COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INDEPENDENT STATE STORE UNION	:	
	:	
v.	:	Case No. PERA-C-08-194-E
	:	
COMMONWEALTH OF PENNSYLVANIA LIQUOR CONTROL BOARD	:	

PROPOSED DECISION AND ORDER

On May 23, 2008, the Independent State Store Union (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Liquor Control Board (Commonwealth or Respondent) alleging that the Commonwealth violated Sections 1201(a)(1), (5) and (9) of the Public Employe Relations Act (PERA).

The Secretary of the Board declined to issue a complaint, by letter dated June 10, 2008. On June 30, 2008, the Union filed exceptions to the Secretary's letter declining to issue a complaint. On October 21, 2008, the Board issued an Order Directing Remand to the Secretary for Further Proceedings. On November 25, 2008, the Secretary issued a Complaint and Notice of Hearing setting the matter for a hearing on February 18, 2009, in Harrisburg. The hearing date was continued to March 17, 2009.

At the hearing, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Union submitted a brief on May 1, 2009, and the Commonwealth submitted a brief on May 28, 2009. The 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 Pennsylvania Liquor Control Board opoerates state liquor stores throughout the Commonwealth. The PLCB utilizes a store classification system based on the volume of units sold. (N.T. 9-10)

2. The Independent State Store Union represents, for meet and discuss purposes, a unit of first level supervisors, including the following classifications: Liquor Store General Manager 1A and 1B (LSGMs) and Liquor Store Manager 1, 2 and 3 (LSMs). (Joint Exhibit 1 at p. 54)

3. The job classification of ISSU-represented employes at stores corresponds to the store classification. The lowest volume stores (annual sales of 10,000 to 95,000 units) are 1-A stores and are managed by the General Manager 1-A classification. Stores with sales of 95,000 to 165,000 are designated as 1-B stores and are managed by a General Manager 1-B classification. Stores with sales o 165,000 to 290,000 are Grade 2 stores and are managed by General Manager 2-Bs. (N.T. 12, Union Exhibit 5)

4. That stores with sales of 290,000 or greater are managed by General Managers 1-C, who are assisted by Liquor Store Managers 1, 2 and 3. (LSM 1, 2, and 3s) depending on the sales volume. The LSMs are also referred to as assistant managers. (N.T. 12, Union Exhibit 5)

5. Store sales are reviewed annually, resulting in stores being reclassified. The parties also informally refer to this process as setting a store quota change. (N.T. 10, 17)

6. The Commonwealth, PLCB and the ISSU are parties to a Memorandum of Understanding (MOU) covering the period from July 1, 2007 to June 30, 2011 (Joint Exhibit 1)

7. Recommendation No. 20 of the MOU, "Policy Changes" provides:

> The Commonwealth shall inform the Union of all contemplated changes of policy which affect wages, hours, terms and conditions of employment, at least fifteen working days prior to the effective date of such policy change, and shall meet and discuss on such contemplated changes with the Union representative(s) upon request.

(Joint Exhibit 1 at page 37)

8. Recommendation No. 23, "Store Assignment" provides, in pertinent part:

> B. Employees desiring to transfer to another store may submit a list of seven preferred stores to the appropriate Regional Manager within thirty (30) days after the Union is notified by the Director of Store Operations of the annual store grade changes and between August 1 and August 31 of each year. Requests must be postmarked no later than August 31. Prior to filling a vacancy, preference requests will be reviewed and considered. The final decision will be at the sole discretion of management. All requests will be purged at the end of each period when new requests are submitted.
>
> C. Ten working days prior to each store reclassification, the Union will be notified of the grade of the store. The Union will be notified one week prior to the distribution of the e-mail announcing store grade changes.

(Joint Exhibit 1 at page 40)

9. There are three regions: Eastern (Region #1); Central (Region #2) and Western (Region #3). Each is headed by a regional manager. Each region has a number of districts, which are managed by a district manager. (N.T. 27, 41, Union Exhibit 5)

10. With as many as 50 stores changing grade at one time, the greatest number of opportunities for ISSU-represented employes to transfer occurs subsequent to the annual store reclassifications. In this period, the PLCB also experiences a domino effect resulting in other vacancies which must be filled. (N.T. 18, 32 and 54)

11. In filling the numerous vacancies resulting from the annual store reclassifications, PLCB managers would examine the preference lists and utilize their discretion to transfer employees into vacancies, without conducting interviews. If that method was not utilized, the PLCB would follow Pennsylvania State Civil Service Commission (SCSC) procedures (N.T. 53-54)

12. On November 8, 2007, the SCSC issued an adjudication on a appeal filed by Charles J. Rupert, a Liquor Store Clerk 2 (LSC 2), which contested Rupert's non-selection for promotion to Liquor Store General Manager 1B employment. (Union Exhibit 1)

13. That Rupert, an LSC 2, is represented for collective bargaining purposes by the United Food and Commercial Workers (UFCW). (N.T. 37)

14. In the Rupert adjudication, the SCSC determined that the PLCB's "failure to conduct interviews of available eligibles within the Rule-of-Three…on a promotion list is a clear violation of the procedures established under the Civil Service Act and Rules for filling these positions…" (Union Exhibit at page 9, footnotes omitted).

15. In the Rupert adjudication, the SCSC ordered that Kevin Hurling, who had been appointed to the LSGM 1B position, and was therefore represented by ISSU, be "returned to a position equivalent to the position he held immediately prior to his promotion" (Union Exhibit 1 at pp. 13-14).

16. The effect of the Rupert adjudication was to require the PLCB to interview all eligible candidates for all vacancies (N.T. 54).

17. Under the best of circumstances, it takes four to six weeks to fill a vacancy when all eligible candidates must be interviewed (N.T. 62).

18. The delay in filling vacancies has a negative impact on PLCB store operations to the extent that it results in a shortage of employes and an increase in overtime. (N.T. 55)

19. Subsequent to the SCSC adjudication, the Commonwealth unsuccessfully attempted to reach an alternate resolution of the issue with the SCSC. (N.T. 56)

20. That on November 14, 2007, the SCSC issued an adjudication on an appeal by Dean Trittenbach, a Liquor Store Manager 3 (also referred to as an assistant manager) which contested his non-selection for a promotion to a Liquor Store Manager 3-A in Monroe County on the grounds that the PLCB's county of vacancy policy for promotions was a non-merit factor that discriminated against him as a Northampton County store employe. (N.T. 22, 41, Union Exhibit 2)

21. That Trittenbach, an LSM 3, is a member of ISSU.

22. In the Trittenbach adjudication, the SCSC determined that Trittenbach presented evidence establishing discrimination violative of Section 905.1 of the Civil Service Act, as amended. The SCSC overruled the action of the PLCB in the promotion of Debra Castellani to Liquor Store General Manager 3A. The SCSC also determined that THE position to which Castellani had been promoted "is directed to be vacated. Debra A. Castellani is returned to the position she held immediately prior to her promotion. The [PLCB] is directed to refill the vacated position by promotion without examination in accordance this adjudication…." (N.T. 22, 41, Union Exhibit 3)

23. After the Rupert decision, the PLCB sought to avoid the creation of a large number of vacancies following the annual store reclassification and the large number of interviews such vacancies would necessitate. To that end, the PLCB determined that employes in stores with an upward reclassification would have their positions reclassified upward, consistent with the store's classification. A vacancy would result only if the employee declined the upward reclassification. (N.T. 24, 41, Union Exhibit 3)

24. The PLCB management concluded that for SCSC purposes, an upward reclassification is not, technically, a promotion and does not involve the creation of a vacancy. Thus, the PLCB believed that this would avoid the domino effect of filling a large number of vacancies. (N.T. 63)

25. On January 18, 2009, representatives of the PLCB met with representatives of ISSU and the UFCW to discuss proposed modifications to the reclassification process. (N.T. 23, 34 and 52)

26. ISSU President David Wanamaker was present at the January 18, 2009 meeting. He voiced a concern regarding a negative impact on people who took time off to take promotional exams hoping to get a promotion. Wanamaker further told PLCB representatives that the proposed modification would make some people happy and some people unhappy. (N.T. 35)

27. By letter dated January 25, 2008, from Robert Koch, Director, Human Resource Management, to ISSU President Wanamaker and UFCW President Wendell Young IV, the PLCB confirmed the discussion held at the January 18, 2008, meeting. The letter states, in pertinent part:

> We will also be changing our process with regard to store quota changes. When a store grade changes upward, the affected employees working in the store at the time of the upgrade of the store quota, will be offered reclassification (promotion) consistent with the store's new grade level. If the affected employee(s) within the store agrees, they will be reclassified. If they do not accept the reclassification, they will be placed in the first available vacancy within their current grade. The upgraded position(s) will then be treated as a vacancy(ies) and employees who are in the correct grade of the store will be given an opportunity to transfer to the store. If no employees desire to transfer, the position will be filled via Civil Service Rules. Discipline or performance ratings less than standard to not affect an individual's ability to be reclassified.

