

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

SERB OPINION 2023-003

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case Number: 2022-ULP-09-0108

ORDER
(OPINION ATTACHED)

Before Chair Zimpher, Vice Chair Mills, and Board Member Walter: October 26, 2023.

On September 2, 2022 Cleveland Police Patrolmen's Association ("the Union" or "Intervenor") filed an unfair labor practice ("ULP") charge with SERB ("SERB", "the Board", or "Complainant"), pursuant to and in accordance with Section 4117.12(B) of the Ohio Revised Code and Section 4117-7-01 of the Ohio Administrative Code. The Union charged that the City of Cleveland ("the Employer" or "Respondent") violated Sections 4117.11(A)(1) and (5) of the Ohio Revised Code, by failing to bargain over the decision and effects of implementing changes as to how body cameras are used by officers.

On March 9, 2023, SERB determined that probable cause existed to believe the Employer had committed or was committing unfair labor practices in violation of R.C. 4117.11(A)(5) by refusing to bargain over the Employer's decision to amend its body camera policy to include the recording of audio while body cameras are in buffering mode. SERB directed the parties to mediation for a period not to exceed sixty (60) days, authorizing the issuance of a complaint and direction to hearing in the event that mediation was unsuccessful. Mediation was held on May 3, 2023 and proved unsuccessful. A complaint was issued on May 23, 2023.

The matter was assigned to a SERB Administrative Law Judge ("ALJ") and a telephone conference was held with the parties on June 2, 2023; the parties subsequently submitted pre-hearing statements, witness lists and exhibits on June 15, 2023 and a record hearing was held on June 22, 2023. Post-hearing briefs were submitted by the parties on August 10, 2023. Subsequently, a Proposed Order was issued by the ALJ on September 8, 2023. Thereafter, the Respondent filed Exceptions with the Board on September 28, 2023, which were responded to by the Complainant and Intervenor on October 5, 2023, and October 9, 2023, respectively. Additionally, the Intervenor filed Exceptions with the Board on September 28, 2023, which was responded to by the Respondent on October 10, 2023.

After reviewing the Unfair Labor Practice Charge, Complaint, Answer, Proposed Order, Exceptions, Responses to Exceptions, and the entirety of the information contained in the record, the Board adopts the Finding of Fact, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Proposed Order, *incorporated herein by reference*, finding that Respondent, City of Cleveland, violated Section 4117.11(A)(5) of the Ohio Revised Code by refusing to bargain the effects of its decision to expand the media captured by its WCS to include "buffering mode" audio.

The City of Cleveland is ordered to:

A. CEASE AND DESIST FROM:

- (1) Refusing to bargain collectively with the exclusive representative of certain of its employees.
- (2) Recording of WCS buffering mode audio until the parties have completed good faith bargaining.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Bargain in good faith with the Cleveland Police Patrolmen's Association over the effects of its decision to expand the media captured by its WCS to include "buffering mode" audio.
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Cleveland Police Patrolmen's Association work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Cleveland shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) Notify the State Employment Relations Board in writing within twenty calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

IT IS SO ORDERED.

ZIMPHER, Chair; MILLS, Vice Chair; and WALTER, Board Member, concur.



W. CRAIG ZIMPHER, CHAIR

TIME AND METHOD TO PERFECT AN APPEAL

This is a final appealable Order. You are hereby notified that an appeal from this Order may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal setting forth the order appealed from and the grounds of appeal with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's Order. A copy of the notice of appeal must also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Administrative Code Rule 4117-7-07.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 20th day of October, 2023.



