

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
 : CASE NO. PERA-C-14-319-E
v. :
 :
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
ROCKVIEW SCI :

PROPOSED DECISION AND ORDER

On September 24, 2014, the Pennsylvania State Corrections Officers Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Corrections, Rockview - SCI (SCI-Rockview or the Commonwealth) violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA).

On October 8, 2014, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of April 6, 2015, in Harrisburg before Hearing Examiner John Pozniak, Esquire. A hearing was held in this matter on April 6, 2015. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Association filed a post-hearing brief on May 28, 2015. SCI-Rockview filed a post-hearing brief on June 24, 2015. This matter was reassigned to the undersigned hearing examiner on July 27, 2015.

The hearing examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of PERA. (N.T. 4).
2. The Association is an employe organization within the meaning of PERA. (N.T. 5).
3. The Commonwealth develops, with Association input, manpower surveys which describe the positions and number of actual corrections officers needed to safely and efficiently staff the SCI-Rockview facility. (N.T. 9, 34-35, 49, 55, 62).
4. The Association filed a grievance on July 17, 2012, which described the complained of violation as: "Management @ S.C.I. Rockview has violated the CBA by understaffing Rockview and not Following the REQUIREMENTS set forth by the most current manpower survey to avoid paying overtime and putting Officers lives needlessly in harms way without due regard to their Safety." (Union Exhibit 1).
5. At the time of the July 17, 2012, grievance, the staff complement of corrections officers for the SCI-Rockview facility pursuant to the manpower survey was 345. (N.T. 35-36).
6. At the time of the July 17, 2012, grievance, the actual number of corrections officers at the SCI-Rockview facility was below 345. (N.T. 35).
7. The Association's grievance was based on the prison not being staffed within the staff complement defined by the manpower survey. (N.T. 8, 11; Union Exhibit 1).
8. On September 4, 2012, during a regularly scheduled monthly meeting, the Association and the Commonwealth settled the grievance and mutually executed a document

(the Grievance Settlement) which contained the following provision in the "Settlement Summary" section: "Keep staffing at Manpower Survey Complement." (Union Exhibit 3, N.T. 14).

9. The minutes for the September 4, 2012, meeting reflect that the Association and Commonwealth agreed to "keep staffing at manpower survey complement". (Union Exhibit 7).

10. The Grievance Settlement occurred during Step 1 of the grievance procedure and neither party challenged the Grievance Settlement to Step 2 of the grievance procedure. (N.T. 14).

11. Following the Grievance Settlement, the Commonwealth took steps to comply with the Grievance Settlement and hired new correction officers to add to the complement at SCI-Rockview. (N.T. 16; Union Exhibit 4).

12. In the Summer of 2014, the Association held the opinion that the Commonwealth was not ultimately going to comply with the Grievance Settlement. (N.T. 17).

13. The Association determined that there were vacancies in the manpower survey by reviewing a vacancy report dated June 2, 2012 (the June Vacancy Report). (N.T. 18-19; Union Exhibit 5).

14. The open slots on vacancy reports correspond to an open slot on the manpower survey. (N.T. 19).

15. The June Vacancy Report indicated that there were twenty-two corrections officers positions vacant. (N.T. 19, Union Exhibit 5).

DISCUSSION

The Association's charge alleges that the Commonwealth violated Section 1201(a)(1) and (5) of PERA as of June 2, 2014, when the June Vacancy Report indicated that open positions in the manpower survey for the facility would not be filled, but rather frozen. The Association alleges that as of June 2, 2014, the Commonwealth's inability or unwillingness to keep staffing of SCI-Rockview at the manpower survey complement was a direct failure to comply with the Grievance Settlement from September 4, 2012, wherein the Commonwealth agreed to "Keep staffing at Manpower Survey Complement."

The law is well established that a public employer's refusal to comply with a resolution at a lower stage in the grievance procedure constitutes a violation of Section 1201(a)(1) and (5) of PERA. **Moshannon Valley School District v. PLRB**, 597 A.2d 229 (Pa. Cmwlth. 1991). When examining the settlement agreement, where the words are clear and unambiguous, the intent of the parties is to be determined only from the express language of the agreement. **Commonwealth of Pennsylvania, Department of Corrections, Dallas SCI**, 38 PPER 84 (Proposed Decision and Order, 2007) (*citing Avery v. Commonwealth of Pennsylvania Labor Relations Bd.*, 509 A.2d 888, 891 (Pa. Commw. Ct. 1986)). Settlement agreements must be construed according to traditional principles of contract construction. **Avery, supra**;

The complainant has the burden to prove each and every one of the elements of its charge of unfair practices by the introduction of substantial and legally credible evidence. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977).

The Association has met its burden in this matter by producing substantial and legally credible evidence that there was a settlement which contains clear and unambiguous language. The language of the Grievance Settlement is clear: "Keep staffing at Manpower Survey Complement." Both parties in this matter had witnesses who testified as to the nature of a manpower survey. The parties' witnesses agreed that manpower surveys are a document developed by the Commonwealth, with input from the Association, which describes the positions and number of actual corrections officers needed to safely

and efficiently staff a facility. Both "staffing" and "complement" are normal English words which need no clarification from testimony or other evidence.

Though the settlement agreement is clear and unambiguous on its face, testimony and evidence provided by the Association supports the intent of the parties with regard to the Grievance Settlement. SCI-Rockview was under the total number of correction officers described by the manpower survey at the time of the Grievance Settlement. The Association's grievance clearly addresses the understaffing at SCI-Rockview. The record shows that the grievance and resulting settlement were based on the prison not being staffed within the staff complement defined by the manpower survey. Further, the minutes of the September 4, 2012, regularly scheduled monthly meeting clearly reflect that the Association and Commonwealth agreed to "keep staffing at manpower survey complement".

As mentioned above, since the Grievance Settlement contains clear and unambiguous language, it is not necessary to delve into testimony and evidence to determine the intent of the parties. **Dallas SCI**, *supra*. The law in **Dallas SCI** notwithstanding, the Commonwealth's argument that it complied with the Grievance Settlement by filling posts in the daily roster is against the clear, express language of the Grievance Settlement. Commonwealth witness Gerald McMann (McMann) testified that "The manpower survey sets positions that need to be filled on a daily basis, a 24-hour period of time. As long as I filled all those positions with warm bodies, I was covering the, I was meeting the intent of that agreement." (N.T. 48). The record shows that McMann was not working at SCI-Rockview when the Grievance Settlement was agreed to by the parties and thus was not the Commonwealth representative who negotiated the Grievance Settlement. (N.T. 48). Additionally, McMann's interpretation is at odds with the clear language of the Grievance Settlement. The June Vacancy Report and other testimony explicitly demonstrate that the Commonwealth had not met the staffing complement of the manpower survey. Moreover, McMann was filling positions on the daily roster by moving corrections officers from collapsed or redeployed posts. (N.T. 45). While each daily post may have been filled by a corrections officer, this is not equivalent to filling vacancies in the manpower survey.

The record also shows that the Commonwealth was not complying with the Grievance Settlement. The June Vacancy Report shows twenty-two vacancies which were not being filled by the Commonwealth. An open slot on a vacancy report corresponds to an open slot in the manpower survey complement. Thus, the Commonwealth was not staffing the facility at the manpower survey complement and was not in compliance with the Grievance Settlement.

Thus, I find that the Commonwealth has violated Section 1201(a)(1) and (5) of PERA by not complying with the Grievance Settlement dated September 4, 2012.

CONCLUSIONS

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

1. That the Commonwealth is a public employer within the meaning of Section 301(1) of PERA.
2. That the Association 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 has committed an unfair practice in violation of Section 1201(a)(1) and (5) 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, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively with the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Immediately comply with the Grievance Settlement dated September 4, 2012, and staff the facility at the manpower survey complement;

(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 its employes 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 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 at Harrisburg, Pennsylvania, this thirty-first day of July, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