(Union Exhibit 3)

28. The letter dated January 25, 2008, further stated, "If you have any questions or wish to further discuss these changes in policy, please contact me no later than February 8, 2008." (Union Exhibit 3).

29. No representative of ISSU requested a meet and discuss session in response to the January 25, 2008 letter. (N.T. 25 and 36)

30. The PLCB never refused any request from ISSU to meet and discuss over the issue. (N.T. 58)

31. The PLCB did not direct a copy of the January 25, 2008 letter to the membership of the meet and discuss unit but only to President David Wanamaker of ISSU. (N.T. 38)

32. That President Wanamaker of ISSU testified about the impact on supervisory employes that the change in the transfer process caused. Using Allegheny County as an example, he testified that there were nine reclassifications of stores in Allegheny County in May, 2008. He further testified that four stores (0206, 0252, 0273 and 0280) were reclassified from 1-A to 1-B. (N.T. 29-30, Union Exhibit 4)

33. That Wanamker further testified that although the above referenced stores show up as 1-B stores on the Union Exhibit 5, under the change in store quota process announced by the PLCB by letter dated January 25, 2008, forty 1-B managers would effectively not have the opportunity to transfer into those stores as they had in the past. (N.T. 30-32, Union Exhibit 5)

34. That Wanamaker also testified that the procedure for preference transfer which was in place prior to January 2008 in which a bargaining unit member could list a store and obtain a transfer because of a reclassification based upon a store quota change was the "greatest opportunity" for preference transfer that a unit member would have. (N.T 17)

35. That PLCB's Koch is now an analyst in the PLCB's Human Resources office. He testified that the PLCB had not changed the policy, it would not have had to conduct interviews for transfers pursuant to the preference transfer policy, which was in place in Recommendation No. 23 of the MOU. (N.T. 60-61)

DISCUSSION

Section 1201(a)(1) Allegation

ISSU's first charge alleges that the PLCB's issuance of a new State Store Manager's transfer policy on January 25, 2008 was retaliation to an ISSU member's success at a State Civil Service Commission (SCSC) adjudication, thereby violating Section 1201(a)(1) of PERA. As stated in the Board's October 12, 2008 Order Directing Remand,

> "The Union further alleges that the Commonwealth interfered with the employes' exercise of rights under PERA by changing its lateral transfer policy in response to two Civil Service appeals filed by the Union in which the Commonwealth was to rescind two promotions/transfers...."

ISSU requests that the Board find that the Commonwealth violated Section 1201(a)(1), that it order the PLCB to rescind the January 25, 2008 policy and that it rescind all transfers made pursuant to the policy.

Section 1201(a)(1) of PERA prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act." 43 P.S. 1101.1201 (a)(1). There are two types of violations of this section, derivative and independent. A derivative violation occurs because of a violation of one of the other specifically enumerated unfair labor practices, while an independent violation occurs not in connection with a separately enumerated unfair labor practice under Section 1201(a). Pennsylvania Social Services Union, Local 668, SEIU v.

Commonwealth of Pennsylvania (Department of Labor and Industry, Office of Vocational Rehabilitation), 31 PPER ¶ 31127 (Final Order, 2000).

An independent violation of this section will be found if the actions of the employer, in light of the totality of the circumstances under which the particular act occurred, tended to be coercive, regardless of whether employes were, in fact, coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)

In its exceptions to the Secretary's dismissal, and in the hearing on the Board's Remand Order, the ISSU alleged that the Commonwealth committed an independent Section 1201(a)(1) violation.

As a preliminary matter, the Commonwealth argues that the independent section 1201(a)(1) charge should be dismissed under the Board's four-month statute of limitations rule, found at Section 1505 of PERA, 43 P.S. 1101.1505 and Section 95.32 of the PLRB's regulations, 34 Pa. Code § 95.32. See North Pocono School District, 32 PPER 32117 (Final Order, 2001). The Commonwealth argues that the Union merely used the exception procedure to add allegations in support of an independent 1201(a)(1) violation. Then, in the hearing held pursuant to the Board's October 12, 2008 Order Directing Remand to the Secretary developed these allegations with facts.

The Commonwealth cites Board precedent that exceptions are not the appropriate procedure for amending a charge to raise a new cause of action. Eishenhart v. Eastern Lancaster County School District, 40 PPER 11 (Final Order, 2009).

Facts supporting an independent 1201(a)(1) violation were not added until the June 30, 2008 exceptions to the Secretary's letter. The ISSU then used the hearing on the remand order to develop facts to show an independent 1201(a)(1) charge when no such cause of action was originally set forth in the charge. However, I am constrained by the Board's October 28, 2008 Order Directing Remand that allowed "further clarifications in the exceptions," (p. 1) to permit the evidence in support of the "further clarifications." Accordingly, this discussion will now proceed to the merits.

As for the merits of the charge, the Commonwealth argues that the 1201(a)(1) should be dismissed. The Commonwealth puts forth several arguments.

The Commonwealth first argues that ISSU has not proven the requisite elements of a Section 1201(a)(1) violation. While evidence of improper motive is not necessary to establish a violation of this section, all surrounding circumstances, including motivation, may be considered in determining whether employer conduct has a "tendency to coerce" employes. Woodland Hills School District, 13 PPER ¶ 13298 (Final Order, 1982). To make this determination, the Board uses an objective standard and asks whether a reasonable employe would conclude that the employer's actions, under the circumstances, would have a tendency to coerce employes. Mifflin County School District, 28 PPER ¶ 28090 (Final Order, 1997), aff'd 28 PPER ¶ 28186 (Mifflin County Court of Common Pleas, 1997); Northwestern School District, 24 PPER ¶ 24141 (Final Order, 1993).

The complainant bears the burden of proving a prima facie case of a Section 1201(a)(1) violation. Once a prima facie case has been established, the respondent has the burden to defend and may offer the affirmative defense that it had a legitimate reason for the action it took and that the need for this action justified any inference with the employes' exercise of statutory rights. Pittston Area School District, 26 PPER ¶ 26176, at p. 411 (Proposed Decision and Order, 1995), 27 PPER ¶ 27066 (Final Order, 1996).

The Commonwealth points out that ISSU, throughout its brief, has incorrectly stated its legal status and legal relationship with the Commonwealth. ISSU's brief stated that its members are "bargaining unit" members and that the Memorandum of Understanding for the period July 1, 2007 to June 30, 2011 is a "collective bargaining agreement." The Board has certified ISSU as the representative of a meet and discuss unit of first level supervisors under Section 301(17) of PERA. Therefore ISSU is not a bargaining unit. The document at issue clearly states that ISSU is a party to a memorandum of understanding

with the Commonwealth. Therefore there is no collective bargaining agreement. The Commonwealth is correct to point out the Union's incorrect choice of language.

Nevertheless, following the Board's Remand Order, I am treating ISSU's argument as one that contends that its member acted within his statutory rights when he asserted his memorandum of understanding rights. The argument then follows to contend that the PLCB change of policy with regard to store quota changes was made in response to protected activity, the SCSC appeal by an ISSU member in lieu of a grievance. ISSU asserts that the Commonwealth's response was retaliation in violation of Section 1201(a)(1).

ISSU argues that unit members asserted a protected right by choosing to "pursue appeals through the Civil Service Commission rather than through the grievance procedure as was their contractual right pursuant to Recommendation No. 15…" (ISSU Brief at p. 6). Thus, ISSU goes on to argue that when the PLCB modified its procedure, it was "attempting to make certain in a loud and insistent manner that, if a bargaining unit member chooses to challenge an action of the Commonwealth through the Civil Service appeal process as provided in the collective bargaining agreement, any success in front of the Civil Service Commission will be met with policy changes which nullifies the assertion of statutory rights by the bargaining unit members." (ISSU Brief, p. 7).

ISSU's charge seeks to remedy the harm done to those managers who are no longer able to make lateral store transfers, or who, in some cases, are no longer able to even submit their list of preferences for store transfers. The harm occurred because the January 25, 2008 policy change on store quotas simply reclassified those store managers when the store's classification changed, thereby closing off vacancies for transfers that would otherwise be available. (See ISSU Specification of Charges, Paragraph 6).

The Commonwealth's first defense is that ISSU has not shown that its members engaged in any protected activity, the predicate for finding a 1201(a)(1) violation.

The Commonwealth first argues that the store quota change at issue was the result of the Rupert civil service adjudication necessitating many more interviews for vacancies. Charles Rupert was not in the ISSU meet and discuss unit, but rather the UFCW bargaining unit. The Commonwealth argues that it is difficult to find retaliation against ISSU if it was a UFCW member who filed the grievance that caused the PLCB to change its manager transfer policies.

This argument is rejected. On its face, the PLCB's January 25 2008 policy change letter refers to two SCSC adjudications as the cause of the policy change. The PLCB's January 25, 2008, Policy Change stated that "[a]s a result of two recent Civil Service Adjudications, the PLCB finds it necessary to modify our promotion/reclassification processes…" (Union Exhibit 3) One of the two adjudications was in favor of an appeal by an ISSU member, Dean R. Trittenbach, a Liquor Store Manager 3 (Civil Service Appeal No. 25322).

Trittenbach filed a Civil Service Commission appeal challenging his non-selection for promotion to General Manager 3A at a store in Monroe County. The PLCB had advised him that he was not eligible for promotion because he was not currently employed in that county but rather in Northampton County. Trittenbach contended that the PLCB non-selection decision was "the result of discrimination" against out of county employes."

The SCSC agreed with Trittenbach, finding that the PLCB engaged in discrimination violative of Section 905.1 of the Civil Service Act, as amended. The Adjudication's last sentence stated, "The announcement notifying potential candidates of the vacancy shall specifically indicate that consideration is open to all current appointing authority employees who meet the criteria." The SCSC adjudication in Trittenbach made it clear that managers have promotion rights beyond their own counties. In light of these facts, it is not difficult to conclude that the PLCB developed the new policy in response to the Trittenbach adjudication as well as the Rupert decision.

The Commonwealth's second argument that there is no protected activity is that Trittenbach's civil service appeal was merely that of an employe seeking personal relief. The Commonwealth argues that such grievance activity does not fall within the definition

of protected activity, citing Coatesville Area School District, 20 PPER ¶ 20186 (Final Order, 1989). However, there are numerous Board cases holding that an employe is engaged in protected activity when he files a grievance. See, e,g. Chambers v. Commonwealth of Pennsylvani (DGS), 36 PPER 170 (Proposed Decision and Order, 2005), 37 PPER 139 (Final Order, 2006).

Trittenbach's filing a Civil Service appeal was an exercise in protected activity, because it was done pursuant to the Memorandum of Understanding that allowed the election of remedies. The parties' MOU provides for employes to choose between a grievance or a Civil Service Appeal to seek redress of a promotion grievance. ("A Civil Service employe may file his/her grievance under either the Civil Service appeal procedure or the Memorandum grievance procedure." Recommendation #15, Joint Exhibit 1).

ISSU argues that this protected activity should not have caused the PLCB policy change and that a violation should be found.

This leads to a discussion of the Commonwealth's second defense. The Commonwealth argues that even if Trittenbach's appeal is found to be protected activity, ISSU cannot argue that harm to an ISSU member leads to a finding that the Commonwealth violated 1201(a)(1). The Commonwealth argues that its motivation for the January 25, 2008 policy change was to stem the adverse effects of the Rupert decision, not to deal with the Trittenbach decision. Rupert was a UFCW member. It was the SCSC's Conclusion of Law in Rupert on the "failure to interview" candidates which caused the PLCB to vastly increase the number of candidates to be interviewed. The SCSC's Conclusion of Law stated the PLCB's "failure to interview available, non-veteran candidates in the Rule of Three for the position of Liquor Store General Manager 1B violates Management Directive 580.10 and Manual 580.1 as amended."

However, as discussed above, the January 25, 2008 policy change letter stated that it was made in response to two civil service adjudications, which would include Trittenbach. Also, as noted in above, an employer may violate 1201(a)(1) even if it did not intend to do so. The Board has stated that even an inadvertent action can be found to violate Section 1201(a)(1). Woodland Hills School District, supra. Eastern State School and Hospital, 14 PPER ¶ 14153 (Final Order, 1983). Accordingly, this defense is also rejected.

The Commonwealth's third defense to the 1201 (a)(1) charge is that the Commonwealth's policy change could not be found to have a "tendency to coerce" employes because the change was announced in a non-threatening manner at a January 18 meeting with leaders of the Union and was not therefore, inherently coercive. It is true that the policy change was first delivered to only the presidents of ISSU and UFCW. However, once the members of ISSU learned about the change, it would seem that to a reasonable person that a message was being sent that the change was caused by an ISSU member engaging in protected activity of filing a civil service appeal. In assessing whether ISSU members could reasonably view the PLCB policy change as coercive, it is important to look at the impact of the change on ISSU represented supervisors. President Wanamaker testified that the policy change adversely affected the ability of supervisors to transfer. The (Findings of Fact 32, 33 and 34). The PLCB policy change ended up harming ISSU members.

The Commonwealth's fourth defense is that any inherent coerciveness is outweighed by the legitimate business purpose behind the decision. See Pittston Area School District, supra. The Commonwealth argues that the legitimate business purpose was the cost savings from not having to conduct additional interviews necessitated by the SCSC adjudications. The Commonwealth also argues that if it did not change the policy the result would have been a delay in filling positions because of the additional interviews to be conducted.

However, as the Union points out, the Commonwealth was unable to determine the number of interviews that would result because the PLCB would not know the specifics of each personnel action. Also, the Union points out the Commonwealth would not have to conduct as many additional interviews if it simply allowed the existing quota and transfer policy to be maintained. The Commonwealth's witness, Robert Koch, the former PLCB's Director of Human Resources Management, admitted that interviews were not

necessary to implement the transfers under the existing preference transfer policy (Recommendation No. 23 of the Memorandum of Understanding). (Finding of Fact 35). Accordingly, the legitimate business purpose defense will not be granted.

Considering all of the circumstances of this case, to a reasonable observer, it must be concluded that the Commonwealth overreacted to the Rupert and Trittenbach adjudications and was not meeting a legitimate business purpose when it ended the existing transfer policy. To deal with the impact of these SCSC adjudications, the PLCB changed the transfer policy for all the supervisors in the unit. This adverse employer action would have a tendency to coerce ISSU represented supervisors from future grievance filing or civil service appeals.

Section 101 of PERA states that one of the purposes in enacting PERA was "to promote orderly and constructive relationships between all public employers and their employes." To be faithful to this purpose statement, Trittenbach's protected activity in filing a SCSC appeal should not have resulted in his fellow first level supervisors having their transfer rights changed. Even though supervisory employes in meet and discuss units are not entitled to the same rights as the bargaining unit employes they supervise, they must still be entitled to some of the protections in PERA.

In ISSU v. Commonwealth of Pennsylvania, Pennsylvania Labor Relations Board, 547 A2d 465, (Pa. Cmwlth. 1988) the Commonwealth Court affirmed the Board's decision that the Commonwealth had not committed an unfair practice by refusing to process an ISSU member's grievance to the fifth step of he grievance procedure outlined in the MOU. However, the Court urged the ISSU members not to view the meet and discuss provisions of PERA and memoranda of understanding developed as "without worth," pointing out that fostering labor peace between public employers and their employes" was a function of the Memorandum and a rationale, in part, for the passage of PERA. Id at 469.

If public employers could retaliate against supervisors in meet and discuss units because they utilized the grievance procedures set forth in memoranda of understanding, those statutory meet and discuss provisions would be mere legislative surplusage, without the value noted in ISSU v. Commonwealth of Pennsylvania, Pennsylvania Labor Relations Board, Id. To come to any other conclusion would expose supervisors to unfair treatment. It is difficult to comprehend that the drafters of PERA intended to allow, for instance, a public employer to terminate a meet and discuss employe simply because that employe used the grievance procedures provisions in a meet and discuss memorandum of understanding to seek redress.

For all of these reasons, it must be concluded that the Commonwealth's actions here constituted a violation of Section 1201(a)(1) of PERA.