ERIN E. CONN, ADMINISTRATIVE OFFICER

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD, :
:
Complainant, : Case No. 2022-ULP-09-0108
:
v. :
:
CITY OF CLEVELAND, : September 8, 2023
:
:
Respondent. : JEANNETTE E. GUNN
:
: Administrative Law Judge
:
:

PROPOSED ORDER

I. INTRODUCTION

On September 2, 2022 Cleveland Police Patrolmen's Association ("the Union" or "CPPA") filed an unfair labor practice ("ULP") charge with SERB ("SERB" or "the Board"), pursuant to and in accordance with Section 4117.12(B) of the Ohio Revised Code ("R.C") and Section 4117-7-01 of the Ohio Administrative Code. The Union charged that the City of Cleveland ("the Employer" or "the City") violated R.C. 4117.11(A)(1) and (5), by failing to bargain over the decision and effects of implementing changes as to how body cameras are used by officers.

On March 9, 2023, SERB determined that probable cause existed to believe the Employer had committed or was committing unfair labor practices in violation of R.C. 4117.11(A)(5) by refusing to bargain over the Employer's decision to amend its body camera policy to include the recording of audio while body cameras are in buffering mode. SERB directed the parties to mediation for a period not to exceed sixty (60) days, authorizing the issuance of a complaint and direction to hearing in the event that mediation was unsuccessful.

Mediation was held on May 3, 2023 and proved unsuccessful. A complaint was issued on May 23, 2023. A telephone conference with the parties and the assigned Administrative Law Judge was held on June 2, 2023; the parties subsequently submitted pre-hearing statements, witness lists and exhibits on June 15, 2023 and a record hearing was held on June 22, 2023. Post-hearing briefs were submitted by the parties on August 10, 2023

II. ISSUE

Did the City violate Section 4117.11(A)(5) of the Ohio Revised Code when it refused to bargain the decision to amend its body camera policy to include the recording of audio while in buffering mode.

III. FINDINGS OF FACT¹

1. The City of Cleveland ("the Employer" or "the City") is a "public employer" as defined by Section 4117.01(B) of the Ohio Revised Code. (S. 1)
2. The Cleveland Police Patrolmen's Association ("the Union" or "CPPA") is an "employee organization," as defined by Section 4117 01(D) of the Ohio Revised Code (S. 2) and is the exclusive representative for all persons employed in the rank of Patrol Officer and/or Trainee ("Patrol Officers" or "Officers") by the City of Cleveland, Division of Police, Department of Public Safety. (S. 3) Of the approximately 1,255 officers in the Cleveland Police Department, roughly 900 are CPPA members.
3. Most Patrol Officers are stationed in two-person patrol cars, as opposed to one-person patrol cars. Day shifts for Patrol Officers are eight hours in length, while afternoon and evening shifts are ten hours in length. Officers are not prohibited from discussing personal matters or union-related matters while on duty.
4. The City and the Union are parties to a collective bargaining agreement ("CBA"), effective April 1, 2022 through March 31, 2025. (S. 4, Jt. Exh. 1) The CBA contains a grievance-arbitration process that is final and binding. (S. 6., Jt. Exh. 1)
5. The City's Division of Police ("the Division") promulgates rules and regulations through the issuance of General Police Orders ("GPO") and Divisional Notices ("DN"). GPOs constitute the rules and procedures for how the Division of Police operates and apply to each member of the Division of Police. DNs are temporary notices that can modify existing GPOs. DNs are often converted to GPOs through revising and reissuing GPOs with the DNs incorporated therein. Upon issuance, GPOs and DNs are disseminated to each officer via email to their assigned City email address and read during roll call for at least seven days to provide notice.
6. In 2013, the City issued a DN announcing that it was initiating a pilot project to test the feasibility of a Wearable Camera System ("WCS"). (City Exh. A) The CPPA filed a grievance which the City denied, citing to the Management Rights clause of the parties' CBA. (City Exh. B) The CPPA did not move the matter to arbitration.

¹ All references to the Joint Stipulations of Fact are indicated parenthetically by "S" followed by the stipulation number. All references to the Joint Exhibits are indicated parenthetically by "Jt. Exh." followed by the exhibit number, City Exhibits are indicated by "City Exh." and Intervenor Exhibits are indicated by "Int. Exh." References to stipulations and exhibits in the Findings of Fact are intended solely for convenience and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

7. In 2014, the City expanded the scope of the WCS pilot project and issued DN 14-226. (S 7, Jt. Exh. 2)
8. Following the pilot program, the City implemented the use of WCS within the Division of Police through General Police Order ("GPO") 3.2.20, issued on February 2, 2015. (S. 8, Jt. Exh. 3) Current Chief of Police Dornat Drummond ("Chief Drummond"), who was the Division of Police's Deputy Chief of Operations at that time, was a member of the City's committee tasked with researching and developing the implementation of WCS within the Division of Police.
9. On February 4, 2015, the Union filed a grievance and unfair labor practice charge regarding the unilateral implementation of GPO 3.2.20. The City denied the CPPA's grievance, citing the Management Rights clause of the parties' CBA, and the CPPA moved the matter to arbitration. SERB deferred the unfair labor practice charge to arbitration, stating that "[c]ontract interpretation and application appear to lie at the heart of both the unfair labor practice charge and grievance dispute."
10. On April 22, 2016, the Arbitrator issued an Opinion and Award denying the grievance, in which the Arbitrator held that the City's decision to implement GPO 3.2.20 did not violate any provisions of the parties' collective bargaining agreement or any binding past practice. The CPPA filed a motion to withdraw its unfair labor practice charge, which SERB granted on June 30, 2016.
11. On August 2, 2017, the City issued a revised GPO 3.2.20. (S. 9, Jt. Exh. 4) The CPPA did not file a grievance challenging the City's issuance of the revised GPO.
12. On January 1, 2020, the City issued GPO 4.06.04, titled "Wearable Camera System," which superseded GPO 3 2.20 and remains the current version of the GPO (S. 10, Jt. Exh. 5)
13. GPO 3.2.20 and GPO 4 06.04 detail how audio and video captured by the WCS is recorded, stored, and reviewed. (Jt. Exh. 2, 4 and 5)
14. At the beginning of each tour of duty, Officers are required to power on the WCS and leave the WCS powered on for the duration of their tour of duty, placing the WCS in a location "that will most closely capture the officer's field of view." Once powered on, the WCS is in either the buffering mode or event mode. (S 10, Jt. Exh. 2 and 5)
15. While the WCS is in buffering mode it continuously loops thirty seconds of video only. When in event mode, the WCS records both audio and video. (Jt. Exh. 2, 4 and 5)
16. Officers are required to place the WCS into event mode prior to responding to all calls for service and prior to all investigative or enforcement contacts with the

- public This includes, but is not limited to calls for service, traffic stops, arrests, searches, interviews, pursuits, prisoner/citizen transports, and any situation in which an officer believes captured media may be of use. (Jt. Exh 5)
17. GPO 3.2.20 and GPO 4.06.04 note that users are alerted by an indicator light and audible tone when the WCS has been placed into event mode and is actively recording both video and audio. Both GPOs also provide that once the WCS has been placed into event mode, thirty seconds of pre-event video without audio will be captured from buffering mode. (Jt. Exh. 2 and 5)
 18. Officers are forbidden and unable to edit, delete, or alter captured WCS media once it has been recorded. (Jt. Exh. 5)
 19. At the end of each tour of duty, Officers are required to categorize and upload all captured WCS media. Captured WCS media is stored and accessible through evidence.com, a cloud-based storage system. Evidence.com is operated by Axon, a private company under contract with the City. (Jt. Exh 5)
 20. Once stored, WCS media is identifiable by Computer Aided Dispatch number, the recording officer's name and badge number, the location where the video was filmed or the date when the video was recorded.
 21. Stored WCS media is preserved in accordance with a standard retention schedule. Depending on the category, WCS media may be maintained by Axon for a minimum of 90 days or may be stored permanently.
 22. Stored WCS media is subjected to both regular and random review by members of the Division of Police and is accessible by a wide variety of individuals, including members of the general public. (Jt. Exh 5, Comp. Exh. 3)
 23. Within the Division of Police, WCS media is accessible to each person in an Officer's chain of command, up to and including the Chief of Police. Supervisors are required to review captured media to confirm compliance with Division policy and Lieutenants review each officer under their command once per year by reviewing eight different WCS recordings generated by each officer. Reviewing supervisors are expected to identify any misconduct observed in the captured media and pursue appropriate corrective action, including discipline
 24. The Office of Professional Standards ("OPS"), an independent agency within the Department of Public Safety charged with receiving and investigating non-criminal complaints filed by members of the general public against Officers in the Division of Police, may access all stored WCS media without filing a public records request. OPS investigations, including any stored WCS media involved in the investigation, are reviewed by the Civilian Police Review Board (the "Review Board") and the

- Review Board may recommend discipline to Chief Drummond upon a determination of officer misconduct.
25. Stored WCS media related to an arrest is attached to the arrest report and can be accessed by prosecutors and defense attorneys involved in litigation of that arrest.
 26. News outlets and members of the general public may access stored WCS media through a public records request.
 27. Stored WCS media may be and has been used to subject Officers to disciplinary action. Violations of WCS policies are classified within the Division's Disciplinary Matrix as a Group I violation. Certain types of officer conduct recorded by WCS media, such as "abusive/demeaning language" and "conduct unbecoming," are classified as Group II violations. (Comp. Exh. 2)
 28. After becoming Chief of Police in 2022, Chief Drummond decided to modify the functionality of the WCS to allow the "buffering mode" loop to capture both video and audio, in an effort to provide additional transparency for the benefit of the general public.
 29. On August 24, 2022, the City issued DN 22-269, effective August 25, 2022. DN 22-269 stated, in part, that "[b]uffering mode will be updated from a thirty second loop to a one minute loop" and "[w]hile the WCS is in buffering mode, audio and video will be recorded prior to being placed in event mode for one minute" (S. 11, Jt Exh. 6)
 30. Prior to DN 22-269, the WCS body cameras did not record audio until the Officer placed the camera in the event mode.
 31. Chief Drummond did not negotiate with the CPPA regarding the recording of buffering mode audio and the issuance of DN 22-269.
 32. After the issuance of DN 22-269, Union President Jeff Follmer called Chief Drummond to express his concern about the recording of buffering mode audio and to request that the City negotiate the changes in the WCS Order. Chief Drummond refused to do so.
 33. The Union's counsel emailed a letter dated August 26, 2022, to Chief Drummond, requesting that the City bargain over DN 22-269 and the recording of buffering mode audio. (Comp. Exh 1)
 34. On or about September 2, 2022, the Union filed the instant unfair labor practice charge against the City (S. 13, Jt. Ex. 8)

35. On or about September 7, 2022, the City issued DN 22-299, which stated, in part, that "effective immediately ... [b]uffering mode will be updated from a one minute loop to a thirty second loop" and "[w]hile the WCS is in buffering mode, audio and video will be recorded prior to being placed in event mode for thirty seconds." (S 12, Jt. Exh. 7)
36. The changes effectuated by DN 22-269 and DN 22-299 impacted only the audio recording functionality of the WCS during the "buffering mode" loop and did not change the requirements of Officers with respect to how they utilize and operate the WCS system and equipment.
37. Since implementing DN 22-269 and DN 22-299, no Officers have been disciplined as the result of audio captured during the "buffering mode."

IV. ANALYSIS AND DISCUSSION

The City is alleged to have violated R.C. 4117.11 (A)(5), which states, in relevant part.

(A) It is an unfair labor practice for a public employer, its agents or representatives to:

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117 of the Revised Code;

Complainant has the burden to demonstrate by a preponderance of the evidence that an unfair labor practice has been committed. R.C. 4117.12(B)(3) The issue as stated within the Board's directive is whether the City violated R.C. 4117.11(A)(5) "when it refused to bargain its decision to amend its body camera policy to include the recording of audio while body cameras are in buffering mode." As clarified in the Complaint and developed in the parties' briefs and testimony at record hearing, the issues to be considered are more clearly articulated as to whether the City violated R.C. 4117.11(A)(5) by 1) refusing to bargain its unilateral decision to expand the media captured by its WCS to include "buffering mode" audio; and 2) refusing to bargain the effects of implementing changes to the WCS policy reflecting that decision

Based upon the analysis herein, the stipulations of the parties and the evidence contained in the record, Complainant has failed to meet its burden of proof regarding its allegation that the City violated R.C. 4117.11(A)(5) by refusing to bargain its unilateral decision to expand the media captured by its WCS to include "buffering mode" audio. Complainant has, however, met its burden to prove that the City violated R.C. 4117.11(A)(5) by refusing to bargain the effects of its decision.

The duty to bargain collectively requires a public employer to bargain in good faith with respect to mandatory subjects of collective bargaining. *Union Twp. Bd. of Trustees v. Fraternal Order of Police, Ohio Valley Lodge No. 112*, 146 Ohio App.3d 456 (12th Dist. 2001), citing *Cincinnati v. Ohio Council 8, AFSCME* (1991), 61 Ohio St.3d 658 (1991); *Lorain City School Dist. Bd. of Ed. v. SERB*, 40 Ohio St 3d 257 (1988). R.C. 4117.08(A) sets forth the mandatory subjects of collective bargaining, namely:

(A) All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section

Unless it agrees otherwise in a collective bargaining agreement, a public employer has the authority to determine matters of inherent managerial policy as outlined in R.C. 4117.08(C). The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.

However, because R.C. 4117.08(A) requires public employers to bargain with an exclusive representative on all matters relating to wages, hours, or terms and other conditions of employment, if a subject involves the exercise of inherent managerial discretion but also materially affects any of these factors, a balancing test must be applied to determine whether the subject is a mandatory or permissive subject of bargaining. *In re SERB v. Youngstown City School Dist. Bd. Of Ed.*, SERB 95-010 (6-30-95).

Youngstown established a three-pronged balancing test to determine whether a subject arising from the exercise of a managerial right that also affected wages, hours, terms or conditions of employment must be bargained or not. The test examines: 1) the extent to which the subject is logically and reasonably related to wages, hours, terms and conditions of employment; 2) the extent to which the employer's obligation to negotiate may significantly abridge its freedom to exercise those managerial prerogatives set forth in and anticipated by R.C. 4117.08(C), including an examination of the type of employer involved and whether inherent discretion on the subject matter at issue is necessary to achieve the employer's essential mission and its obligations to the general public; and 3) the extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter.

- A. The City's unilateral decision to amend its body camera policy to include the recording of audio while body cameras are in buffering mode is not a mandatory subject of bargaining.

Two of the Board's recent opinions, *In re City of Sharonville*, SERB Opinion 2021-004 (11-19-2021) and *In re City of Cleveland*, SERB Opinion 2022-001 (8-10-2022), shed light on the extent to which public employers may capture video and/or audio to surveil their employees without bargaining. *Sharonville* involved continuous video and audio recording in the offices and living quarters of firefighters. SERB ruled that such broad surveillance, which was likely to pick up on many personal conversations unrelated to the employer's essential mission, was a mandatory subject of bargaining. In *Cleveland*, SERB ruled that the public employer could record both video and audio in ambulances during runs when lights and sirens were on without bargaining. In the latter case, the Board determined that the employer's collection of video and audio was much more limited than the continuous recording in *Sharonville* and was narrowly tailored to study the employer's work mission. On appeal, the Cuyahoga County Court of Common Pleas affirmed SERB's Order finding that the City was required to bargain the effects, but not the implementation, of the camera program. *City of Cleveland v. SERB*, CV 22 967903 (7-31-2023), *appealed* (8-23-2023).

Under the first prong of *Youngstown*, the capture of audio while in buffering mode considerably alters Patrol Officers' conditions of employment. Undoubtedly, at least a portion of conversation or monologue by Patrol Officers will always be recorded, and potentially preserved by subsequent activation of event mode. The traditional condition of video-only recording while in buffering mode allowed for relative privacy or control over what was heard. Now, a Patrol Officer cannot verbalize thoughts without the specter of recording. Dialogue between Patrol partners will also necessarily be subject to surveillance, dampening the candor of personal conversations or bantering about policy or working conditions, as well as potentially chilling protected-activity discussions. This tends to implicate the limits on audio surveillance without first bargaining created in *Sharonville*.

Under the second prong of *Youngstown*, however, the public employer has a compelling interest in using technology to "take actions to carry out the mission of the public employer as a governmental unit." R.C. 4117.08. The addition of audio to the video already being captured in buffering mode is very reasonably calculated to create a more complete and unbiased record of the conditions immediately preceding an event. This brief recording, preserved only where followed by an event, comes much closer to the kind of less impactful surveillance in *Cleveland*, which did not require bargaining over the decision itself.

The third prong of *Youngstown* deals with the effectiveness of bargaining to resolve the matter. In this case, the answer is likely "no." Based on evidence adduced during the hearing, it is apparent that the Union would not support the recording of audio by WCS body cameras while in buffering mode. There is no indication that it could or

would propose alternatives which would allow for buffering mode audio collection in a different manner. The employer implemented its decision without bargaining and, after consideration, voluntarily decreased the length of time it originally proposed for the capture of buffering mode audio. As a no-strike unit, conciliation over the matter would not likely affect the ultimate outcome, namely pre-event audio recording in buffering mode. There is little to no room for downward concessions (less recording time).

B. The Management Rights and Zipper ("Witnesseth") clauses in the CBA are not material to the duty to bargain in this case.

The City argues that the Union specifically waived its ability to bargain any changes to policy during the life of the current collective bargaining agreement. The City points to the CBA's "Management Rights" clause, which provides that the Employer can "[I]mplement new or revised existing policies that do not conflict with the express terms of the CBA," as well as the language contained in the CBA's "Witnesseth" clause, which states that the parties "[V]oluntarily waive the right to demand new proposals on any subject or matter, not included herein, during the term of this Contract, even though such subject matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Contract."

SERB precedent heavily disfavors language purporting to extinguish the right to bargain where it is "not a specific nor a clear and unmistakable waiver" of a statutory right to bargain *In re Cleveland*, SERB 2022-001 (8-10-2022). See, also, *Lakewood v. SERB*, 66 Ohio App.3d 387 (8th Dist. 1990). Here, there is no specific waiver on the subject of surveillance or audio surveillance. Regardless of where the City's referenced provisions are located in the CBA, there is no clear or unmistakable indication that the Union intended to give up its right to bargain expanded employee surveillance, including by audio recording. The historical fact that audio surveillance during event mode had not previously been contested does not operate as a waiver of bargaining over new surveillance

C The City must bargain the effects of its decision to expand audio recording.

GPO 4.06.04 acknowledges the potential for discipline arising from "[M]isconduct and/or repeated violations or irregularities" of WCS policy; Chief Drummond acknowledged in his testimony that Officer misconduct captured in WCS media has been the basis for discipline in the past and would continue to be a potential basis for discipline going forward.

Since the announcement of the *Youngstown* test, SERB has specifically considered whether discipline is a mandatory subject of bargaining, holding that where an employer's conduct or policy contains a disciplinary component that affects wages, hours, or other terms and conditions of employment, that policy is a mandatory subject of bargaining. *In re Cuyahoga County Sheriff's Department*, SERB 99-018 (6-30-99). A

dress code policy revision containing a disciplinary component was considered by SERB in *Cuyahoga County Sheriff*, with the Board finding that because discipline for a policy violation could result in the loss of income and other adverse employment consequences, the policy revision directly affected "wages," and was, therefore, a mandatory subject of bargaining.

