

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :
 :
 v. :
 : Case No. PERA-C-08-74-E
 :
 YORK COUNTY :
 YORK COUNTY PRISON BOARD :
 ET AL :

PROPOSED DECISION AND ORDER

On February 28, 2008, the Teamsters Local 776 (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against York County, York County Prison Board, Warden Thomas Hogan and Captain William Cuffaro (County or Respondents)¹ alleging that the Respondents violated Section 1201(a)(1) of the Public Employe Relations Act (PERA).

On March 20, 2008, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and June 11, 2008, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary, but was continued to allow the parties the time to pursue settlement discussions. The parties were not successful in settling the matter and they requested that the Board conduct a hearing in the matter. Accordingly, a hearing was scheduled for November 10, 2010. The location of the hearing was changed to York.

At the scheduled time and place, the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. The examiner, on the basis of the evidence presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. York County is a public employer under the meaning of Section 301(3) of PERA and operates the York County Prison located at 3400 Concord Road, York, Pennsylvania.
2. Teamsters Union Local 776 is an employe organization within the meaning of Section 301(3) of PERA with its address located at 2552 Jefferson Street, Harrisburg, PA 17110.
3. Teamsters Union Local 776 is the exclusive certified representative of a unit of full time and regular part time correctional officers at the York County Prison. (Joint Exhibit 1)
4. Correctional officers are responsible for the custody, care and security of the prisoners of the York County prison. (N.T. 6-8)
5. One of the most important duties of a correctional officer is to perform an inmate count in his particular area of responsibility. The count is done four times a day. The most formal count is the one done each afternoon after lunch. The officer asks each inmate to stand at his bunk, to remain quiet and to allow the officer to do an armband count. The officer prints the name of each inmate on a sheet next to a number

¹ The Union alleges that the named individuals are representatives of York County. They would not be personally liable for any unfair practices that they may have committed as representatives of York County, however. See Lancaster County, 30 PPER 30180 (Final Order, 1999), aff'd on another ground sub nom. Teamsters Local 771 v. PLRB, 760 2d 496 (Pa. Cmwlth. 2000) (The principal is liable for any unfair practices committed by its representatives) Accordingly, I am construing the charge as having been filed against the principal, York County.

that corresponds to an inmate. This insures that all inmates are in the location where they are supposed to be. (N.T. 6-8, 43-44)

6. Each inmate count takes approximately 15 to 20 minutes. (N.T. 15, 80)

7. The correctional officer then sends the count sheets to the main control center in the prison where a supervisor cross-references them with a master list of the location of all inmates to make sure all the inmates are accounted for. In the terminology of the York County prison, this is called "clearing the count." (N.T. 44, 46)

8. David Skaggs is a correctional officer in the York County prison. (N.T. 6)

9. Mr. Skaggs works the 8 a.m. to 4 p.m. shift. (N.T. 6)

10. Mr. Skaggs is responsible for 54 inmates on his block. (N.T. 7-8)

11. Captain William Cuffaro is chief control captain during the day shift. He supervises the control officers in the control room. He and two lieutenants on that shift are responsible for clearing the count. (N.T. 53)

12. On February 7, 2008, Captain Cuffaro gave Mr. Skaggs an informal verbal warning about his inmate count being illegible. Captain Cuffaro advised Mr. Skaggs that an inmate disciplinary report that Mr. Skaggs wrote that same day was legible and that the control room had no problem reading. (N.T. 21-23, 33, County Exhibits 2, 3 and 9)

13. On February 8, Mr. Skaggs filed a grievance over the alleged failure of the County to remove a written warning from his personnel file. (N.T. 12, Union Exhibit 1)

14. Later on February 8, 2008, at approximately 2:38 p.m., Mr. Skaggs submitted his afternoon inmate count sheet. (N.T. 27, 67, County Exhibit 5)

15. On the afternoon of February 8, 2010, the Captain Cuffaro attached a sticky post-it note to Mr. Skaggs' 2:38 p.m. inmate count, which stated, "David, I need your count sheet redone as clear as the grievance form you wrote today. It must be done before you leave @4:00 PM today 2-8-08. Capt. Cuffaro." (N.T. 29, 67, County Exhibit 6)

16. York County Prison's Inmate Count Procedures states, *inter alia*, "Officer must see their [inmate's] armband and legibly print the inmates name on the count sheet." (N.T. 19, County Exhibit 1)

17. Mr. Skaggs then did another inmate count before the end of the day. (N.T. 14, 16)

DISCUSSION

The Union's charge of unfair practices alleges that the County violated Section 1201 (a) (1) of PERA. The specification of charges states that York County Prison Captain William Cuffaro retaliated against correctional officer David Skaggs for exercising his right to file a grievance. The specification of charges alleges, "On February 8, 2008, after Skaggs turned in Grievance #17584, Captain Cuffaro directed Officer Skaggs to rewrite his inmate count sheet as clear as the grievance he wrote, then forced him to rewrite the same count sheet 7 times."

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). An independent violation of Section 1201(a) (1) of PERA occurs, "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985); Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER ¶ 97 (Final Order, 2004).

A correctional officer at the York County prison must perform inmate counts throughout the day for the blocks he patrols. The officer carries a clipboard to each individual cell. He asks each inmate to stand and show the officer his wristband. The officer then prints the name of the inmate next to a number that corresponds to the inmate. If the inmate is not there, the officer enters a "zero" with a line through it.

After the officer counts the inmates and writes their names on the count sheet, the officer takes the sheet to the control room so that the control room officers can "clear the count." Clear the count means that the control room officers must verify that the inmates' names are consistent with a master list of all the inmates in the prison and their proper location. The verification requires the control room officers to read the names of the prisoners that the correctional officer has written on the list. Prison procedures require that the officers are to "legibly print" the inmates' names.

David Skaggs is a York County Prison correctional officer. In February, 2008, Mr. Skaggs was responsible for performing an inmate count of the 54 inmates.

Captain William Cuffaro oversees the prison control room, where officers verify the inmate count done by Skaggs and the other correctional officers. Captain Cuffaro testified that he and the control room officers had difficulty reading the names of the inmates on Mr. Skaggs' list because of illegible writing. Therefore, the control room officers could not "clear the count." This problem predated the day at issue in this charge. Captain Cuffaro brought it to Mr. Skaggs attention several times in the past and on February 7, Captain Cuffaro gave Mr. Skaggs a verbal warning about his illegible writing.

On February 8, Captain Cuffaro repeated the warning. He requested Mr. Skaggs to rewrite the list legibly. Mr. Cuffaro attached a post-it note to the count sheet, notifying Skaggs that he needed to redo the count sheet. He used Mr. Skaggs' February 8 grievance form as an example of a legible writing.

Captain Cuffaro's request to Mr. Skaggs to write legibly was within the County's managerial rights. However, Captain Cuffaro's choice of Skaggs' grievance form as an example of legible writing was not a good example to use. From Mr. Skaggs' perspective, this use of the grievance form could reasonably be understood that management believed he was giving more attention to filing a grievance than to performing his work duties. This could make an employe have second thoughts as to filing a grievance. Instead, Captain Cuffaro could have again used Mr. Skaggs' February 7 inmate disciplinary report as an example of legible writing, as he did the day before.

In ordering Mr. Skaggs to redo the count in a more legible fashion, it is entirely plausible that Captain Cuffaro may not have been motivated to retaliate against Officer Skaggs for filing a grievance. However, as the Board has held, the motivation of the supervisor is not relevant to this inquiry. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, supra. Accordingly, as for this part of the specification of charges, there will be a finding of an unfair practice in violation of Section 1201 (a) (1) of PERA.

The second part of the specification of charges is the Union's contention that "[o]n February 8, 2008, after Skaggs turned in Grievance #17584, Captain Cuffaroforced him [Skaggs] to rewrite the same count sheet 7 times." It is not clear from this record that Captain Cuffaro forced Skaggs to rewrite the count sheet seven times on February 8 after Skaggs turned in the grievance. Officer Skaggs testified to this effect. However, the County introduced documentary evidence showing that on February 8, Mr. Skaggs rewrote the count sheet four times. The County offered into evidence the count sheets marked as County Exhibit 5, County Exhibit 6 (same as Union Exhibit 3) County Exhibit 7 and County Exhibit 8 as the count sheets written on February 8. The Union, as the charging party, has the burden of proving, by substantial and legally credible evidence, the allegations of the charge and the existence of an unfair practice. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977); PLRB v. Kaufmann Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). Given, this record, the County's evidence cast doubt on the Union's contention. Accordingly, there will be no finding of an unfair practice on this part of the specifications.

CONCLUSIONS

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

1. That York County is a public employer within the meaning of Section 301(1) of PERA.
2. That Teamsters Local 776 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 County has committed unfair practices in violation of Section 1201(a)(1) 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 County shall:

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

2. Take the following affirmative action:

- (a) 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 of the York County Prison and have the same remain so posted for a period of ten (10) consecutive days.

- (b) 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

- (c) Serve a copy of the attached affidavit of compliance upon the Association.

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 seventeenth day of March, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner