

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

The Commonwealth of Pennsylvania, Department of Corrections, Rockview State Correctional Institution (Commonwealth) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 20, 2015, to a Proposed Decision and Order (PDO) issued on July 31, 2015. In the PDO, the Hearing Examiner concluded that the Commonwealth violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by failing to comply with a grievance settlement entered into between the Commonwealth and the Pennsylvania State Corrections Officers Association (Association or Union). Based on the testimony and evidence presented during a hearing held on April 6, 2015, the Hearing Examiner made Findings of Fact, which are amended and summarized as follows.

AMENDED FINDING OF FACT

13. The Association determined that there were vacancies in the manpower survey by reviewing a vacancy report dated June 2, 2014 (the June Vacancy Report). (N.T. 18-19; Union Exhibit 5).

DISCUSSION

For each state correctional institution, a manpower survey is developed by the Commonwealth, with Association input, which describes the positions and number of corrections officers needed to safely and efficiently staff each facility. In July 2012, the Association became aware that the number of corrections officers at the SCI-Rockview facility was below the manpower survey staff complement of 345 corrections officers established by the Commonwealth. The Association filed a grievance on July 17, 2012, which stated as follows: "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."

On September 4, 2012, during a regularly scheduled monthly meeting, the Association and the Commonwealth settled the grievance during Step 1 of the grievance procedure. The Commonwealth and the Association mutually executed a document (the Grievance Settlement) which contained the following provision in the "Settlement Summary" section: "Keep staffing at Manpower Survey Complement." Neither party challenged the Grievance Settlement to Step 2 of the grievance procedure.

Following the Grievance Settlement, the Commonwealth hired new correction officers to add to the complement at SCI-Rockview. However, upon review of a vacancy report dated June 2, 2014, the Association determined that there were twenty-two corrections officer positions vacant in the manpower survey.

Based on the testimony and evidence presented by the parties, the Hearing Examiner concluded that the Association sustained its burden of establishing a failure to comply with the Grievance Settlement in violation of Section 1201(a)(1) and (5) of PERA. On exceptions, the Commonwealth argues that the Hearing Examiner erred in finding that the terms of the Grievance Settlement are clear and unequivocal and contends that the Hearing Examiner erred in accepting extrinsic testimony and evidence to define "staffing at

manpower survey complement" to mean that the Commonwealth's failure to maintain 345 corrections officers at SCI-Rockview was not in compliance with the Grievance Settlement.

A public employer's refusal to comply with a resolution reached during 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). The burden of proof lies with the complainant to establish that the respondent has refused to comply with the express terms of the grievance settlement. *E.g.* **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977).

The Board has recognized, however, that a respondent may show that it has not refused to comply with the grievance settlement because the terms of the agreement, albeit express, are susceptible to more than one understanding and the respondent's actions are in accord with the agreement. **Pennsylvania State Corrections Officers Association v. Commonwealth, Department of Corrections Fayette SCI**, 38 PPER 40 (Proposed Decision and Order, 2007). For purposes of the unfair practice, it is not the function of the Hearing Examiner to arbitrate the settlement agreement between two plausible interpretations. **AFSCME, District Council 47, Local 2187 v. City of Philadelphia**, 36 PPER 124 (Final Order, 2005). However, where the grievance settlement uses nomenclature unique to the industry or workplace, testimony and evidence may be necessary to determine whether there was a meeting of the minds on the agreement or whether the terms used are susceptible to more than one meaning and application. *Id.*, **Radnor Township Education Association v. Radnor Township School District**, 40 PPER 44 (Final Order, 2009).

In determining whether the complainant has sustained its burden of proving clear and express terms in the face of a defense that the settlement agreement is susceptible to more than one interpretation, it is the function of the Hearing Examiner to weigh the evidence and decide issues of credibility to reach those necessary findings of fact and conclusions. *E.g.* **Mt. Lebanon Education Association v. Mt. Lebanon School District**, 35 PPER 98 (Final Order, 2004). Accordingly, the Hearing Examiner did not err in utilizing the testimony and evidence to find that the Association and Commonwealth held a mutual understanding of "staffing at manpower survey complement" when they entered into the Grievance Settlement.

On this record, there is substantial evidence to support the Hearing Examiner's determination that the Grievance Settlement was understood by the parties to actually mean that the Commonwealth would maintain the Manpower Survey required complement of 345 corrections officers for the SCI-Rockview facility. Larry Blackwell, business agent for the Association, testified as follows:

The union's position was that the manpower analysis provided by the Commonwealth gave us a number of corrections officers to staff the facility. The number, I believe it was like 345, that was the minimum staffing complement that you have for corrections officer one. And the grievance was that we were below that number. And again, we were getting beat up with overtime through military deployments, all kinds of things. But we weren't at that number. So the vice president filed the grievance because we weren't filling positions up to the 345.

(N.T. 35). The Commonwealth takes issue with the Hearing Examiner's reliance on this testimony, noting that Mr. Blackwell states that the manpower survey references 345 correction officer ones, not any corrections officers as found by the Hearing Examiner in Findings of Fact 5 and 6. The Commonwealth also contends that Mr. Blackwell's assertion that the grievance was filed because of excessive overtime was not supported by grievance documents.

The Hearing Examiner is free to accept the testimony of any witness in whole or in part. **Limerick Township Police Officers v. Limerick Township**, 36 PPER 125 (Final Order, 2005).¹ Furthermore, the testimony of the Commonwealth's witnesses supports the inferences

¹ Simply because there is contradictory testimony or evidence in the record does not compel the Board to set aside the Hearing Examiner's credibility determinations and fact finding. **PLRB v. Stairways, Inc.**, 425 A.2d 1172

and findings made by the Hearing Examiner in the PDO. Gerald D. McMann, then major of the guard at SCI-Rockview, testified as follows:

Q. The manpower survey is something that is brought together by both management and the union; correct?

A. Correct.

Q. And it sets forth the positions, including their reliefs, to safely and efficiently run the institution; correct?

A. Correct.

Q. And it presumes that people would be working a normal, essentially 40-hour work week to fill those positions; correct?

A. Correct.

* * *

Q. [T]he actual survey presumes that each one of these positions will be filled by an individual person who's working a normal schedule; correct?

A. When you say position is where I'm having a rough time saying that. But yes, the manpower survey has the post that need to be filled, they have the relief factor for each one of those posts, which are different based on a five-day post, a six-day post, a seven-day post, multiplied by the relief factor, which is based on the amount of leave, of military, that Rockview generates.

(N.T. 49-50). Additionally, Cynthia Rowe, the field human resource officer at SCI-Rockview, testified as follows:

Q. The manpower survey, you'll agree with me, identifies the number of warm bodies that are needed in order to safely and efficiently run an institution; correct?

A. The manpower allows for the relief factor which will factor in when people are not going to be there, either they're on military leave or they're on long-term sick leave, those types of things.

* * *

Q. ... But the actual manpower survey identifies how many human beings ultimately, and it gives you a specific number, each jail, of what's expected to run that jail from day to day to day; correct?

A. Including relief factor and expecting them off, correct.

(N.T. 62).

As indicated by the testimony of Mr. Blackwell and Ms. Rowe, the Hearing Examiner could properly infer from the record evidence that the Commonwealth understood at the time of the Grievance Settlement that the manpower survey was not merely positions to be filled on a daily roster, but stated the total number of correctional officers needed for all corrections officer positions during a normal 40-hour work week, including coverage for anticipated leave. At SCI-Rockview, the staffing complement as indicated at that time by the Commonwealth's manpower survey was 345 corrections officers.

The Commonwealth argues on exceptions that the vacancy reports offered into evidence by the Association do not support the conclusion that the Commonwealth was not in compliance with the manpower survey complement, and therefore Hearing Examiner Findings of Fact 13 through 15 are not supported by substantial evidence. The testimony of Matthew Foster, president of the Association's local at SCI-Rockview, is substantial evidence that the June and July 2014 vacancy reports, provided to him by the Commonwealth, indicated that there were vacancies in the total complement of correctional officers. From the vacancy reports and the testimony of Mr. Foster (N.T. 18-19), the

(Pa. Cmwlth. 1981); **Temple University Health System**, 40 PPER 3 (Final Order, 2009). Moreover, the Hearing Examiner need not make findings summarizing all of the evidence presented, but is only required to make those findings that are relevant and necessary to support the conclusion reached. **Page's Department Store v. Velardi**, 464 Pa. 276, 346 A.2d 556 (1975).

Hearing Examiner could reasonably infer and find that the Association satisfied its burden of showing that the Commonwealth was not in compliance with its agreement to keep staffing at the manpower survey complement of 345 corrections officers. Accordingly, the Commonwealth's exceptions to Findings of Fact 13 through 15 are dismissed.²

The Commonwealth also argues on exceptions that the Hearing Examiner erred in concluding that the Step One Grievance Settlement was binding on the Commonwealth. Before the Hearing Examiner and on exceptions, the Commonwealth contends that the Grievance Settlement is not binding because it is allegedly in violation of the management rights clause of the collective bargaining agreement. Article 33 of the collective bargaining agreement, relied on by the Commonwealth, provides as follows:

The Employer must retain certain prerogatives which include but are not limited to the determination of the required employee complement. Due regard shall be given by the Employer in determining personnel needs to the safety of the employees. The Association may invoke the provisions of the grievance procedure in the event it determines that assignments are made without due regard to safety. In the event that the Union should successfully challenge an action by the Employer as being in violation of this Section, the Arbitrator shall be empowered to enter such award as is necessary to remedy the violation, including the reinstatement of the status quo.

(Commonwealth Exhibit 1, p. 67).

The Commonwealth's argument must be rejected.³ Having agreed that "[t]he Association may invoke the provisions of the grievance procedure in the event it determines that assignments are made without due regard to safety[,]" the matter was properly the subject of a grievance and therefore may be resolved by the parties in the course of the grievance procedure. To suggest, as the Commonwealth does, that a public employer who enters into a grievance settlement may nevertheless revoke that agreement because of alleged nonconformity with the collective bargaining agreement would be tantamount to a failure to discuss grievances in good faith in violation of Section 1201(a)(5) of PERA.

On this record, the Hearing Examiner did not err in finding that the Association established that the Commonwealth failed to abide by the terms of a September 4, 2012 Grievance Settlement to "[k]eep staffing at Manpower Survey Complement." Accordingly, the Hearing Examiner did not err in concluding that the Commonwealth committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA. After a thorough review of the exceptions and all matters of record, the Commonwealth's exceptions to the PDO shall be dismissed and the July 31, 2015 PDO shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI are hereby dismissed, and the July 31, 2015 Proposed Decision and Order, be and hereby is made absolute and final.

² The Commonwealth also argues that Finding of Fact 11, that the Commonwealth had taken steps to comply with the Grievance Settlement and hired new correction officers to add to the complement at SCI-Rockview, is in error. Mr. Foster's testimony that between 2012 and 2014 the Commonwealth hired more than fifty corrections officers at SCI-Rockview, could reasonably be viewed as progressing toward a complement of 345 corrections officers, which would be in compliance with the Grievance Settlement. Accordingly, the Commonwealth's exception to Finding of Fact 11 is dismissed.

³ Notably, nothing in the Grievance Settlement alters the fact that the manpower survey complement is a document ultimately established by the Commonwealth.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twentieth day of October, 2015. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