In this case testimony was clear that Officers could be disciplined for misconduct captured in stored WCS media, including buffering mode video and audio. Applying *Cuyahoga County Sheriff* to the facts at hand, the disciplinary component of the City's WCS policy directly affects wages and its revision is, therefore, a mandatory subject of bargaining. See also, *Union Twp. Bd. Of Trustees v. Fraternal Order of Police, Ohio Valley Lodge No. 112*, 2001-Ohio-8674. The City's unilateral implementation of DN-269 and DN-299 violates R.C. 4117.11(A)(5).

Although the decision to expand audio is the employer's prerogative, the potential for discipline arising from the recordings is a mandatory subject of bargaining. Policy decisions which may be unilaterally set by the public employer but are not mandatorily bargainable are not precluded from mandatory bargaining over the impact, or effects, of the implementation of such decisions on wages, hours, or terms and conditions of employment when an appropriate showing of negotiable impact has been made. Here, the potential for discipline is a negotiable impact.

V. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge recommends the following Conclusions of Law:

1. The City of Cleveland ("the Employer" or "the City") is a "public employer" as defined by Section 4117.01(B) of the Ohio Revised Code. (S. 1)
2. The Cleveland Police Patrolmen's Association ("the Union" or "CPPA") is an "employee organization," as defined by Section 4117.01(D) of the Ohio Revised Code (S. 2)
3. The City of Cleveland violated Section 4117.11(A)(5) of the Ohio Revised Code by refusing to bargain the effects of its decision to expand the media captured by its WCS to include "buffering mode" audio.

VI. RECOMMENDATION

The following is respectfully recommended:

1. The State Employment Relations Board adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law set forth above.
2. The State Employment Relations Board order the City to cease and desist from refusing to bargain collectively with the exclusive representative of certain of its employees.
3. The State Employment Relations Board order the City to bargain in good faith with the Cleveland Police Patrolmen's Association over the effects of its decision to expand the media captured by its WCS to include "buffering mode" audio
4. The State Employment Relations Board order the City to post for sixty (60) days in all the usual and customary posting locations where bargaining-unit employees represented by the Cleveland Police Patrolmen's Association work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Cleveland shall cease and desist from actions set forth in item 2 and shall take the affirmative action set forth in item 3; and
5. The State Employment Relations Board order the District to notify them in writing within twenty (20) calendar days from the date that its Order becomes final of the steps that have been taken to comply therewith.

ISSUED and **SUBMITTED** to the State Employment Relations Board in accordance with O.A.C. 4117-1-15 and **SERVED** on all parties listed below by Certified U.S. Mail, return receipt requested, this 8 day of September, 2023


JEANNETTE E. GUNN
Administrative Law Judge

cc:

City of Cleveland

David P. Frantz, Zashin & Rich Co., L.P A

Cleveland Police Patrolmen's Association

Susannah Muskovitz, Esq., Muskovitz & Lemmerbrock, LLC

Thomas M Steffas, Esq., Muskovitz & Lemmerbrock, LLC

State Employment Relations Board

Lori Friedman, Esq., Ohio Attorney General

James Cochran, Esq., Ohio Attorney General



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

**POSTED PURSUANT TO AN ORDER OF
THE STATE EMPLOYMENT RELATIONS BOARD
AN AGENCY OF THE STATE OF OHIO**

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this notice. We intend to carry out the order of the State Employment Relations Board and to do the following:

A. CEASE AND DESIST FROM:

- (1) Refusing to bargain collectively with the exclusive representative of certain of its employees.
- (2) Recording of WCS buffering mode audio until the parties have completed good faith bargaining.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Bargain in good faith with the Cleveland Police Patrolmen's Association over the effects of its decision to expand the media captured by its WCS to include "buffering mode" audio.
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Cleveland Police Patrolmen's Association work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Cleveland shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) Notify the State Employment Relations Board in writing within twenty calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

SERB v. CITY OF CLEVELAND

Case No. 2022-ULP-09-0108

BY

DATE

TITLE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED