

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYES :  
INDEPENDENT UNION :  
 :  
v. :  
 : CASE NOS. PERA-C-15-126-W  
 : PERA-C-15-128-W  
ALLEGHENY COUNTY :

**PROPOSED DECISION AND ORDER**

On May 14, 2015, the Allegheny County Prison Employees Independent Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Allegheny (County) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act). The Board assigned Case No. PERA-C-15-128-W to this charge. The Union therein specifically alleged that, on April 9, 2015, the Warden of the Allegheny County Jail (ACJ or Jail) reneged on a negotiated redeployment agreement, where certain redeployments raised safety issues and constituted a mandatory subject of bargaining. On May 15, 2015, the Union filed another charge of unfair practices with the Board also alleging that the County violated Section 1201(a)(1) and (5) of the Act. The Board assigned Case No. PERA-C-15-126-W to this charge. The Union therein specifically alleged that, on or about April 22, 2015, ACJ management unilaterally eliminated the Gym Officer position and began utilizing civilian yoga instructors to supervise inmates inside the gym during yoga classes and to provide care, custody and control, thereby transferring bargaining unit work of correctional officers to civilian contractors.

On June 4, 2015, the Secretary of the Board issued a complaint and notice of hearing for both charges, directing that a consolidated hearing be held on Wednesday, January 13, 2016, in Pittsburgh. I continued the hearing indefinitely due to inclement weather. On March 2, 2016, after settlement discussions failed to resolve the issues in dispute, the complainant requested a new hearing date, which I scheduled for Wednesday June 15, 2016, in Pittsburgh. During the hearing on that date, all parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On August 29, 2016, the Union filed its post-hearing brief. The County filed its post-hearing brief on April 21, 2017.

The examiner, based upon 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. (PERA-R-1061-W)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-1061-W)
3. Corrections officers are responsible for care, custody, control and supervision of inmates at the ACJ. (N.T. 16-17)
4. Officers bid on certain jobs within the ACJ by seniority. Bid jobs have set days and hours. The records officer is a bid job. A letter bid job is one where officers submit a resume to an administrator who chooses the best qualified officer. (N.T. 17-18).
5. Floaters are officers who can be assigned anywhere throughout the jail. These are officers without much seniority. There are eight levels in the ACJ. A floater could be assigned to level four one day and level three the next. (N.T. 18-19)
6. Different floor levels are assigned to different types of inmates. Inmates are designated according to their level of security risk, i.e., maximum, medium or minimum. Also, some inmates are designated as "protective custody" status or "PC" and

some inmates are designated as "administrative custody" status or "AC." AC inmates are designated as such because they do not get along with inmates in the general population and/or they have been released from the disciplinary housing unit (DHC or "the hold"). (N.T. 19, 24-25)

7. In 2013, the ACJ administration raised the issue of redeployments with the Union. On January 8, 2013, Deputy Warden of Operations, William Emerick, emailed the Union President, Charles Mandarino and the Union Vice-President, Michael Salopek, listing the positions proposed for redeployment within the ACJ. (N.T. 21-22; Union Exhibit 1)

8. There are three shifts at the ACJ (7-3; 3-11; 11-7). Each floor level at the ACJ contains pods. Level 8 Pod D (8D) historically contained mostly homicide and high security risk inmates, which are the most dangerous inmates within the ACJ. There were historically two officers posted to 8D during the 7-3 and 3-11 shifts. Level 6 Pod F (6F) contains medium to maximum security risk inmates, including AC and PC inmates. 6F has two walls on each side of the pod called "the bubble." The bubble separates PC inmates, like child rapists, who may be in danger in the general population, disciplinary inmates and AC inmates. There were historically two officers assigned to 6F, on the 7-3 and 3-11 shifts. (N.T. 23-25, 49-50, 52, 54, 150-151)

9. In 2013, the ACJ administration proposed, inter alia, eliminating one of the three supply officers and redeploying that officer to another post within the ACJ. The ACJ also proposed, inter alia, eliminating the second correctional officer on 8D for the 7-3 shift and the 3-11 shift and one officer from 6F. 6F contains some medium security prisoners now, but it also still contains maximum security inmates and special custody inmates in the bubble. (N.T. 26-27; Union Exhibit 1)

10. On January 11, 2013, Union President Mandarino sent a letter to Warden Orlando Harper and Deputy Warden Emerick seeking to negotiate the proposed redeployments. (N.T. 27; Union Exhibit 1 at 2)

11. In that letter, President Mandarino stated: "The proposed redeployment creates massive safety concerns putting the officers at great risk." The letter further provided as follows: "The officer safety issues create a substantial interest on the part of the officers. The heightened nature of these safety and other related concerns causes the issue of this redeployment to rise to a matter of mandatory bargaining under [PERA]." (N.T. 155-159; Union Exhibit 1 at 2-3)

12. Warden Harper met two times in 2013 with the Union and its labor counsel. The first meeting was a couple of hours in duration and occurred at the County Law Department. The Union and the Warden exchanged proposals. The Union attempted to retain positions. The Union refused to concede the positions on 8D or 6F, but it eventually agreed to give up many other positions. The Warden agreed to keep the positions on 8D and 6F. (N.T. 29-31, 134, 146-147, 155-156)

13. Early in 2014, Union Vice-President Salopek, Major Joseph Demore, Warden Harper, Deputy Warden Emerick, the Union's Counsel and Officer Comer met for the first time regarding the second round of proposed redeployments. Major Demore met with the Union a couple of times and believed that management was bargaining and negotiating a redeployment resolution with the Union. (N.T. 78-81, 158-159)

14. On April 29, 2013, the parties held their second meeting. Present at the meeting were County Counsel, Union Counsel, Warden Harper, Union Vice-president Salopek and Deputy Warden Emerick. At this meeting, the Union and the County agreed to maintain the second officer on 8D and the second officer on 6F for both the 7-3 and 3-11 shifts. The parties also agreed to retain the Elevator Escort Officer position and the second property officer position. In exchange, the parties agreed that the ACJ would redeploy 17 other positions. These discussions continued into July 2013. (N.T. 31-33, 126, 155-159; Union Exhibit 1)

15. The County followed this agreement for approximately one year until it issued a redeployment notice in May 2014. At this time, the County and the Union again negotiated more redeployments. At the first 2014 negotiation, the following individuals were present: Union Vice-president Salopek, Union Counsel, Warden Harper, Deputy Warden Emerick and Major Demore. This meeting occurred in either the ACJ conference room or Deputy Warden Emerick's office. (N.T. 33-35, 130; Union Exhibit 2)

16. During the 2014 redeployment discussions, the ACJ sought to again eliminate and redeploy the second 6F and 8D officer on both the 7-3 and 3-11 shifts and splitting the number of inmates released at any given time for recreation, reducing the Gym Officer position. Both parties made concessions at this time. Warden Harper knew that Major Demore met with the Union regarding redeployment discussions without him. (N.T. 36-37, 159)

17. On or about May 1, 2014, Major Demore and Union Vice-president Salopek signed an agreement agreeing to a new round of redeployments. Salopek also shook hands with the Warden believing that they had a deal. The Union conceded the Gym Officers who were deployed five days per week at the gym and agreed to post the Gym Officer at the gyms for only three days per week, thereby agreeing to eliminate the Gym Officer on Tuesdays and Thursdays. The Gym Officer position is a bid position. The Union also agreed to eliminate the DHU officer on Saturdays and Sundays. The ACJ agreed to keep the second officer on 8D and 6F and the Elevator Escort Officer on 3-11 shift and the second property officer. 17 other positions were redeployed. (N.T. 37-38, 41-42, 43-45, 70-71, 78, 83, 85-86, 88, 153, 161, 170; Union Exhibit 3)

18. After Major Demore signed the May 1, 2014 agreement, he brought it to Warden Harper's office where Deputy Warden Emerick was present. At that time, the Warden called the County's attorney at the law department. The County's attorney did not mention that the County did not have an obligation to honor the agreement. The May 1, 2014 agreement remained in effect for approximately one year. Eliminating the second 6F, 8D and the Gym Officer positions in April 2015 was contrary to the May 1, 2014 agreement. (N.T. 87, 101, 103; Union Exhibit 3)

19. There are 80-100 inmates in a pod. The Gym Officers coordinated and supervised all the recreation for all the pods. The Gym Officers brought inmates to the big gym where the inmates played basketball or exercised by themselves for one hour, after which the Gym Officers rotated another group of inmates into the gym. There is a big gym on levels 2, 3, 4, 5 and 6. The Gym Officers were required to be inside the gym at all times. There were 40-50 unrestrained inmates to one Gym Officer. All the big gyms are closed now for routine recreation. (N.T. 38-40, 55)

20. The officers in a pod wear a pin that, when pulled, sounds an alarm. The alarm pins do not function inside the bubble. 6F houses maximum security inmates. Currently, there is one 6F officer. When an inmate needs to be escorted to an appointment, the 6F officer may call for an Escort Officer, but if the Escort Officer cannot leave the hallway, the 6F officer will have to enter the bubble alone without backup because the second 6F has been redeployed. The officer alone in the bubble has no functional alarm activator pin. There needs to be a second officer outside the bubble to pull the pin if the Escort Officer or the 6F officer has a conflict with a maximum security inmate inside the bubble. Without the second officer, there is no assistance. Radios function inside the bubble. An officer involved in a conflict is unable to operate the radio; it is not as simple as pulling the pin alarm. (N.T. 49-50, 523, 54)

21. Prior to 2014, the big gyms on levels 1-6 were all open. Warden Harper closed the big gyms, in 2015. Currently, all the big gyms on levels 1-6 are closed. The ACJ holds yoga classes inside the big gyms, but bargaining unit officers are not posted inside the big gyms, and they do not supervise inmates inside the big gyms during yoga classes. Presently, inmates exercise in the small gyms located within the pods. (N.T. 57, 151-153)

22. Inmates using the big gyms for basketball games and workouts relieve stress by providing physical release from the frustrations of confinement, which relieves pressure from the officers. The average age of inmates is 18-26 years old. As young adults, they require productive physical activity so they do not release their frustrations on each other or the officers. Currently, inmates can only use the small gyms, which have limited equipment and space. The inmates cannot use the smaller gyms in the winter when the temperature gets cold or when it snows. (N.T. 58-61, 70-72)

23. The Union negotiated the positions in the gym, 8D and 6F as a safety issue. The ACJ management did not deny that they were negotiating during the meetings in 2013 or 2014 and never mentioned that the discussions were only "meet and discuss." At all times, the Union believed that the discussions regarding redeployment of positions were negotiations. No one from ACJ management reserved the right to renege on any agreements made at any meetings or discussions regarding redeployments. (N.T. 63, 66-67, 82)

24. The Union conceded positions that it strongly disagreed with giving up but it relinquished those other positions because the Union wanted to keep the positions on 8D, 6F and the Gym Officers. Union Vice-president Salopek would not have given up the escort positions if he thought that management could renege on the deal regarding the positions on 8D, 6F and the gyms because those positions presented important safety issues for the Union and the officers. (N.T. 69-71)

25. The County saved approximately \$500,000 in overtime based on the Union's concessions. Major Demore believed that the ACJ was forging good labor management relations by negotiating redeployments with the Union. The terms of the May 1, 2014 agreement were followed by the ACJ until 2015 when Warden Harper unilaterally eliminated the second officers on both 8D and 6F as well as the Gym Officers, without bargaining with the Union. (N.T. 81-83, 163, 187-188)

26. Article XV of the parties' CBA is entitled "**Management Rights**" and provides as follows:

The County retains and reserves unto itself all inherent, statutory and other powers, rights, authority, duties and responsibilities of its management status—including but not limited to those of operating, manning and securing its facilities, hiring, scheduling, directing, supervising and, for just cause, disciplining and discharging its employees—which are not expressly modified or restricted by any specific and enforceable terms or conditions of these Agreement provisions.

(Joint Exhibit 1 at 25)

27. Chapter C, Article VI, Section 1.6-602 of the County Charter provides for the powers and duties of the County Manager and therein authorizes the County Manager to delegate the authority to hire, discipline and discharge employees and any other duties of the County Manager in consultation with the County Executive. (County Exhibit 11, Article VI, § 1.6-602(e) & (1))

28. Currently, there are non-bargaining unit civilians in the big gyms with inmates teaching them yoga. Prior to April 2015, the ACJ placed a Gym Officer inside the gym during yoga instruction. There remains an officer in the hallway but there is no longer an officer inside the big gym. There have been central or big gyms on each level at ACJ since it opened in 1995. There have been gym or "rec" officers since at least 1985 and inside those central or big gyms on levels 1-6 since 1995, until the Warden terminated the position in April 2015. (N.T. 167-170, 172-173, 179-181)

29. The Gym Officers would call inmates to the central gym on a given level and supply and track gym equipment such as balls, tires, jump ropes and medicine balls. He would also track inmates using the bathroom and track equipment return. In addition, he would referee and control the inmates' behavior and call for assistance in the event of a conflict, fight or code. He patrolled the entire gym while inmates were inside the gym. (N.T. 177)

30. The Gym Officer was present inside the central gyms while inmates were inside the gym. The Gym Officer was not in the hallway. Any activities in the big or central gyms were supervised by a Gym Officer. These activities included basketball, religious and other classes and meetings. Any occasion when civilians would enter the ACJ and teach classes in the central gyms, a Gym Officer would be present inside the gym. When the Gym Officer called off work, the ACJ would fill the Gym Officer position with another officer. When the Gym Officer went on lunch break, an Escort Officer or hallway officer would take the place of the Gym Officer and physically patrol inside the gym. Prior to April 2015, the ACJ always deployed a Gym Officer inside the gym when civilian teachers or instructors were teaching inmates. Currently, the only person inside the gym watching inmates during yoga instruction is the yoga instructor. (N.T. 172-174, 184-186)

31. The hallway outside of the level 4 gym, where yoga is held, is 100-120 yards long. There is a floor control officer and 2-3 Escort Officers assigned to the hallway adjacent to the level 4 central gym where the yoga classes are taught. When the floor control officer is at one end of the hallway, he cannot see or hear what is happening inside the gym when he is down the hall. He can only see inside the gym if he is standing directly in front of the gym entrance. The gym is in the middle of the level 4 hallway. The Escort Officers are sometimes performing pod checks or escorts and would not be in

the hallway at all. The yoga instructors do not wear body alarms. The ACJ did not bargain with the Union over utilizing yoga instructors to be alone with inmates inside the gym instead of officers. (N.T. 174-176, 179, 182, 184-185)

## DISCUSSION

### PERA-C-15-128-W

The Union argues that it collectively bargained to agreement the redeployments of the second officers on 6F and 8D and the Gym Officers, which were mandatory subjects of bargaining due to the safety issues and concerns engendered by the elimination of those positions. (Union's Post-hearing Brief at 1-10). The County maintains that it never bargained away its managerial right to assign correctional officers. The County contends that its only motivation to discuss redeployments with the Union was to foster good relations. The County posits that the Warden and the County's attorney repeatedly informed the Union leadership, and its attorney, that any discussions regarding redeployments were on a "meet and discuss" basis only and that it remained the ACJ's managerial prerogative to ultimately decide redeployments. The Union's attorney, argues the County, even agreed that the ACJ was not waiving any managerial rights, which is consistent with the management rights provision of the parties' CBA. (County's Post-hearing Brief at 1-11).

In **Ellwood City Police Wage and Policy Unit v. Ellwood City Borough**, 36 PPER 89 (Final Order, 2005), the Board recognized that overall employe complement and staffing levels are within the managerial rights of the employer, citing **IAFF Local 669 v. City of Scranton**, 429 A.2d 779 (Pa. Cmwlth. 1981), but held that the number of police officers assigned to transport a prisoner was a mandatory subject of bargaining because it was a safety issue. The record in this case clearly demonstrates that, in April 2015, ACJ management unilaterally eliminated the second officer on 8D and 6F during the 7-3 and 3-11 shifts, without bargaining. The substantial, competent evidence of record also establishes that some of the most dangerous inmates at the ACJ are housed on 8D and 6F and that historically there were two officers posted during the 7-3 and 3-11 shifts.

There are 80-100 inmates in a pod. The officers in a pod wear a pin that, when pulled, sounds an alarm. The alarm pins do not function inside the bubble. 6F houses maximum security inmates. Currently, there is one 6F and 8D officer on any shift, since the unilateral change. When an inmate needs to be escorted to an appointment, the 6F officer may call for an Escort Officer, but if the Escort Officer cannot leave the hallway, the 6F officer will have to enter the bubble alone without backup because the second 6F has been redeployed. The officer alone in the bubble has no functional alarm activator pin. There needs to be a second officer outside the bubble to pull the pin if the Escort Officer or the 6F officer has a conflict with a maximum security inmate inside the bubble. Without the second officer, there is no assistance.

The record also demonstrates that the Union repeatedly notified the ACJ management that the second 8D and 6F officer positions and the Gym and Escort Officer positions were very important to maintain to ensure adequate employe safety. Based on this record, I agree with the Union that the number of officers deployed on 8D and 6F during the 7-3 and 3-11 shifts constitutes a matter of employe safety significantly affecting employe terms and conditions of employment, specifically officer safety, and therefore constitutes a mandatory subject of bargaining within the meaning of **Ellwood City, supra**. Accordingly, ACJ management could not unilaterally reduce the number of officers deployed in that capacity without bargaining approval from the Union.

I also agree that the Gym Officer position is a matter of officer safety and a mandatory subject of bargaining. Inmates using the big gyms for basketball games and workouts relieve stress by providing physical release from the frustrations of confinement, which relieves pressure from the officers. As young adults, inmates require productive physical activity so they do not release their frustrations on each other or the officers. Currently, inmates can only use the small gyms without basketball and limited exercise equipment. The inmates cannot use the smaller gyms in the winter when the temperature gets cold or when it snows.

Also, the hallway outside of the level 4 gym, where yoga instruction is held, is 100-120 yards long. When the floor control officer is at one end of the hallway, he

cannot see or hear what is happening inside the gym when he is down the hall. He can only see inside the gym if he is standing directly in front of the gym entrance. The gym is in the middle of the level 4 hallway. The Escort Officers are sometimes performing pod checks or escorts and would not be in the hallway at all. The yoga instructors do not wear body alarms. Inmates could overwhelm the civilian instructor and matters could escalate making it more difficult for the hallway officers to contain the escalated violence without receiving injuries. Accordingly, the ACJ unilaterally changed terms and conditions of employment that constituted mandatory subjects of bargaining.

Moreover, the facts demonstrate that the ACJ bargained an agreement with the Union in 2014, which it disavowed in April 2015. Even Warden Harper admitted that there was such an agreement. The County argues that it never bargained with the Union and that it repeatedly told the Union that their discussions were accommodations for good relations under "meet and discuss" and that the ACJ reserved its managerial prerogative to assign officers to different posts. However, the County's proffered testimony of Warden Harper and its Solicitor (that the ACJ notified the Union that it essentially reserved a right to renege on their agreement) is contradicted by the testimony of Major Demore and Vice-President Salopek. I resolve this conflict in favor of the corroborated testimony of Major Demore and Vice-President Salopek, and I find that the County did not make any such representations to the Union, although ACJ management and counsel may have discussed that position among themselves. Furthermore, such representations would not provide the ACJ with a right it did not possess because the elimination of officers on 8D, 6F, in the Gym and on escort were mandatorily bargainable. The County employer does not have the right or the power to unilaterally determine whether a matter is a safety issue any more than an employer has the right to unilaterally determine whether a grievance is arbitrable under the parties' contract. Permitting the employer to unilaterally make such a determination allows the employer to refuse to meet its bargaining obligations or to selectively choose when it will bargain merely by characterizing the issue as not safety related or, in the example, not arbitrable.

Additionally, the ACJ management did bargain and reach an agreement with the Union in 2014 over redeployments. The Board recently stated in **International Association of Firefighters Local 840 v. Larksville Borough**, PF-C-16-46-E, as follows:

The Board examines all relevant circumstances in determining whether the parties reached an agreement. It is the external objective conduct of the parties, and not subjective beliefs, that establish the presence or absence of a meeting of the minds. Where the parties have a meeting of the minds concerning the subject matter of the agreement, a binding agreement exists.

**Id.** (citations omitted).

The record shows that both the ACJ and the Union made concessions. And by all outward appearances, a reasonable participant or observer would have had every reason to believe that the ACJ and the Union were negotiating the redeployments with officer safety being of paramount concern to the Union. The Union negotiated the positions in the gym, 8D and 6F as a safety issue. The ACJ management personnel did not outwardly deny to the Union that they were negotiating during the meetings in 2013 or 2014 and never mentioned to the Union that the discussions were only "meet and discuss." No one from the ACJ reserved the right to renege or disavow any agreements made regarding redeployments.

The Union gave up positions that it strongly resisted conceding. The Union made those concessions because it wanted to keep the positions on 8D, 6F and the Gym Officer. Union Vice-president Salopek would not have given up the escort positions if he thought that management could renege on or disavow the deal regarding the positions on 8D, 6F and the gyms because those positions presented important safety issues for the Union and the officers.

The County saved approximately \$500,000 in overtime based on the Union's concessions. Major Demore believed that the ACJ was negotiating redeployments with the Union. The terms of the May 1, 2014 agreement were followed by the ACJ until April 2015 when Warden Harper unilaterally eliminated the second officers on both 8D and 6F as well as the Gym Officers without bargaining with the Union. Consequently, the objective conduct of the parties demonstrates a meeting of minds after negotiations, within the meaning of **Larksville, supra**. Consequently, having negotiated an agreement on redeployments, it does not matter whether the elimination of the second position on 6F and 8D or the Gym Officers constituted a safety issue and a mandatory subject of

bargaining. The ACJ had a duty to bargain any changes to the negotiated redeployments. Accordingly, the County engaged in unfair practices and violated its bargaining obligation to the Union when it unilaterally eliminated 6F, 8D and the Gym Officers, in violation of the negotiated agreement.

The County argues that the Union agreed that the County was not waiving any managerial rights during the 2014 negotiations and those managerial rights are embodied in the parties' CBA. Article XV of the parties' CBA is entitled "**Management Rights**" and provides, in relevant part, that the County reserves all of its managerial rights and powers including but not limited to operating, manning and securing the ACJ, as well as scheduling and directing personnel. In **Ellwood City, supra**, the Board rejected the position that the broad scope of the boilerplate language in a management rights clause could eclipse employees' right to negotiate safety issues. Moreover, in the context of applying zipper clauses in collective bargaining agreements, the Board long ago adopted the policy of the National Board that a "[w]aiver of a statutory right [to bargain a mandatory subject] will not be lightly inferred. The relinquishment to be effective must be clear and unmistakable." **PLRB v. Commonwealth of Pennsylvania, Venango County Board of Assistance**, 11 PPER ¶ 11223, at 388 (quoting **NLRB v. C & C Plywood**, 148 NLRB 414, 416 (1967), *aff'd*, 385 U.S. 421 (1967)). The evidence of record must demonstrate that the Union consciously yielded or clearly and unmistakably waived its interest in the specific matter. **Venango County**, 11 PPER at 390 (citing **Unit Drop Forge Division**, 171 NLRB 600 (1968)).

The management rights provision in the parties' CBA is very broadly worded, and a waiver of the Union's right to bargain over compromising the safety of officers resulting from certain redeployments cannot be lightly inferred. There is no reasonable inference to be drawn that the Union consciously yielded or unmistakably waived the right to bargain the safety of officers resulting from inadequate post assignments where one officer is posted to supervise approximately 80 dangerous maximum security inmates by himself. Accordingly, the boilerplate language in the Management Rights clause does not support the position that the ACJ had the right to eliminate the positions on 8D, 6F and the Gym without bargaining or that the Union unmistakably waived its right to bargain that specific issue.

The County argues that Major Demore lacked authority to agree to redeployments with the Union because only the County Manager can negotiate labor contracts on behalf of the County. Clearly if the Warden has the authority to determine deployments, then clearly he and his management personnel have the authority to settle disputes created by the Warden's decisions on redeployments in the first instance. Also, the Warden followed the agreement for one year demonstrating his approval and his intent to honor the agreement to which he felt bound. In this regard, the circumstantial evidence of record yields the inference that the ACJ knew it was bound by the agreement when it entered the agreement, but later attempted to conjure an excuse to disengage from it.

Here, the County wants it both ways. The County wants to emphasize a management rights clause that enshrines the powers of ACJ management to schedule, direct, assign and deploy its employees, but then argues that only the County Manager has the authority to negotiate agreements with respect to such direction of personnel and deployments and scheduling. Moreover, the record shows that the County appointed different representatives at various times to negotiate and represent the County in interest arbitration and that ACJ management was present at negotiations and arbitrations, demonstrating that the Manager has delegated labor negotiations to ACJ management and other representatives. Also, it defies credulity to believe that the ACJ management has the authority to make redeployment decisions but does not have the authority to reverse those decisions. Further, the deployment of personnel within the ACJ is consistent with the County charter, which authorizes the County Manager to delegate his/her authority to negotiate labor contracts and determine personnel matters.

**PERA-C-15-126-W**

In this case, the Union claims that the ACJ unlawfully transferred bargaining unit work to civilian contractors when it eliminated the Gym Officer position and allowed civilian yoga instructors to supervise inmates engaging in yoga classes inside the Gym. The County maintains that it had a managerial prerogative to close the gym and there is adequate supervision of inmates inside the gym doing yoga exercises because there are officers posted in the hallway. However, the County's position is not supported by the record.

Currently, there are non-bargaining unit civilians in the big gyms with inmates teaching them yoga. Prior to April 2015, the ACJ placed a Gym Officer inside the gym during yoga instruction. There remains an officer in the hallway but there is no longer an officer inside the big gym. There have been central or big gyms on each level at ACJ since it opened in 1995. There have been gym or "rec" officers since at least 1985 and inside those central or big gyms on levels 1-6 since 1995, until the Warden terminated the position in April 2015. The Gym Officers would call inmates to the central gym on a given level and supply and track gym equipment such as balls, tires, jump ropes and medicine balls. He would also track inmates using the bathroom and track equipment return, and he would additionally referee and control the inmates' behavior and call for assistance in the event of a conflict, fight or code. He patrolled the entire gym while inmates were inside the gym. (N.T. 177)

The Gym Officer was present inside the central gyms while inmates were inside the gym. The Gym Officer was not in the hallway. Any activities in the big or central gyms were supervised by a Gym Officer including basketball, women's classes, Muslim classes and any other meetings had to have a Gym Officer. Any occasion when civilians would enter the ACJ and teach classes in the central gyms, a Gym Officer would be present inside the gym. When the Gym Officer called off work, the ACJ would fill the Gym Officer position with another officer. When the Gym Officer went on lunch break, an Escort Officer or hallway officer would take the place of the Gym Officer and physically patrol inside the gym. Prior to April 2015, the ACJ always deployed a Gym Officer inside the gym when civilian teachers or instructors were teaching inmates. Currently, the only person inside the gym watching inmates during yoga instruction is the yoga instructor. Accordingly, the ACJ transferred the bargaining unit work of the Gym Officer to the civilian yoga instructors, and the charges of unfair practices under both case numbers are sustained.

#### **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.
2. The Union is an employe organization.
3. The Board has jurisdiction over the parties hereto.
4. The County has committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act under Case No. PERA-C-15-128-W by reneging on a collectively bargained agreement and unilaterally changing a mandatory subject of bargaining regarding unsafe redeployments.
5. The County has committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act under Case No. PERA-C-15-126-W by transferring bargaining unit work of the Gym Officer to non-unit civilian contractors when conducting yoga classes in the big gyms.

#### **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 PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is 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 hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately restore the status quo ante and restore the work to the bargaining unit. Specifically, immediately restore the second position on 8D and 6F on the 7-3 and 3-11 shifts in accordance with the May 1, 2014 bargained-for agreement;

(b) Immediately restore the Gym Officers in accordance with the May 1, 2014 bargained-for agreement and post a Gym Officer inside the big gyms during yoga classes/instruction/exercises;

(c) 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; and

(d) 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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifth day of May, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO  
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYES :  
INDEPENDENT UNION :  
v. :  
ALLEGHENY COUNTY :  
CASE NOS. PERA-C-15-126-W :  
PERA-C-15-128-W :

**AFFIDAVIT OF COMPLAINT**

The County of Allegheny hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has returned to the bargaining unit of County correctional officers at the Allegheny County Jail positions of second officer on 8D and 6F on the 7-3 and 3-11 shifts, consistent with the May 1, 2014 bargained-for agreement; that it has returned to the bargaining unit of County correctional officers at the jail the Gym Officer position consistent with the May 1, 2014 bargained-for agreement; that it has assigned a Gym Officer inside the big gym during inmate yoga exercises; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

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