COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE COLLEGE AND UNIVERSITY FACULTIES	:	
v.	:	CASE NO. PERA-C-15-240-E
PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION	:	

FINAL ORDER

The Association of Pennsylvania State College and University Faculties (APSCUF or Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 20, 2017, from a Proposed Decision and Order (PDO) issued on February 28, 2017, in which the Hearing Examiner dismissed APSCUF's Charge of Unfair Practices as untimely under Section 1505 of the Public Employe Relations Act (PERA). With its exceptions, APSCUF filed a motion to amend its Charge of Unfair Practices filed against the Pennsylvania State System of Higher Education (PASSHE or State System). PASSHE filed responses to the exceptions and motion to amend on April 10, 2017. Following an extension of time granted by the Secretary of the Board, PASSHE filed a brief in response to the exceptions. Upon review of the exceptions, and the entire record, the Board makes the following:

AMENDED FINDING OF FACT

14. After the Child Protective Services Law (CPSL) was amended in July, 2015, Mary Rita DuVall, Head of Labor Relations for APSCUF, again wrote to Lisa Sanno, PASSHE's Assistant Vice Chancellor for Labor Relations on July 21, 2015. DuVall's letter states in relevant part:

> On July 1, 2015, amendments to the [CPSL] went into effect. These amendments eliminate or modify certain provisions of the pre-existing law that imposed legal obligations on members of the bargaining units represented by APSCUF, including but not limited to the necessity to obtain criminal history information and certifications as a condition of employment and the frequency of obtaining updated criminal history information and certifications.
>
> The current policy of the [State System], issued under the pre-July 1, 2015 law, imposed requirements on members of our bargaining units that the law no longer requires. We believe, and hereby notify you, that the imposition of those terms and conditions of employment not required by the [CPSL] that the State System has imposed on our bargaining unit members is now subject to bargaining.
>
> Because the State System never previously bargained with APSCUF over the imposition of those terms and conditions of employment, due to their having been imposed by the previous version of the law, it is our belief that the policy is now null and void insofar as it exceeds the

> requirements of the current law. If the State System wished to apply any such terms and conditions of employment on employees who are not subject to the requirements of the law, it is incumbent on the State System to bring that request to the bargaining table.
>
> In the alternative, APSCUF demands to bargain over the application of the above-described policy to employees not subject to the requirements of the [CPSL], or impact thereof. Insofar as any such matters are not subject to the duty to bargain, APSCUF demands meet and discuss.
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> (Association Exhibit 13; N.T. 69, 459).

DISCUSSION

APSCUF is an employe organization within the meaning of PERA and represents a bargaining unit of faculty and coaches employed by PASSHE. APSCUF and PASSHE are parties to a collective bargaining agreement which expired on June 30, 2015.

On December 22, 2014, Dr. Kenneth Mash, President of the Association, received a letter from Lisa Sanno, the State System's Assistant Vice Chancellor for Labor Relations. Sanno's letter states in relevant part:

> On July 8, 2014, [the State System's] Board of Governors (BOG) adopted Policy 2014-01: Protection of Minors. This policy was developed to promote the safety and security of children who participate in programs on university property and required universities to establish and implement criminal background screening policies and procedures consistent with applicable law and the BOG policy 2009-01: Criminal Background Investigations. Since the issuance of BOG Policy 2014-01, the Pennsylvania Legislature has passed and the Governor has signed Act 153 of 2014 (HB 435), effective December 31, 2014, providing for expanded clearance checks for employees and volunteers who have direct contact with children, as defined by the Child Protective Services Law. Act 153 also requires employees and volunteers to notify their employer within 72 hours of an arrest or conviction of a criminal act covered by the statute.
>
> As previously conveyed at the statewide Meet and Discuss between the parties on December 19, 2014, the State System's universities offer programs and activities involving minors and in light of the expanded clearance checks and reporting requirements provided in Act 153, the BOG will amend Policy 2014-01: Protection of Minors to include:
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> - All employees will be required to have criminal background screening clearances in accordance with applicable procedures, standards, and guidelines as established by the chancellor.

- All employees will provide written notice within 72 hours if arrested for or conviction [sic] of a Reportable Offense enumerated under the Child Protective Services Law or named as a perpetrator in a founded or indicated report of child abuse.

Enclosed for your review are draft copies of the amended Policy 2014-01-A: Protection of Minors and the related Procedures and Standards for University Operations document which establishes the procedures and standards for implementation of the Protection of Minors Policy. The amended Protection of Minors Policy will be presented to the BOG for adoption at its January 21, 2015 meeting.

"Policy 2014-01-A: Protection of Minors", as amended on January 22, 2015, states in relevant part:

C. Policy

Each State System entity offering or approving programs that involve minors within the scope of this document will establish and implement policies and procedures consistent with this policy. The chancellor . . . may promulgate procedures, standards, and guidelines as necessary to ensure the proper implementation of this policy. The locally established policies and procedures will, at a minimum, include the following requirements.

. . .

4. Criminal Background Screening

All employees and volunteers are required to have criminal background screening clearances in accordance with applicable procedures, standards, and guidelines as established by the chancellor.

. . .

7. Reporting Obligations

a. Reporting of Child Abuse
In a situation of suspected child abuse, all State System administrators, faculty, coaches, staff, student workers, independent contractors, and volunteers are mandated reporters under this policy. Everyone who is deemed a mandated reporter pursuant to this policy shall be trained as if designated a mandated reporter by Pennsylvania law. . . .

. . .

b. Reporting of Arrests and Convictions

All employees, volunteers, and program administrators must provide written notice to the designated person in charge at the university if they or an authorized adult or program

> staff are: (1) arrested for, convicted of, an offense that would constitute grounds for denial of employment or participation in a program, activity, or service; or (2) are named as a perpetrator in a founded or indicated report under the Child Protective Services Law (23 Pa.C.S. §6301, *et seq.*). The employee, volunteer, or program administrator shall provide such written notice within 72 hours of arrest, conviction, or notification that the person has been listed as a perpetrator in the statewide database. The failure of an employee or program administrator to make a written notification, as required, is a misdemeanor of the third degree.
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> If the employer or program administrator has a reasonable belief that an employee or volunteer has been arrested or convicted of a reportable offense or was named as perpetrator in a founded or indicated report under the Child Protective Services Law, or if an employee or volunteer has provided notice of activity that would be sufficient to deny employment or program participation, the employer must immediately require the employee or volunteer to immediately submit current information for required criminal background screening clearances in accordance with applicable procedures, standards, and guidelines as established by the chancellor.

The State System began requiring faculty and coaches in the Association's bargaining unit to have background checks completed pursuant to the Protection of Minors Policy in January, 2015.

On January 28, 2015, PASSHE and APSCUF met concerning the implementation and impact of the Protection of Minors Policy. On February 25, 2015, Mary Rita DuVall, Head of Labor Relations for APSCUF, wrote a letter to Sanno which summarized the meeting and requested follow-up on unanswered issues raised at the meeting. DuVall's February 25, 2015, letter states in relevant part:

> This correspondence is in follow up to our joint negotiation session held on January 28, 2015 for the implementation and impact of the Protection of Minors Policy / Background Checks. Since the Protection of Minors Policy has been implemented as written, it is imperative that faculty members and coaches have knowledge who is a minor in their classes, sports and other programs. Accordingly please immediately provide each faculty member and coach with a list of names of minor students currently enrolled in their classes, programs, sports and/or who are assigned to faculty members as advisees. In addition to seeking immediate response to the above request, below you will find a list of unanswered questions for which [the Association] seeks response. [The Association] requests [the State System's] responses prior to any further negotiation sessions on these issues.
>
> <u>Background Checks</u>
> - The OOC has stated that Criminal Background checks costs are being covered for faculty members and coaches. Who

> will pick up the costs of the background checks required for temporary faculty members, who have a break in service?
> - How will the costs of background checks for employees in sports camps be assessed in the context of Coaches' fundraising duties?
> - Has the OOC created a draft copy of Protection of Minors / Background Checks guidelines? It was our understanding that the guidelines were to be established by the BOG pertaining to the costs for background checks and who pays for same.
> - What procedures will PASSHE follow checking for errors and/or addressing clearances [sic] false positives? Will PASSHE assist the faculty/coach if the if [sic] faculty/coach believes the report is incorrect?
>
> Reporting Requirements
> - At our last session PASSHE advised that the OOC would provide a response to APSCUF's questions regarding the reporting requirements in Section C.7.b.9(1) of the Protection of Minors Policy. Please clarify whether the offenses that are to be reported are limited only to those listed in the Child Protective Services Law.
> - What is the PASSHE procedure when a faculty member or coach self-reports an arrest? What if the arrest results in no conviction?
> - What is PASSHE's definition of arrest under this policy?
>
> . . .
>
> Our hope is that the parties will reach mutual joint agreement on the impact and implementation of these polices on our faculty and coaches as quickly as possible.

On June 11, 2015, DuVall sent Sanno an email which states in relevant part:

> Good afternoon. After review of my demand to bargain (see attached) letter dated February 25, 2015 for the implementation and impact of the Protection of Minors Policy/Background checks, I am writing to arrange another bargaining session in regards to the outstanding issues not yet addressed as of today's date. Please let me know what dates work for you in June.

On June 18, 2015, Sanno responded to DuVall's email by writing: "As we in currently [sic] bargaining for a successor collective bargaining agreement, this topic is appropriate for discussion at the main table."

On July 1, 2015, the Pennsylvania General Assembly passed Act 15 of 2015. Act 15 of 2015 amended the Child Protective Services Law [CPSL] to exempt employees of higher education institutions from the background check and arrest reporting requirements of the CPSL as long as their direct contact with minors is limited to matriculated students enrolled in the institution or prospective students visiting campus. (Act 15 of 2015 at §6344). Act 15 of 2015 exempted certain APSCUF bargaining unit members from the background check and arrest reporting

requirements of the CPSL.[1] PASSHE did not change its Protection of Minors Policy in response to the changes made to the CPSL on July 1, 2015.

After the CPSL was amended in July, 2015, DuVall again wrote to Sanno on July 21, 2015. DuVall's letter states in relevant part:

> On July 1, 2015, amendments to the [CPSL] went into effect. These amendments eliminate or modify certain provisions of the pre-existing law that imposed legal obligations on members of the bargaining units represented by APSCUF, including but not limited to the necessity to obtain criminal history information and certifications as a condition of employment and the frequency of obtaining updated criminal history information and certifications.
>
> The current policy of the [State System], issued under the pre-July 1, 2015 law, imposed requirements on members of our bargaining units that the law no longer requires. We believe, and hereby notify you, that the imposition of those terms and conditions of employment not required by the [CPSL] that the State System has imposed on our bargaining unit members is now subject to bargaining.
>
> Because the State System never previously bargained with APSCUF over the imposition of those terms and conditions of employment, due to their having been imposed by the previous version of the law, it is our belief that the policy is now null and void insofar as it exceeds the requirements of the current law. If the State System wished to apply any such terms and conditions of employment on employees who are not subject to the requirements of the law, it is incumbent on the State System to bring that request to the bargaining table.
>
> In the alternative, APSCUF demands to bargain over the application of the above-described policy to employees not subject to the requirements of the [CPSL], or impact thereof. Insofar as any such matters are not subject to the duty to bargain, APSCUF demands meet and discuss.

Sanno responded to DuVall with a letter dated August 7, 2015. Sanno's letter states in relevant part:

> It is the State System's position that the Policy is not null and void as APSCUF claims, as the Board of Governors has, in accordance with Act 188, the prerogative to establish personnel policies. There is nothing in Act 15 of 2015 rendering any part of the State System's policy on background checks to be unlawful. As such, the State System has a valid, lawful policy in place.

[1] However, bargaining unit coaches were covered by the amended law because they have direct contact with non-matriculated minors with few exceptions, and some faculty members would still be covered by the law such as those faculty members who visit primary or secondary schools.

> Furthermore, it is the State System's position that requiring background screenings for current employees is a matter of inherent managerial prerogative and is not a mandatory subject of bargaining. That being said, the State System is and remains willing to bargain over the impact of conducting criminal background screenings for current faculty and coaches. Such was communicated to APSCUF via correspondence dated June 30, 2014 and July 30, 2014 . . . . In fact, the parties . . . met on January 28, 2015 for the purposes of bargaining over the impact of the State System's decision to require current employees to undergo those criminal background screenings required by the Policy. Most recently, on June 8, 2015, you contacted me to arrange another bargaining session regarding outstanding issues not yet addressed as of that date, to which I replied, as APSCUF and the State System are currently engaged in bargaining for a successor collective bargaining agreement this topic is appropriate for discussion at the main table.
>
> The State System has been and remains willing to bargain over the impact of conducting criminal background screenings for current faculty and coaches or meet and discuss, as appropriate.

After receipt of Sanno's August 7, 2015, letter APSCUF filed the Charge of Unfair Practices on August 18, 2015. Hearings on the charge were held on April 19, 2016, May 17, 2016, and July 21, 2016, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Following submission of post-hearing briefs, the Hearing Examiner issued the February 28, 2017 PDO. In the PDO, the Hearing Examiner found that the Protection of Minors Policy was implemented, at the latest, by February 25, 2015, which was the date APSCUF expressed awareness of the policy's implementation. The Hearing Examiner concluded that APSCUF's charge filed on August 18, 2015, was untimely under the four-month statute of limitations set forth in Section 1505 of PERA, stating as follows:

> The State System's Motion to Dismiss is granted as to the Association's charge based on the unilateral implementation of the Protection of Minors Policy, and that charge therefore is dismissed as untimely. The Association's charge with respect to disruption of the status quo, which was raised by the Association for the first time at hearing and again in its Post-Hearing Brief, is dismissed as there was no change to the status quo through the State System's continued enforcement of an existing policy.

(PDO at 10).

On exceptions, APSCUF argues that the Hearing Examiner erred in finding that its Charge of Unfair Practices filed on August 18, 2015 was untimely under Section 1505 of PERA. In this regard, APSCUF argues that the Protection of Minors draft policy was not implemented before the CPSL was made applicable to all university employes by the Act 153 amendments to the CPSL, and thus a charge of unfair practices filed at that time would have been dismissed as premature. *See* APSCUF v. PLRB,

263 C.D. 2009, *unreported* (Pa. Cmwlth. Oct. 22, 2009). APSCUF further argues that after the Act 153 amendments to the CPSL effective December 31, 2014, PASSHE was legally obligated to require background checks and reports of criminal arrest and child abuse, and therefore APSCUF had no statutory right to bargain that was enforceable before the Board while Act 153 was in effect. *See* 43 P.S. §1101.703. APSCUF therefore asserts that its statutory right to bargain, and the limitations period for filing a charge of unfair practices, did not arise until on or after July 1, 2015, the effective date of the Act 15 amendments to the CPSL that eliminates the mandate for background clearances or reporting of criminal arrests or findings of child abuse for some of its bargaining unit members.

In the PDO, the Hearing Examiner correctly stated the law regarding timeliness of unfair practice charges as follows:

> Section 1505 of PERA states: "[n]o charge shall be entertained, which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge." 43 P.S. §1101.1505.
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> The four-month limitations period for the filing of an unfair labor practice charge under Section 1505 of the PERA is triggered when the complainant has reason to believe that the unfair practice has occurred. Lancaster Cty. v. Pennsylvania Labor Relations Bd., 62 A.3d 469, 473 (Pa. Commw. Ct. 2013); Commonwealth v. Pennsylvania Labor Relations Board, 438 A.2d 1061, 1063 (1982). The complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. Hazleton Area Education Support Professionals v. Hazleton Area School District, 45 PPER ¶ 20 (Final Order, 2013).
>
> As a general matter, the nature of the alleged unfair practice claim frames the limitations period for that cause of action. Bensalem Township Police Benevolent Association v. Bensalem Township, 47 PPER ¶ 109 (Proposed Decision and Order, 2016); Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001).

(PDO at 7-8).

Thereafter, the Hearing Examiner addressed the case strictly as one of implementation, and found that PASSHE implemented the Protection of Minors Policy at the latest by February 25, 2015, the date APSCUF expressed awareness of the policy's implementation. However, upon review of the Charge, the record evidence, and the exceptions, it is clear that APSCUF also charged PASSHE with violating Section 1201(a)(1) and (5) of PERA by refusing to bargain the Protection of Minors Policy, upon demand, following the Act 15 legislative changes to the CPSL on July 1, 2015. Indeed, Ms. Duvall's July 21, 2015 letter to Ms. Sanno expressly stated that "APSCUF demands to bargain over the application of the above-described policy to employees not subject to the

requirements of the [CPSL]…."[2] By letter dated August 7, 2015, Ms. Sanno refused to bargain, stating that "requiring background screenings for current employees is a matter of inherent managerial prerogative and is not a mandatory subject of bargaining."[3] To the extent APSCUF alleged that PASSHE refused its July 21, 2015 demand to bargain over submission of background clearances and reports of criminal arrests and child abuse for faculty not covered by the CPSL, APSCUF's Charge of Unfair Practice filed on August 21, 2015, was timely filed with the Board within the four-month statute of limitations under Section 1505 of PERA. Accordingly, in this regard, APSCUF's exception to the Hearing Examiner's conclusion that its Charge of Unfair Practices was untimely filed is sustained in part.

However, even where there is a timely demand to bargain, the matter sought to be negotiated must have been a subject of bargaining in order for an employer to have violated Section 1201(a)(5) of PERA. In State College and University Professional Association (SCUPA) v. Pennsylvania State System of Higher Education, 48 PPER 15 (Proposed Decision and Order, 2016), *affirmed*, PERA-C-15-299-E (Final Order, May 16, 2017), the Hearing Examiner, applying the PLRB v. State College Area School District, 461 Pa 494, 337 A.2d 262 (1975) balancing test, determined that PASSHE's background clearances and reporting requirement under its Protection of Minors Policy is a managerial prerogative. In so finding, the Hearing Examiner stated as follows:

> The record in this case shows that the State System has a strong inherent managerial right to implement the policies at issue because the polices at issue "go to the heart of the function" of the State System and "fulfil a vital function" of the State System. The State System's broad Protection of Minors policy, from which the specific charged policies in question in this matter eventually flowed, was developed in the wake of the Sandusky Scandal and the Freeh Report of 2012. The concern generated by those events in the State System are completely reasonable considering how, in many ways, the State System is similar to the Pennsylvania State University, and the risks and dangers to minors on State System campuses and to the State System as a whole was directly relatable to the experience of Pennsylvania State University. Further, the State System was aware of a legislative attention to the very public issue and rightfully concerned of legislative attention and action concerning its practices, and felt a strong, responsible reaction was proper.
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> In response to these events, the State System's Board of Governors became concerned that the State System did not

[2] On exceptions, APSCUF notes that there is a typographical error in the Hearing Examiner's Finding of Fact 14 quoting Ms. DuVall's July 21, 2015 letter. AFSCUF's exception to Finding of Fact 14 is sustained, and the finding has been amended herein.

[3] We note that at the time of Ms. Duvall's letter, the collective bargaining agreement between APSCUF and PASSHE had expired and the parties were in the process of negotiating a successor collective bargaining agreement.

have adequate system-wide polices regarding the protection of minors and whether the individual institutions of the State System followed their own polices with regard to the protection of minors. Indeed, the State System estimated that there are approximately 387,000 minor visits to its 14 universities each year during approximately 23,700 annual events. To address these concerns, the Board of Governors inquired with State System management as to the current polices which were in place and how they were enforced. In response to this inquiry, the Board of Governors was not satisfied with the State Systems' then-current policies and practices with regard to the protection of minors and the Board of Governors decided that it must take strong action and make a response a high priority. In developing its new policy to address the protection of minors, the Board of Governors was focused on creating a high degree of uniformity between the individual universities and campuses in the State System, to address the fact that faculty and staff more often move from campus to campus, and on creating procedures which would be applicable to staff that interacted with minors on campuses.

I move from the general State System policy on protecting minors to the specific policies at issue in this matter. First, the policy that all employes, including those not covered by the CPSL, as amended, should complete regular background checks addresses the State System's concerns by ensuring that the State System is aware of employes with criminal pasts or have been involved in situations where the welfare of children was put in danger, and, also, by maintaining a high degree of uniformity and efficiency on the State System campuses by ensuring that all staff are properly checked no matter what role or on what campus they are assigned. Second, the policy that all employes, including those not covered by the CPSL, as amended, should report arrests and convictions of a certain subset of crimes addresses the State System's concerns by ensuring that the State System is immediately aware of when an employe may be a risk to minors and allow the State System to make prompt, responsible determinations and actions and, also, ensures that standards with regard to reporting of arrests and convictions are uniform throughout the State System.

Thus, the record in this matter clearly shows that the State System was reasonably concerned over risks to minors on its campuses and the consistency of policy throughout its entire system. These concerns "go to the heart of the function" of the State System, which is to provide secondary education, and, accordingly, I find that the policy in question in this matter is directly responsive to the managerial concerns of safeguarding minors and providing the effective and efficient performance of higher education in the Commonwealth, and that the unilateral implementation of the policies in question in this matter were well within the Employer's inherent managerial authority.

> Since I find that the policies in question in this matter fulfill a vital function of the State System, their impact on employe wages, hours, terms and conditions of employment must be compelling to find such policies to be mandatory subject of bargaining. The record in this matter does not show that the unilateral implementation of the State System's policies at issue have had a compelling impact on the employes' term and conditions of employment. With respect to the requirement to report arrests and convictions, this issue has already been reviewed by the Board in [Commonwealth of Pennsylvania (Governor Dick Thornburgh), 13 PPER ¶ 13097 (Final Order, 1982), *aff'd*, 479 A.2d 683 (Pa. Cmwlth. 1984)], and the Board found that the Employer's managerial interest outweighs the employes' interest on their terms and conditions of employment, and I follow the holding in that matter. With regard to requiring regular background checks, the record in this matter does not indicate any substantial impact on the employes' terms and conditions of employment, let alone a compelling impact, and I find that the State System's interest in this matter outweighs the employes' interest. Thus the policies in question were within the State System's inherent managerial right to implement and no unfair practice occurred when the State System did so implement them.

SCUPA v. PASSHE, 48 PPER at 69-70.

Where the State College balancing test has been applied to the subject matter at issue for a particular public employer, the Board and public employers and employe representatives, may rely on that prior determination as precedent for a similar set of circumstances. *See* Chester Upland School District v. PLRB, 150 A.3d 143 (Pa.Cmwlth. 2016); City of Allentown v. International Association of Fire Fighters Local 302, ___ A.3d ___, 24 MAP 2016 (Pa. Mar. 28, 2017). Upon review of the record in this case, there are no compelling factual differences warranting deviation from the decision in SCUPA v. PASSHE, *supra.* Here, as in the prior determination, PASSHE has a significant and substantial interest in the protection of students and minors on its premises. Indeed, PASSHE indicated the need for background clearances and reporting of arrests and findings of child abuse for all faculty, noting that faculty in higher level courses that would be exempt from the CPSL may need to substitute for faculty in courses where minors may be present, thus supporting its need to have background clearances and reporting of arrests and findings of child abuse for all faculty bargaining unit members. Additionally here, the interests in wages, hours and working conditions of the faculty who do not fall within the requirements of the CPSL, do not outweigh the concerns of PASSHE in providing a safe environment on campus. While the interests of the faculty may be different in kind from those employes in SCUPA v. PASSHE, the interests of the faculty here do not warrant a different result. Indeed, the faculty concerns over such matters as privacy and tenure consideration, while material, do not outweigh PASSHE's

managerial interests in campus safety, and may be addressed through impact bargaining.[4]

Accordingly, PASSHE's implementation of background clearances and reporting of criminal arrests or findings of child abuse for all bargaining unit faculty and coaches is a managerial prerogative under the State College balancing test, and not a mandatory subject of bargaining. As such, PASSHE did not violate Section 1201(a)(1) and (5) of PERA by declining APSCUF's demand to bargain the implementation of the background clearances and requirement that faculty and coaches report criminal arrests and findings of child abuse under the Protection of Minors Policy.

APSCUF also argues on exceptions that the Hearing Examiner erred in failing to find that PASSHE unlawfully altered the status quo after expiration of the collective bargaining agreement by failing to conform the Protection of Minors Policy to the Act 15 amendments to the CPSL effective July 1, 2015. In the alternative, APSCUF filed a motion with the Board for leave to amend its Charge of Unfair Practice to allege a unilateral alteration of the status quo. Generally speaking, an employer's unilateral alteration of wages, hours or working conditions following contract expiration, while the parties are negotiating a successor agreement, is a failure to bargain in good faith in violation of Section 1201(a)(5) of PERA. Appeal of Cumberland Valley School District, 394 A.2d 946 (Pa. 1978).

However, to find an unlawful alteration of the *status quo*, the matter which the employer allegedly changed must have been a subject over which the employer has a statutory obligation to bargain. As addressed above, PASSHE's implementation of the background clearances and reports of arrest and findings of child abuse for faculty and coaches is a managerial prerogative, and not a mandatory subject of collective bargaining. Moreover, there is no evidence of record that the Protection of Minors Policy was a negotiated provision in the expired collective bargaining agreement, raising a question of its continued viability during the *status quo* period. *See* Scranton School Board v. Scranton Federation of Teachers, Local 1147, A.F.T., 365 A.2d 1339 (Pa. Cmwlth. 1976). Accordingly, because the background clearances and requirement to report criminal arrests and findings of child abuse

[4] With regard to the conduct of the parties in this case, we note that APSCUF has identified issues of wages, hours and working conditions that are impacted by PASSHE's implementation of the Protection of Minors Policy, and has made a timely demand to bargain. The wage, hour and working condition matters that are impacted by, and severable from, PASSHE's implementation of the Protection of Minors policy, such as disciplinary procedures, privacy concerns, and tenure procedures, are mandatory subjects of bargaining. *See* SCUPA v. PASSHE, *supra.;* City of Philadelphia v. PLRB, 588 A.2d 67 (Pa.Cmwlth. 1991), *petition for allowance of appeal denied*, 598 A.2d 285 (Pa. 1991); PASSHE, California University v. PLRB, 2159 C.D. 2011, *unreported* (Pa.Cmwlth. Aug. 15, 2012). However, the record evidence also establishes that PASSHE has not refused to engage in impact bargaining over the severable issues of the bargaining unit employes' wages, hours and working condition. Accordingly, on this record no violation of PASSHE's duty to engage in impact bargaining can be found.

under the Protection of Minors Policy are not mandatorily negotiable, PASSHE did not violate its good faith bargaining obligation with regard to maintenance of the *status quo* concerning the Protection of Minors Policy during negotiations.

Moreover, as found in the PDO, PASSHE implemented the Protection of Minors Policy for all bargaining unit employes as of February 25, 2015. As found by the Hearing Examiner, the application of the policy to all bargaining unit members had not changed since January 22, 2015. After July 1, 2015, PASSHE made no changes to the Protection of Minors Policy, which remained applicable to all bargaining unit members. The fact that the application of the Protection of Minors Policy to all bargaining unit members began pursuant to a statutory mandate of Act 153 on December 31, 2014, does not negate the fact that the Protection of Minors Policy was lawfully made applicable to all bargaining unit members more than four months prior to the filing of the charge. *See* 43 P.S. §1101.1505. Therefore, PASSHE's maintenance of the previously lawfully implemented Protection of Minors Policy for all bargaining unit members would thereafter be the *status quo* upon contract expiration. *See* Fairview School District v. Unemployment Compensation Board of Review, 454 A.2d 517, 520 (Pa. 1982) (holding that the status quo is "the last actual, peaceable and lawful noncontested status which preceded the controversy"). As such, PASSHE made no unilateral changes to the Protection of Minors Policy on or after July 1, 2015, and thus did not alter the *status quo* of employe wages, hours or working conditions following expiration of the collective bargaining agreement.

Accordingly, PASSHE did not alter the *status quo* with respect to its Protection of Minors Policy on or after July 1, 2015, and thus there can be no violation of Section 1201(a)(1) and (5) of PERA for unlawful unilateral changes to wages, hours or working conditions. As such, the Hearing Examiner committed no reversible error in failing to find a violation of Section 1201(a)(1) and (5) of PERA with respect to the maintenance of the *status quo*. Furthermore, because the facts as alleged cannot support an unfair practice under Section 1201(a)(1) and (5) for a unilateral change to a mandatory subject of bargaining during contract negotiations, APSCUF's motion for leave to amend the Charge of Unfair Practices to allege a change in the *status quo* is denied. *See* Homer Center Education Association v. Homer Center School District, 30 PPER ¶30024 (Final Order, 1998).

After a thorough review of the exceptions and all matters of record, the exceptions filed by APSCUF shall be sustained in part, and dismissed in part. Where the requirement of background clearances and reporting of criminal arrests or findings of child abuse by bargaining unit employes are managerial prerogatives, PASSHE did not unlawfully refuse to bargain those issues in violation of Section 1201(a)(1) and (5) of PERA. Accordingly, although the decision herein is based on different grounds, the Hearing Examiner did not err in dismissing APSCUF's Charge of Unfair Practices and rescinding the Complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Association of Pennsylvania State College and University Faculties are hereby sustained in part and dismissed in part, and the conclusion that the Pennsylvania State System of Higher Education did not violate Section 1201(a)(1) and (5) of PERA in the February 28, 2017, Proposed Decision and Order, be and hereby, is made final as modified herein.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twentieth day of June, 2017. The Board hereby authorizes the Acting Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.