

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 773 :  
v. : CASE NO. PERA-C-14-110-E  
MONROE COUNTY :

**PROPOSED DECISION AND ORDER**

On April 14, 2014, Teamsters Local 773 (Union or Teamsters) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Monroe County (County) violated Section 1201(a)(1) of the Public Employee Relations Act (PERA or Act). The Union specifically alleged that the Monroe County Correctional Facility (MCCF or Employer) unilaterally issued a new social media policy that intereferes with employees' Article IV rights under PERA.

On May 6, 2014, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 1, 2014, in Harrisburg. On September 25, 2014, the parties filed with the Board a Stipulation of Facts in lieu of a hearing signed by counsel for both parties. Consequently, a hearing became unnecessary. Neither party submitted post-hearing briefs.

The examiner, based upon the Stipulations of Fact and all matters of record, makes the following:

**FINDINGS OF FACT**

1. The County is a public employer within the meaning of Section 301(1) of PERA. (S.F. ¶ 1)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (S.F. ¶ 2)
3. The Union and the Employer are parties to a collective bargaining agreement (CBA), which is effective from January 1, 2012, to December 31 2014. The CBA is attached to the Stipulations of Fact as Joint Exhibit A. (S.F. ¶ 3)
4. On or about April 2, 2014, MCCF Warden, Donna Asure, released a new policy, which was intended to be made effective on April 11, 2014, titled Document 10.23, Social Media. The policy is attached to the charge. (S.F. ¶ 4)
5. On or about July 21, 2014, the Employer revised and reissued the Social Media Policy. The Revised Policy is attached to the Stipulations of Fact as Joint Exhibit D. (S.F. ¶ 7)
6. The Revised Policy did not eliminate the Union's concerns as asserted in the instant unfair practice charge. The Revised Policy has been incorporated into the instant unfair practice charge, without objection. (S.F. ¶ 8)
7. The Revised Policy would impact employes of the Employer who are also members of the Union's bargaining unit. These employes are public employes within the meaning of Section 301(2) of PERA. (S.F. ¶ 9)
8. The Policy and the Revised Policy were based on the social media policy of the Commonwealth of Pennsylvania Department of Corrections (DOC) Policy Statement on Social Media. A copy of the DOC's Policy is attached to the Stipulations of Fact as Joint Exhibit E. (S.F. ¶ 10-a)
9. The Employer's policies and procedures have always been treated as confidential. (S.F. ¶ 10-b)
10. The Employer believes that security information must remain confidential for the safety and security of its staff, the inmates and the public. (S.F. ¶ 10-c)

11. The Employer believes that inmates and their families utilize social media. If the Employer's security procedures are shared (such as methods of inmate transportation and staffing and monitoring of hospitalized inmates) the safety risk is increased. (S.F. ¶ 10-d)

12. Employees posting their job responsibilities on social media (e.g. "hey, I am working hospital duty the next few nights") potentially share private security information. (S.F. ¶ 10-e)

13. The Employer believes that its inmates have become increasingly volatile and technologically savvy and that they are now better able to access others' social media accounts. (S.F. ¶ 10-f)

14. Concerns under the Health Insurance Portability and Accountability Act (HIPAA) and current protocols require confidentiality regarding certain medical information which the Employer's staff frequently overhears. (S.F. ¶ 10-g)

15. The Revised Policy, submitted as Joint Exhibit D, provides, substantially and in relevant part, as follows:

I. Policy:

This policy has been implemented to establish guidelines for the use of social media. It applies to all Monroe County Correctional Facility Staff, vendors, contracted services and volunteers.

....  
....

IV. Procedure:

A. An Employee Using County Resources

1. An employee who is not an authorized user and who uses social media in a manner that would indicate that he/she represents or is acting on behalf of the Department shall be subject to appropriate disciplinary action, up to and including termination.

2. An MCCF employee, contractor or vendor who uses County Information Technology resources should be aware that every record of computer use, including, records of internet activity and/or E-mail communication (sent, received, or stored), temporary documents and files, cookies, and other metadata information, conducted on County IT resources are the property of the County and is subject to access by appropriate County staff at any time. In addition, the employee should review and be familiar with the terms and conditions of applicable County/Internet Use Policies.

3. An employee who misuses County IT resources by inappropriately accessing or using social media shall be subject to disciplinary action, up to and including termination. Such misuse includes, but is not limited to:

a. Using County IT resources to post information on social media sites in a manner that indicates that the employee is an Agency Representative, or that the post is sanctioned by MCCF or Monroe County, when in fact the employee lacks appropriate authorization to make such posts; or

b. Accessing and posting to social media sites with County IT resources, when such activity is not related to the employee's job responsibilities.

B. An Employee Acting in a Private Capacity Using Private Resources

1. Given the Nature of corrections work, an MCCF employee may choose not to refer to his/her employment when using social media in his/her personal life. However, if an employee chooses to refer to his/her employment when using

social media in a private capacity, the employee must make clear that his/her activity is as a private individual and not as a representative of the County of Monroe or the Monroe County Correctional Facility. A statement such as the following, located in a prominent position, would be an appropriate disclaimer [bracketed language should be modified to each individual's particular use]:

This site [blog, account, etc.] is operated by [insert name of employee] as a private individual and not as a representative of the County of Monroe or the Monroe County Correctional Facility. None of the statements, representations, viewpoints, images or other media contained herein has been sanctioned, approved or endorsed by the County of Monroe or Monroe County Correctional Facility. Nothing contained herein should be deemed to represent the official views of the County of Monroe.

2. Material posted on a social network can be viewed by the public and misconstrued to represent the official position of MCCF. Therefore, an employee must take every precaution to ensure that his/her activity in a social media forum does not lead the public to reasonably believe that the employee is acting on behalf of MCCF.

3. At no time shall an MCCF employee acting in his/her private capacity engage in the following activities in any social media networks, personal web pages or blogs:

a. Use of any language that would lead a viewer to believe the social media site is operated by the County or MCCF;

b. Use of any image or photograph of images that belong to MCCF such as:

- (1) MCCF patch (past or present);
- (2) MCCF Official Logo;
- (3) Photos of any MCCF building, facility, or grounds;
- (4) Any image of an inmate (with or without permission);
- (5) Use of any material for which the County or MCCF holds a copyright, trademark, patent or other intellectual property right.

c. Use of any MCCF policies, procedures, manuals or documents.

4. Even when an MCCF employee uses a disclaimer, such as the one listed in B,1 above, every employee, by virtue of his/her Monroe County Correctional Facility employment, continues to have an ethical obligation that applies to his/her personal activity, i.e., when he/she is not at work or using any County resources.

5. Even if an employee has disclaimed association with the County or MCCF when using social media, the employee must not be engaged in activity that violates the Monroe County or MCCF Employee Manual, or any MCCF or County policy. A violation shall subject an employee to appropriate discipline, including, when applicable, termination.

6. Applicable directives include restrictions on dissemination of information obtained through the course of MCCF employment and the MCCF Code of Conduct. An employee must refrain from divulging any confidential or non-public information obtained by virtue of his/her employment. Confidential information includes, but is not limited to, inmate or employee medical, mental health or treatment information, criminal history record information, security and intelligence information, investigative information, operational concerns, confidential polices, legal advice, prison layout, photographs of the prison or training sessions conducted on or off facility grounds, etc.

Posting of such information on a social media site is especially dangerous because any comment, photograph, or other material posted in social media often will be permanently available to the public and able to be reproduced in other media. An employee who posts or shares such information in social media shall be subject to appropriate discipline.

7. An MCCF employee is expected to conduct himself/herself in such a manner as to demonstrate the public's trust and confidence inherent in his/her position as a public servant, even during off-duty hours. An MCCF employee must refrain from posting comments in social media that discredit his/her profession, discredit MCCF or disparage his/her position as a public servant. A social media site is not an appropriate forum for airing internal workplace grievances, including, complaints about any inmate, coworker, or supervisor, or otherwise discrediting the public service offered by MCCF. To the extent that an MCCF employee uses social media in a way that discredits his/her profession, responsibilities, MCCF or public service at large, he/she shall be subject to appropriate discipline

V. Gen. Info:

1. Monroe County employees are prohibited from using County equipment to access social media sites for personal use.
2. Do not use your work e-mail address to register for social media and other sites unless permission has been given as work related.
3. Employees are personally responsible for the content they publish on blogs, wikis or any other form of user-generated media. Monroe County is not responsible for the personal content of your social media sites.
4. Be mindful that what you publish may be public for a long time.
5. Be aware of your association with Monroe County in online social networks. If you identify yourself as a Monroe County employee, ensure your profile and related content is consistent with how you wish to present yourself with colleagues and clients.

(Joint Exhibit D)

### DISCUSSION

The Union has not identified the specific provisions that allegedly violate PERA, either by way of brief or the Stipulations of Fact. Therefore, I must evaluate all of the specific Revised Policy provisions and attempt to glean therefrom, without the benefit of identification of the problem areas, case law or arguments, which provisions violate the Act and which precedent to apply. As an initial matter, there is no dispute that the MCCF unilaterally implemented the Revised Policy, on July 21, 2014, without bargaining with the Union. However, the Union did not charge the County with a bargaining violation. The Revised Policy contains restrictions on the use of social media and discipline for violations of certain provisions contained in the policy.<sup>1</sup>

Section 1201(a)(1) of PERA prohibits an employer 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 employer's implementation or application of a policy constitutes an independent violation of Section 1201(a)(1) of PERA "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). The Board uses an objective standard to determine whether a reasonable employe would conclude that the employer's actions would have a tendency to coerce employes. **Mifflin County School District**, 28 PPER ¶ 28090 (Final

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<sup>1</sup> Both the disciplinary provisions and the limitations on social media conduct will be analyzed under Section 1201(a)(1) only, not 1201(a)(5).

Order, 1997), **aff'd**, 28 PPER ¶ 28186 (Mifflin County Court of Common Pleas, 1997). If the complainant establishes a prima facie case of a Section 1201(a)(1) violation, the respondent has the burden to establish that it had a legitimate reason for the complained-of action and/or that the need for this action justified interference with the employees' exercise of statutory rights. **Pittston Area School District**, 26 PPER ¶ 26176, at 411 (Proposed Decision and Order, 1995), 27 PPER ¶ 27066 (Final Order, 1996). An employer violates [the Act] if it maintains workplace rules that would reasonably tend to chill employees in the exercise of their rights. **T-Mobile USA, Inc. and Communications Workers of America and Communications Workers of America Local 7011**, 363 NLRB No. 171 (2016).

In **T-Mobile**, the National Board relied on **Lutheran Heritage Village-Livonia**, 343 NLRB 646 (2004) and reiterated its standard for determining whether non-bargaining claims comply with the policies of the National Act and posited, in relevant part, as follows:

If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." [**Lutheran Heritage Village-Livonia**, 343 NLRB at 647] **Id.** at 647.

**T-Mobile**, 363 NLRB No. 171 at 2-3. "Employees, who are dependent on the employer for their livelihood, would reasonably take a cautious approach and refrain from engaging in [protected] activity for fear of running afoul of a rule whose coverage is unclear." **T-Mobile**, 343 NLRB No. 171 at 6 (quoting **Whole Foods Market**, 363 NLRB No. 87, slip op. at 4 fn. 11 (2015)). I have adopted these National Board standards herein as applied to Article IV of PERA and the rights contained therein.

The substantive provisions under consideration are under "IV Procedure." The first provision, Section IV (A) (1), violates the Act because it vaguely and broadly prohibits, without defining, any social media usage that "would indicate" that an employee "represents" the MCCF. Under this prohibition, it is unclear whether an employee runs afoul of the rule if he/she simply mentions their employment status with the MCCF. Also, the rule imposes unspecified discipline, subject to the unilateral determination of the MCCF, for using social media in a manner that subjectively "would indicate" the employee represents the MCCF. The blanket threat of unspecified discipline would coerce and intimidate a reasonable employee from mentioning his/her place of employment, in the course of seeking mutual aid and protection and/or the improvement of working conditions by sharing ideas and complaints, in fear of unspecified discipline. Accordingly, this provision violates Section 1201(a)(1) of the Act, under the first prong of **Lutheran Heritage, supra**.

Section IV(A)(2) does not violate the Act and properly informs employees that any information or data recorded as a result of their use of County owned computers and other equipment is County property. This provision places employees on notice that the County has constant access to any and all information on County owned and operated equipment and that the employees do not have any expectation of privacy in any information received or generated by the use of that equipment. Accordingly, this provision does not violate Section 1201(a)(1) of PERA.

Section IV(A)(3), (A)(3)(a) and (A)(3)(b) must be read together. Section IV(A)(3) provides as follows: "An employee who misuses County IT resources by inappropriately accessing or using social media shall be subject to disciplinary action up to and including termination." Subsection (A)(3)(a) prohibits using County IT resources to post information on a social media site which indicates that the employee is a representative of the MCCF. Subsection (A)(3)(b) prohibits accessing or posting on social media with County equipment. Although the disciplinary provision is vague and overbroad and the specific actions warranting termination are not provided, this is not a bargaining claim and the discipline is clearly triggered by forbidden use of County equipment for accessing social media. The MCCF clearly defined "misuse," in Section IV(A)(3)(b) to

categorically prohibit the use of any County equipment to access and post on social media sites not within an employee's job responsibilities. Clause (3) (b) trumps clause (3) (a) by prohibiting the use of any County equipment for any social media activity, unless directed to do so by the MCCF, regardless of whether the employe indicates or implies that he/she is a representative of the MCCF. Clause (3) (b), which overrides (3) (a), clearly defines prohibited behavior that does not interfere with Article IV protected rights and a reasonable employe would not construe these prohibitions as interfering with Article IV rights. The disciplinary component is vague, subjective and overly broad. However, the discipline does not violate Section 1201(a) (1) because it is triggered by clearly defined prohibitions against using County IT resources for social media. The unilateral subjectivity of the level of discipline is a matter of bargaining that is not at issue here.

Section IV(B) addresses "An Employee Acting in a Private Capacity Using Private Resources." The MCCF is a public employer uniquely charged with the responsibility of care, custody and control of inmates who are dependent on the MCCF for everything related to their very survival, including, but not limited to, health care, sustenance, security, safety, exercise, rehabilitation and counseling. The MCCF believes that inmates under the care, custody and control of the MCCF are volatile and technologically savvy. They are capable of accessing others' social media accounts. Edified with this understanding, therefore, the MCCF must take measures to ensure the safety and security of its employes and its operations in relation to the potentially destructive capabilities of inmates and their allies. Balancing the employer's interests in fulfilling its responsibilities to both the inmates and its employes against employes' rights under Article IV of PERA, I find that the language in Section IV(B) (1) & (2) to be lawful because it does not infringe on employes' Article IV rights and it protects the MCCF from association with employe postings on social media who refer to their employment with the MCCF.

Section IV(B) (3) (a) is unnecessary to the extent that it prohibits employes from referencing employment with the MCCF because employes are required to insert the disclaimer provided in Section IV(B) (1). To the extent that Section IV(B) (3) (a) prohibits other references by an employe to the MCCF, it must be rescinded as too vague and overly broad. In this manner, this provision would cause a reasonable employe to take a cautious approach to engaging in protected activity and seeking mutual aid and protection in fear of running afoul of the rule. In its current form, IV(B) (3) (a) is unclear and speculative regarding the language from which any possible "viewer" may conclude that the posting individual is speaking on behalf of the MCCF or that the social media page or site is operated by the MCCF. Such a broad prohibition has the likely potential to restrict the exercise of Article IV rights under the Act.

Section IV(B) (3) (b) prohibits the use of photography or images in a social media capacity, "that belong to the MCCF." In **Whole Foods Market, supra**, the National Board opined that the taking and posting of photography as well as audio or video recording of the workplace on social media are protected when employes are acting in concert for their mutual aid and protection and no overriding employer interest is present. **Whole Foods, supra**. Still photographs and audio or video recordings of picketing, unsafe working conditions, unsafe equipment or discussions about terms and conditions of employment are protected. **Whole Foods, supra**. Also, recordings for the purpose of providing evidence in employment-related adjudications are also protected. **Whole Foods, supra**, n.10. At least one administrative law judge concluded that surreptitiously recorded evidence, when available and intelligible, is more accurate and more truthful than the faded memories of witnesses. **Professional Electrical Contractors of Connecticut**, 199 LRRM 1917 (2014). Under this general prohibition, it is unclear to the reasonable employe which images would "belong to the MCCF." The MCCF could subjectively and unilaterally determine that any picture taken and shared violates this prohibition, if its management does not approve of the image being shared. Accordingly, Section IV(B) (3) (b) violates the Act and must be rescinded.

The prohibitions against the use of the MCCF patch or Logo in (B) (3) (b) (1) & (2) are reasonable guards against the possibility that viewers may believe that the social media site or page is operated under the authority of the MCCF. The MCCF has a legitimate

interest in controlling what information about the MCCF is authorized or disseminated by the MCCF. However, forbidding "photos of any MCCF building, facility or grounds," in Section IV(B) (3) (b) (3), must be rescinded. The MCCF is a public institution for the housing of inmates. The County has not demonstrated any legitimate interests in keeping the conditions of its buildings, facilities or grounds from public view. The general population understands and expects to see the typical construction details attributable to a jail, i.e., walls, fences, barbed wire, sally ports, officers, gates, barred doors, cameras, control rooms, etc. The manner in which this prohibition is stated would prohibit reasonable employees from seeking mutual aid and protection through the use of social media with fellow employees complaining about potentially unsafe working conditions generated by facility conditions and unsanitary conditions threatening employee safety.

Section IV(B) (3) (b) (4) prohibits the use of "any image of an inmate (with or without permission) on social media. Although the County has a legitimate interest in protecting the privacy of dependent individuals for whom it has care and of whom it has custody and control, the prohibition, as worded, would prohibit photographic or other recordings of inmate overcrowding or hostilities which could pose a safety threat to employees seeking to increase the complement of officers or the reduction of the inmate population. In this case, the employees have a greater interest in exercising their Article IV rights for mutual aid and protection, addressing terms and conditions of employment and employee safety than the MCCF has in protecting inmate privacy. Moreover, to the extent that the MCCP maintains cameras throughout the jail for its own purposes, neither the inmates nor the employees possess a reasonable expectation of privacy anywhere throughout the jail. Section IV(B) (3) (b) (4) runs afoul of the first **Lutheran Heritage** prong and, therefore, must be rescinded.

Section (3) (b) (5) prohibits the "use of any material for which the County or MCCF holds a copyright, trademark, patent or other intellectual property right." This prohibition is vague and ambiguous. An employee may or may not know that information to which he/she is referring is copyrighted or patented or trademarked to the MCCF. Moreover, although County or the MCCG owned intellectual property may not be used for personal gain or financial benefit, it certainly may be used against the MCCF, for mutual aid and protection, to demonstrate safety risks or improve working conditions, within the meaning of Article IV. The MCCF must identify the intellectual property it owns and the specific prohibited uses of that property in a manner that does not interfere with a reasonable employee's Article IV rights. Section IV(B) (3) (b) (5) must be rescinded in its current form.

Section IV(B) (3) (c) addresses the "Use of any MCCF policies, procedures, manuals or documents." Section IV(B) (3) (c) (4) generally provides that every MCCF employee has an "ethical obligation that applies to his/her personal activity, i.e., when he/she is not at work or using any County resources." The reminder that employees should behave ethically in their personal lives and with County resources does not interfere with protected employee rights under Article IV.

However, Section IV(B) (3) (c) (5) provides that, even where an employee has disclaimed association with the County as provided in Section IV(B) (1), "the employee must not be engaged in activity that violates the Monroe County or MCCF Employee Manual, or any MCCF or County policy. A violation shall subject an employee to appropriate discipline, including, when applicable, termination." The blanket provision is overly broad, vague and ambiguous. The Employer, under this provision, is empowered to unilaterally determine (1) that a violation has occurred and (2) the "appropriate" level of discipline up to termination. A reasonable employee knows that he/she cannot remember every provision in the Employee Manual or every County policy. In this regard, for fear that an accidental violation of a single provision out of voluminous materials may get them fired, a reasonable employee would be chilled from using social media for mutual aid and protection or to complain about working conditions. Having not placed employees on notice about specific policies or provisions which the employee should be careful not to violate, without interfering with his/her rights under PERA, Section IV(B) (3) (c) (5) must be rescinded.

Section IV(B) (3) (c) (6) precludes the "dissemination of information obtained through the course of MCCF employment." It prohibits the employees from "divulging any confidential or non-public information obtained by virtue of his/her employment. This clause defines confidential information as the following:

[I]nmate or employee medical, mental health or treatment information, criminal history record information, security and intelligence information, investigative information, operational concerns, confidential policies, legal advice, prison layout, photographs of the prison or training sessions conducted on or off facility grounds, etc. Posting of such information on a social media site is especially dangerous because any comment, photograph, or other material posted in social media often will be permanently available to the public and able to be reproduced in other media. An employee who posts or shares such information in social media shall be subject to appropriate discipline.

In **The Boeing Company**, 362 NLRB No. 195, 204 LRRM 1620 (2015), the National Board affirmed the administrative law judge's conclusion that "`blanket confidentiality directives impermissibly infringe on employees' statutory right to discuss among themselves their terms and conditions of employment and otherwise engage in concerted protected activity." **Boeing**, at 4. In weighing the competing interests, the National Board opined that "[w]hile an employer may legitimately require confidentiality in appropriate circumstances, it must also attempt to minimize the impact of such a policy on protected activity." **Id.** In **Radisson Plaza Minneapolis**, 307 NLRB 94 (1992), the National Board concluded that "a violation is not premised on mandatory phrasing, subjective impact, or even evidence of enforcement, but rather on the reasonable tendency of such a prohibition to coerce employees in the exercise of fundamental rights protected by the Act." **Id.** at 94, **enf'd**, 987 F.2d 1376 (8th Cir. 1993). The inquiry must focus on the particular circumstances tending to compromise the integrity of the Employer's operations or the information sought to be protected. The inquiry is again subject to a reasonable person standard and not the employer's claimed or subjective impact.

In weighing the interests of the MCCF against the employees' Article IV rights under PERA, I conclude that the MCCF has a right to require the maintenance of the confidentiality of "inmate or employee medical, mental health or treatment information, security and intelligence information, investigative information, operational concerns, confidential policies, legal advice . . . or training sessions conducted on or off facility grounds." In pursuing the protections under the Act to improve working conditions, complain about management and operations or seek other mutual aid and protection, employees do not have an interest in sharing on social media this information, and the Employer's directive is unambiguous and specific, as opposed to vague and broad, drawing clear boundaries for employees.

However, broad restrictions prohibiting the sharing of information on inmate criminal history, prison layout and photographs of the prison violate the Act. An inmate's criminal history is a matter of public record. It is unclear why such information that is already in the public domain should be considered confidential by the MCCF. Moreover, such information may be relevant to an MCCF employee's complaints, in pursuit of mutual aid and protection under Article IV, where, for example, a particularly violent inmate is under-guarded or threatens other inmates or employees which are legitimate safety and operations concerns under Article IV of PERA.

Information on the physical layout of the prison is public information and does not, by itself, compromise the integrity of Employer operations or protocols or threaten the safety of inmates or employees. The information does not reveal inmate handling and transport schedules or operations that should be confidential to ensure security and safety. Moreover, as previously stated herein, broadly restricting photographs of the prison restricts employees seeking to share such information for purpose of exposing overcrowding or other unsafe working conditions and violates employees' Article IV rights under PERA. Accordingly, the MCCF must rescind the broad prohibition against sharing information about the prison layout or photographs of the prison.

Section IV(B) (3) (c) (7) provides that MCCF employees are expected to conduct themselves in a manner that preserves the public trust and confidence inherent in a public servant even during off-duty hours. This Section further provides as follows:

An MCCF employee must refrain from posting comments in social media that discredit his/her profession, discredit MCCF or disparage his/her position as a public servant. A social media site is not an appropriate forum for airing internal workplace grievances, including, complaints about any inmate, coworker, or supervisor, or otherwise discrediting the public service offered by MCCF. To the extent that an MCCF employee uses social media in a way that discredits his/her profession, responsibilities, MCCF or public service at large, he/she shall be subject to appropriate discipline.

Applying the **Lutheran Heritage** standard, the **T-Mobil** Board held that prohibiting employees from "arguing" and from making "detrimental" comments about their employer violated employees' protected rights. The National Board concluded that, because labor disputes and union organizing efforts frequently involve controversy, criticism of the employer, arguments, and often negative statements about terms and conditions of employment or the employer, employees would reasonably avoid a range of potentially controversial but protected communication for fear of running afoul of the rule. **T-Mobile**, 363 NLRB No 171. The National Board has also held that where a rule is ambiguous (e.g., a rule broadly prohibiting negative conversations about managers), the fact that there was no limiting language to assure employees that their statutory rights were protected has to be taken into account. Additionally, a rule prohibiting discourteous or inappropriate attitude or behavior to members of the public was invalid because those terms are ambiguous and could reasonably interfere with vigorous, lawful union organizing propaganda. In **Professional Electrical Contractors of Connecticut, Inc.**, 199 LRRM 1917 (2014), the administrative law judge relied on the National Board's decision in **Costco Wholesale Corp.**, 358 NLRB No. 106 (2012), and found that the employer violated Section 8(a) (1) by maintaining a rule prohibiting employees from using their own computers to communicate with others in "any manner that may adversely affect company business interests or reputation."

Section IV(B) (3) (c) (7) must be rescinded under this standard. Sharing workplace grievances and complaints about supervisors with other employees is protected activity under Article IV. Seeking mutual aid and protection, the improvement of working conditions or grieving workplace safety or personnel issues are all protected under PERA. Labor disputes, organizing activities, workplace conflicts and the reasons causing employees to share and discuss those activities with one another are protected under the Act. Accordingly, Section IV(B) (3) (c) (7) of the Revised Policy would bar reasonable efforts by employees to discuss a broad range of controversial but protected activity. **T-Mobile**, 363 NLRB No 171. Moreover, the disciplinary language, like the disciplinary language found in other parts of the Revised Policy, is undefined, overly broad and too subjective to be lawful under Section 1201(a) (1). The disciplinary provision empowers the Employer to determine first whether it deems that a violation has occurred under this subsection and does not define "appropriate discipline." A reasonable employee would avoid sharing workplace conditions or complaints for fear of undefined discipline, which could result in serious financial impact, such as suspension or termination. The Employer's interest in controlling its reputation does not outweigh employees' rights under PERA to address workplace grievances, working conditions, controversial matters affecting employees or the public interest in transparency in public employer operations. This subsection, therefore, must be rescinded.

I find that the material contained in Section V, providing General Information and considerations for employees, is lawful.

#### CONCLUSIONS

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

1. The County is a public employer under Section 301(1) of PERA.

2. The Union is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The County engaged in unfair practices under Sections 1201(a)(1) of PERA.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing 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, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately rescind the following sections and subsections of the Revised Policy: IV(A)(1); IV(B)(3)(a); IV(B)(3)(b); IV(B)(3)(b)(3); IV(B)(3)(b)(4); IV(B)(3)(b)(5); IV(B)(3)(c)(5); IV(B)(3)(c)(6); IV(B)(3)(c)(7);

(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 MCCF's employes and have the same remain so posted for a period of ten (10) consecutive days; and

(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.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventh day of June, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 773

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v. CASE NO. PERA-C-14-110-E

MONROE COUNTY

**AFFIDAVIT OF COMPLIANCE**

Monroe County hereby certifies that it has ceased and desisted from its violation of Sections 1201(a) (1) of the Public Employe Relations Act; that it has complied with the proposed decision and order; that it has rescinded the following sections and subsections of the Revised Policy: IV(A) (1); IV(B) (3) (a); IV(B) (3) (b); IV(B) (3) (b) (3); IV(B) (3) (b) (4); IV(B) (3) (b) (5); IV(B) (3) (c) (5); IV(B) (3) (c) (6); IV(B) (3) (c) (7); that it has posted a copy of this decision and order as directed in the proposed decision and order; and that it has served a copy of this affidavit on Teamsters, Local 773.

\_\_\_\_\_

Signature/Date

\_\_\_\_\_

Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public