To remedy this violation of PERA, it is important to note that Section 1303 of the Act requires that the Board take "such reasonable affirmative action . . .as will effectuate the policies of this act." 43 P.S. 1101.1303. The matter of remedying an unfair practice is within the Board's sound discretion. Appeal of Cumberland Valley School District, 483 Pa. 134, 384 A2d 946 (1978). The Board has stated that its broad powers are remedial and not punitive. Commonwealth of Pennsylvania (Department of Education), 15 PPER ¶15206 (Final Order, 1984)

ISSU argues that the Commonwealth's violation of Section 1201 (a)(1) should result in a return to the status quo as well as an order to cease and desist from interfering, restraining and coercing employe in the future. In the present case a return to the status quo would mean the rescission of the transfers made under the new policy.

However, in cases where the return to the status quo would unfairly penalize employes for a wrong they did not commit, the Board has declined to order a return. See Highland Sewer and Water Authority, 4 PPER 116 (Nisi Decision and Order, 1974); Mifflin County School District, 21 PPER ¶ 21127 (Final Order, 1990). Accordingly, the Commonwealth should be ordered to cease and desist from this violation and to rescind that part of the January 25, 2008 policy change dealing with store quota changes. The PLCB will not be ordered to rescind transfers that have been made between January 25, 2008 and the date of

this order because of the likely disruption that it would cause to the employes who transferred in the last store reclassification period, pursuant to the new policy. Accordingly, the remedy ordering a return to the previous policy for store quota changes and transfers will be prospective only.

Section 1201(a)(5) Allegation

In its exceptions to the Secretary's letter refusing to issue a complaint, ISSU did not allege error with regard to her dismissal of the Section 1201(a)(5) refusal to bargain allegations. The Secretary noted that under Section 704 of PERA, 43 P.S 1101.704, employers are not obligated to bargain with meet and discuss units, so a change in working conditions for a meet and discuss unit would not give rise to a refusal to bargain charge. Accordingly, that allegation is deemed to be withdrawn and there will be no further discussion of the issue.

Section 1201(a)(9) Allegation

ISSU also alleges that the Commonwealth committed an unfair practice in violation of Section 1201(a)(9) by not fulfilling its duty to meet and discuss when it issued the January 25, 2008 policy change.

Under PERA, although public employers are not required to bargain "over matters of inherent managerial policy," they must still "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon *upon request* by public employe representatives." Section 702 of PERA (emphasis added).

This charge comes to the hearing examiner because the Board's Order Directing Remand to Secretary for Further Proceedings stated, "The Union alleges in its exceptions that it requested a meet and discuss session with the Commonwealth and that the Commonwealth refused the Union's request." (Order, p. 1)

Section 301(17) of PERA, 43 P.S. § 1101.301(17), further provides that the term meet and discuss "means the obligation of a public employer *upon request* to meet at reasonable times and discuss recommendations submitted by representatives of public employes" and that "any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." (Emphasis added by Examiner)

The Commonwealth argues that ISSU did not prove the requisite elements of a meet and discuss violation. It argues that ISSU never requested to meet and discuss but simply went ahead and filed the present charge. President Wanamaker testified that ISSU did not request another meeting after the January 18, 2008 meet and discuss session with management or after the January 25, 2008 policy change memorandum was issued. A prerequisite to the employer's duty to provide a meet and discuss session is the union's demand for such session. Teamsters Local 77 & 250 v. Pa. Labor Relations Bd., 786 A.2d 299 (Pa. Cmwlth. 2001); Corr. Inst. Vocational Educ. Ass'n PSEA/NEA v. Dep't of Corr., 37 PPER ¶ 118 (Final Order, 2006). Accordingly, because the Union never requested a meet and discuss session with the Commonwealth before it filed the unfair practice charge, the Section 1201(a)(9) charge is dismissed.

CONCLUSIONS

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

1. That the Commonwealth of Pennsylvania, Liquor Control Board, is a public employer within the meaning of Section 301(1) of PERA.

2. That the Independent State Store Union is an employe organization within the meaning of Section 301(3) of PERA.

3. That the Board has jurisdiction over the parties hereto.

4. That the Commonwealth of Pennsylvania, Liquor Control Board, has committed unfair practices in violation of Section 1201(a)(1) of PERA.

5. That the Commonwealth of Pennsylvania, Liquor Control Board, has not committed unfair practices in violation of Sections 1201(a)(5) and (9) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Commonwealth shall:

1. Cease and desist from interfering with restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Take the following affirmative action:

(a) Rescind paragraph 5 of the January 25, 2008 policy change letter to ISSU and UFCW;

(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 employes in every PLCB store 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 ISSU.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this twenty-sixth day of February, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner