The Township parries that it has a managerial prerogative to implement Policy 1.9.1 and the PIP program because it has the inherent right to track employe performance and take steps to improve substandard work performance. (Township Brief at 6-9). The Township further contends that challenges to the imposition of discipline as part of the PIP program are not ripe for consideration because the program has not yet been implemented since the Chief rescinded the Policy. The Township contends that the potential for discipline under the existing Code of Conduct does not constitute a change or the addition of discipline. The Township argues that there is no guarantee that an officer who is placed on a PIP after being deemed deficient will be disciplined and that the PIP policy is completely intertwined with the performance evaluation process. (Township Brief at 8-9).

The Township stresses that bargaining over the Policy would unduly infringe on its inherent managerial right to select and direct personnel, which is essential to the proper functioning of a police department. (Township Brief at 10). The Township also emphasizes that it has a considerable interest in maintaining PLEAC accreditation and that the PIP is required by PLEAC. (Township Brief at 10-11). The Township asserts that it could lose its provisional PLEAC accreditation without the PIP program and that performance standards are neceesary to establish and provide quality service, which is a core managerial interest. (Township Brief at 10-11). The Township finally posits that it is not required to bargain over core managerial policy concerns such as employe evaluations and performance improvement programs because it has the exclusive discretion to implment and enforce performance standards as a core managerial function. (Township Brief at 10-11). The mere fact that officers could face some discipline as a consequence of failing to meet performance standards does not obligate the Township to bargain because the impact of the policy is not severable from the managerial policy decision. (Township Brief at 11).

Initially, the latest evaluation form has been used since 2023. The form change, therefore, is too old for consideration. 43 P.S. § 9(e). Also, the Chief informed the officers in mid-January 2025, that Policy 1.9.1, which includes the PIP program, would be effective and governing behavior for the 2025 evaluation cycle. Thus, the Janaury 28, 2025 charge was not untimely or premature because the Chief implemented the Policy for 2025. Harmar Township Wage and Policy Committee v. Harmar Township, 33 PPER 33025 (Final Order, 2001)(stating that implementation is the date when the directive becomes operational and guides the conduct of employes).

The Commonwealth Court has held that employers have a managerial prerogative under Act 111 to select and direct personnel to perform assigned duties and evaluate that performance. Delaware, supra. In Delaware, the Court opined as follows: "It is within a Township's prerogative to establish and utilize a method to aid in selecting and directing its personnel and in measuring and evaluating their performance. The ability to formulate policies

in these areas is essential for the proper and efficient functioning of a police force." Id. at 1121. The Board properly relies on precedent to determine whether a matter constitutes a managerial prerogative rather than re-applying the balancing test to arrive at the same result. PSCOA v. Commonwealth of Pennsylvania, Department of Corrections, Fayette SCI, 35 PPER 58 (PDO, 2004)(citing Teamsters Local 77 & 250 v. PLRB, 786 A2d. 299 (Pa. Cmwlth. 2001)). However, where a party introduces different facts affecting or altering the weight a matter bears on the parties' interests, the Act 111 balancing test should be used to evaluate the new facts under consideration. Jenkintown Borough Police Benevolent Ass'n v. Jenkintown Borough, 56 PPER 57 (PDO, 2025).

The Union in this case has met its burden of establishing additional facts affecting the parties' interests sufficient to warrant the application of the Act 111 balancing test instead of relying on precedent. Policy 1.9.1 is not merely an evaluation policy setting forth performance standards to measure and track employe productivity with objective data, which were deemed managerial prerogatives in Delaware County Lodge, supra. Rather Policy 1.9.1 additionally contains a PIP program that must be analyzed under the balancing test for Act 111 cases.

Here, there is no dispute that the PIP program is a new addition to the evaluation process and constitutes a change in the past practice of simply evaluating the officers annually on an evaluation form. Middleburg Borough Police Officers Association v. Middleburg Borough, 53 PPER 2 (Final Order, 2021)(stating that a complainant "need not prove a past practice, but need only satisfy its burden that there was a change in the then existing *status quo* regarding a mandatory subject of bargaining"). An employer may not act unilaterally to change a past practice without bargaining where the matter constitutes a mandatory subject of bargaining. South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002), *appeal denied*, 569 Pa. 727, 806 A.2d 864 (2002); Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 43 PPER 53 (Final Order, 2011).

In determining whether a matter is a managerial prerogative or a mandatory subject of bargaining in the Act 111 context, the inquiry is whether the managerial decision is rationally related to terms and conditions of employment and, if so, the inquiry becomes whether collective bargaining over the topic would unduly infringe upon the employer's essential managerial responsibilities or its core function. Borough of Ellwood City v. PLRB, 998 A.2d 589, 600 (Pa. 2010). The Township concedes in its Brief that the PIP program is rationally related to terms and conditions of employment. (Township Brief at 9). The question thus becomes whether bargaining over the PIP program in its current form would unduly infringe on the Township's core managerial functions.

The Union has demonstrated that the officers have a substantial interest in the effects of the PIP program on terms and conditions of employment. The Township also has significant interest in developing a program to improve officers' performance under the standards set by the Township and to implement a PIP program to maintain its PLEAC accreditation. However, bargaining the procedural and disciplinary aspects of the PIP program would not unduly infringe on management's core function to ensure that officers improve performance and meet performance standards and expectations.

In Jenkintown Borough Police Benevolent Ass'n v. Jenkintown Borough, 57 PPER 25 (PDO, 2025), Hearing Examiner Pozniak aptly opined that "the Board's hearing examiners, with Board approval, have repeatedly and consistently recognized that any written documentation designed to correct an employe's conduct constitutes discipline. East Allegheny Education Ass' n , PSEA/NEA v. East Allegheny School District, 47 PPER 55 (Proposed Decision and Order, 2015); FOTP Lodge 109 v. SEPTA, PERA-C-18-132-E (Proposed Decision and Order, 2020); FOP PA Conservation Police Officers Lodge 114 v. Commonwealth of Pennsylvania, 55 PPER 20 (Proposed Decision and Order, 2023), *aff' d*, 55 PPER 60 (Final Order, 2024)." Under this standard for identifying discipline, the issuance of a written PIP to an officer, which then is placed in the officer's personnel file for an indefinite period of time, for the purpose of improving work performance and correcting the officer's conduct, constitutes a new form of discipline affecting future work opportunities, training, and promotions. In this manner, the PIP program is severable from the evaluation forms and the previous evaluation process. In Middletown Borough Police Officers Ass'n v. Middletown Borough, 47 PPER 30 (Final Order, 2015), the Board stated that "matters of employe discipline and disciplinary procedures, including the institution of a new system of discipline or a significant change from a previously existing system, are mandatory subjects of bargaining." Id. at 94.

The PIP goes beyond the managerial prerogative to evaluate, measure, and assess performance and productivity. Although an employer may have an interest in pursuing an officer's performance improvement, doing it through new forms of discipline must be bargained. The mere fact that PLEAC may require the LMPD to have a PIP program does not remove it from the scope of bargaining, and there is no evidence that PLEAC requires a disciplinary component to an employer's PIP program. Thus, there is also no evidence that the Township could lose its provisional accreditation if it eliminates the disciplinary aspects of the PIP program.

An examination of the PIP program in this case reveals several aspects of the program affecting terms and conditions of employment, and bargaining those provisions would not unduly infringe on management's interest to improve employe performance through the PIP program because it would not compromise core managerial operations, as evidenced by the fact that the LMPD has gone many years without PIPs. Internal vagueness within the Policy makes the Policy ambiguous and, therefore, arbitrary. That ambiguity must be bargained out of the Policy.

Section IV(D)(1)(b) of the Policy provides that "[i]f the evaluating supervisor determines the **overall** rating of the officer to be Needs Improvement, the supervisor **shall** request to place the evaluated officer on a Performance Improvement Program (PIP) to improve the deficiency or correct the conduct." (F.F. 11) (emphasis added). Comparatively, Section IV (D)(1)(b)(1) provides that "[i]f the evaluating supervisor identifies an **area or areas** with sufficient deficiencies or patterns of problematic conduct, the supervisor **may** request to place the evaluated officer on a Performance Improvement Program (PIP) to improve the deficiency or correct the conduct." (F.F. 12) (emphasis added). The emphasized language shows that the Policy is vague and arbitrary, even if it is not inconsistent.

The first Section provides that an overall rating of Needs Improvement requires that the supervisor request that the officer be placed on a PIP. However, there is no place on the evaluation form for an overall rating. There is no specific direction in the Policy or on the form directing the

supervisor as to how or when an officer is to receive an overall rating of Needs Improvement. In other words, the question remains as to how many individual categories of Needs Improvement dictate an overall rating of Needs Improvement. One supervisor may believe that a majority of categories of Needs Improvement dictates an overall rating of Needs Improvement while another supervisor may believe that 3 or 4 out of the 9 categories of Needs Improvement is sufficient for the overall rating. This could lead to disparate treatment of officers under different supervisors.

The second provision indicates that a supervisor who identifies only 1 area as Needs Improvement may in his/her discretion request to have the officer placed on a PIP, as Chief Smith determined was warranted for Sgt. Kolar. Supervisors operating under the second Section of the Policy do not have objective direction or guidance in determining when or how to place an officer on a PIP. One supervisor may feel that a PIP is warranted for 1 category whereas another supervisor may feel it is unnecessary. The Policy also leaves supervisors beleiving that a PIP is only a consideration when an officer receives a Needs Improvement in only 1 area (or maybe 2 or 3) and a requirement when an officer receives a Needs Improvement as an overall rating, where the criteria for an overall rating is not objectively provided or defined and may be subjectively triggered by 2 or 3 categories. The ambiguity between the discretionary PIP for areas of Needs Improvement and the mandatory PIP for overall Needs Improvement, where overall could be several areas, needs to be resolved through bargaining.

The lack of defined criteria and direction of what consitutes an overall rating as well as the subjective discretion of an individual supervisor to determine that a Needs Improvement in 1 category warrants a PIP, versus another supervisor who may believe that a Needs Improvement in 2 or more categories warrants a PIP, are ambiguities that will produce inconsistent application of the PIP provisions of the Policy throughout the LMPD. The Policy currently gives too much subjective, inconsistent disrection to the various supervisors potentially resulting in the disparate treatment of the officers. The Township, therefore, needs to bargain the Policy with the Union so the parties can develop more objective criteria and direction for when officers would be placed on a PIP, resutling in fundamental fairness as well as clearly defined expectations for the officers.

The Policy further provides that the PIP and the final results of the PIP are to be filed in the officer's personnel file. Reckoning periods for new discipline are bargainable. Fairview Township Police Ass'n v. Fairview Township, 30 PPER ¶ 30209 (PDO, 1998). The PIP itself constitutes new discipline. The Policy does not mention the length of time that a PIP and its results will remain in an officer's personnel file. Under the current language of the Policy, a PIP could seemingly remain in an officer's file for the remainder of his/her tenure with the LMPD having long lasting effects on an officer's career and promotional opportunities.

The Policy also provides that failure to improve to a satisfacotry rating in "identified area(s)" after the 90-day improvement period may result in discipline in compliance with the LMPD's Code of Conduct and disciplinary policy. The PIP form provides that "[i]f you fail to improve your job performance to a "Meets Requirements" level in the identified area(s) below you may be subject to disciplinary action as outlined in the Department's Code of Conduct." In addition to the PIP itself, this new layer of undisclosed discipline was not bargained. In Fairview Township Police Ass'n v. Fairview Township, 31 PPER 31019 (Final Order, 1999), the Board stated:

> [A]lthough an employer maintains the statutory right to enforce reasonable rules for the conduct of its business, which includes the right to discipline employes for violating the rules or for inefficient production, the institution of a new system of discipline, or a significant change from the previously existing system, is included within employe "terms and conditions of employment" considered subject to mandatory bargaining. Bargaining over the change here would address the procedural and impact aspects of discipline so that employes are fairly and equitably apprised of the disciplinary consequences of their actions.

Id. at 46 (citation omitted).

Bargining the type and severity of the discipline for failing to improve to a Meets Reqirements rating within 90 days is not unduly burdensome and marks a change from a past practice where there were no potential disciplinary consequences for a Needs Improvement rating in 1 category. As stated in Fairview Township, supra, the Township must bargain the procedural and impact aspects of the PIP discipline so that officers are fairly and equitably made aware of the disciplinary consequences of failing to improve after 90 days, espcially where the Township is not using that discipline to ensure the enforcement of specific work rules.

The Township contends that the testimony of Cpl. McCoy established that there were always consequences for a Needs Improvement rating. Cpl. McCoy testified that he had some years where he received substandard performance reviews causing him to lose opportunities given to other officers as well as opportunities for specialized trainings and work assignments. However, those consequences were not identified as required or potential discipline under the LMPD Code of Conduct and disciplinary code, and they were not recorded in Cpl. McCoy's personnel file. Both the PIP Policy and the PIP form reference discipline under the Code of Conduct, without identifying the specific form of discipline, for failing to improve within 90 days. Also, the Policy is applying the Code of Conduct to discipline officers for a newly identified reason, i.e. poor performance in 1 category, instead of violating a work rule or law. Officers who are placed on a PIP should know whether the discipline they could receive for failing to improve within 90 days could be a written reprimand, demotion, suspension, or termination all of which affects wages and terms and conditions of employment. By not identifying the potential discipline in this context, the decision by a supervisor to seek discipline in a particular case is itself arbitrary, as is the level of discipline sought to be imposed on different officers by different supervisors, creating the potential for disparate treatment among officers in the program.

The PIP Policy also increases supervisors' discretion in determining whether to impose discpline when they subjectively determine whether an officer on a PIP has improved to a Meets Requirements rating. Increasing a supervisor's discretion to seek additional levels of discipline constitutes a change in discipline that must be bargained, especially where, as here, those levels are undefined. Selinsgrove Police Officers Ass'n v. Selinsgrove Borough, PF-C-23-8-E (PDO, 2023). The Union and the officers have a significant interest in bargaining for objective standards across all supervisors in identifying the triggers for discipline. A supervisor could subjectively rate an officer as Needs Improvement after 90 days of PIP and thereby trigger discpline under the PIP Policy even though the officer did not violate any work rules or laws. The supervisors' new authority and

increased discretion to effectuate an additional cause for and level of discipline, not previsouly contemplated by the Code of Conduct, rationally relates to officers' terms and conditions of employment. It would not be unduly burdensome for the Township to bargain for more objective standards in the PIP-based disciplinary process. Signficantly, although the supevisors received training on the new Policy, that training session did not include the disciplinary aspects of the PIP, which may result in supervisors approaching PIP ratings and the imposition of discipline differently throughout the LMPD.

Moreover, Article 6.2 of the CBA provides that "[e]xcept as otherwise set forth above, all rights and obligations of the Township and of the Police Department *and all practices* shall continue as heretofore." (F.F. 24) (emphasis added). By way of this contractual provision, the Township agreed to maintain past practices regarding mandatory subjects of bargaining. The addition of the PIP policy and the potential for undefined discipline changed practices and procedures for evaluating officers without such discipline. These changes to mandatory subjects of bargaining have a severable impact on officers' terms and conditions of employment in violation of Article 6.2 of the CBA, which was collectively bargained by the parties. The Township may certainly have a PIP program; it simply must bargain the procedural and disciplinary aspects of the PIP program.

**CONCLUSIONS**

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

1. The Township is a public employer and a political subdivision within the meaning of the PLRA as read with Act 111.

2. The Union is a labor organization within the meaning of the PLRA as read with Act 111.

3. The Board has jurisdiction over the parties hereto.

4. The Township has violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

**HEREBY ORDERS AND DIRECTS**

that the Township shall:

1. Cease and desist from interfering, 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 in good faith with an employe representative which is the exclusive representative of

employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111, as read with the PLRA:

(a) Cease and desist from refusing to bargain the procedural and disciplinary terms of the PIP program;

(b) Rescind any and all references to discipline contained in the Performance Improvement Plan provisions of Policy 1.9.1;

(c) Bargain any and all procedural aspects of the PIP policy including: the vague and inconsistent provisions pertaining to when supervisors either must or may request a PIP for officers; any objective criteria for imposing specifically identified discipline; and reckoning periods for the retention of PIPs in digital or physical personnel files;

(d) Rescind any PIPs that may have been issued to LMPD officers for the 2025 evaluation cycle and expunge all records of those PIPs and make those officers whole for any lost training or opportunities;[3]

(e) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(f) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of February, 2026.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ JACK E. MARINO/S

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JACK E. MARINO, Hearing Examiner

[3] Any discipline would not have yet been imposed because 90 days have not expired since the beginning of January 2026.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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|---|---|---|
| LOWER MORELAND TOWNSHIP POLICE BENEVOLENT ASSOCIATION | : | |
| v. | : | Case No. PF-C-25-4-E |
| LOWER MORELAND TOWNSHIP | : | |

**AFFIDAVIT OF COMPLIANCE**

Lower Moreland Township hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read with Act 111; that it has ceased and desisted from refusing to bargain the terms of the PIP program and the disciplinary provisions contained therein; that it has rescinded any and all references to discipline contained in the Performance Improvement Plan provisions of Policy 1.9.1; that it has bargained any and all procedural aspects of the PIP policy including: the vague and inconsistent provisions pertaining to when supervisors either must or may request a PIP for officers; any objective criteria for imposing specifically identified discipline; and reckoning periods for retention of PIPs in digital and physical personnel files; that it has rescinded any PIPs that may have been issued to LMPD officers for the 2025 evaluation cycle and expunged all records of those PIPs and made those officers whole for any lost training or other opportunities as a result; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public