COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES INDEPENDENT UNION	:	
v.	:	Case No. PERA-C-21-136-W
ALLEGHENY COUNTY	:	

FINAL ORDER

The Allegheny County Prison Employees Independent Union (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 17, 2022, challenging a Proposed Decision and Order (PDO) issued on November 2, 2022.[1] In the PDO, the Board's Hearing Examiner concluded that Allegheny County (County) did not violate Section 1201(a)(1) or (5) of the Public Employe Relations Act (PERA) when it unilaterally implemented an ordinance that eliminated longstanding jail rules and enforcement practices concerning the use of solitary confinement, leg shackles, restraint chairs and pepper spray. Following an extension of time granted by the Board Secretary, the Union filed a brief in support of the exceptions on December 7, 2022.[2]

The facts of this case are summarized as follows. During the May 18, 2021, primary election, the voters of Allegheny County approved a ballot initiative (Referendum) concerning the County Jail. The question on the ballot was whether the Allegheny County Code, Chapter 205, entitled "Allegheny County Jail," should be amended and supplemented to include a new Article III, setting forth standards governing conditions of confinement in the Allegheny County Jail. The proposed changes prohibited solitary confinement (defined as detaining an inmate in a cell for more than 20 hours a day) except in certain emergencies, and the use of leg shackles, restraint chairs, or pepper spray at any time for any reason. (FF 4). The Referendum was approved by the voters and became an ordinance. (FF 5).

Thereafter, to comply with the Referendum, the Warden of the Jail implemented policies which forbade the use of restraint chairs, leg irons or pepper spray and modified the Jail's policy on solitary confinement. (FF 5). When the Referendum passed, the Jail did not have any explicit "solitary confinement" wing or facility. However, the Jail did have a restrictive housing unit (RHU) where some of the most dangerous inmates are held which is separate from the Jail's general population. Inmates who commit serious misconduct while incarcerated are sent to RHU. RHU inmates are moved by two

[1] The Union filed a request for oral argument, which is denied as the matter has been adequately presented in the Union's brief.

[2] On January 6, 2023, the County requested a 30-day extension to file a brief in opposition to the exceptions, which was denied by the Secretary as untimely. 34 Pa. Code § 95.98(c)(a response to the exceptions must be filed "[w]ithin 20-calendar days following the date of receipt of the statement of exceptions and supporting brief").

correction officers everywhere they go in the unit. (FF 7). After the Referendum was passed, the Jail changed the existing policy to give inmates in RHU four hours of recreation time per day instead of one hour. (FF 6, 7).

Prior to the changes to the Jail's policies necessitated by the Referendum, the Jail would discipline inmates in the General Population pursuant to the "Informal Resolution Policy." This policy allowed the correctional officers to administer punishment to inmates for minor rule infractions, for a period of 4, 8, 24, 48, or 72 hours, of complete confinement in his or her cell. If an inmate was locked up for a rule violation under this policy, he or she would still get one hour of recreation time per day outside of their cell. (FF 8).

The Union filed a Charge of Unfair Practices with the Board on July 2, 2021, alleging that the County violated Section 1201(a)(1) and (5) of PERA, by unilaterally implementing changes to inmate discipline and use of force policies in the Allegheny County Jail which impacted the correctional officers' safety. On October 5, 2021, the Secretary of the Board dismissed the Charge, to which exceptions were filed by the Union on October 21, 2021. On January 18, 2022, the Board issued an Order Directing Remand to the Secretary for Further Proceedings.

On February 9, 2022, the Secretary issued a Complaint and assigned this matter to a Hearing Examiner. A hearing was held before the Hearing Examiner on April 26, 2022, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner first concluded that the County's new policy regarding solitary confinement, i.e., providing the inmates with four hours of recreation time instead of one hour, is a managerial prerogative under PERA as it relates to the care, custody and control of the inmates. The Hearing Examiner also found that the policy changes banning the use of leg shackles, restraint chairs and pepper spray in the Allegheny County Jail were within the managerial authority of the County to direct personnel in its use of force. Concerning the Union's argument that the policy changes affected the safety of the correctional officers, the Hearing Examiner determined that the Union failed to present sufficient evidence demonstrating an increased risk of any specific or actual harm to the correctional officers due to the changes. Finally, the Hearing Examiner concluded, pursuant to the test enunciated in PLRB v. State College Area School District, 337 A.2d 262 (Pa. 1975), that the County's interest in the care, custody and control of inmates outweighed the Union's purported interest in correctional officers' safety. Accordingly, the Hearing Examiner dismissed the Union's Charge and rescinded the Complaint.

The Union's exceptions challenge the Hearing Examiner's conclusion that the County's changes to the Jail's policies were a proper exercise of managerial prerogative. In particular, the Union contends that the Hearing Examiner erred in failing to consider, *inter alia*, testimony explaining that the ordinance changed working conditions by severely limiting the effectiveness of the Jail's "Informal Resolution Policy," and straining the Jail's ability to control dangerous inmates, both of which impacted the safety of correctional officers.

It is well-settled that the Hearing Examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence, and

draw inferences from those findings of fact. PLRB v. Kaufmann Department Stores, Inc., 29 A.2d 90 (Pa. 1942). Absent the most compelling of circumstances, the Board defers to the credibility determinations of its hearing examiners who observe the manner and demeanor of the witnesses during the testimony. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Id.; International Association of Firefighters Local 840 v. Larksville Borough, 48 PPER 82 (Final Order, 2017). Here, the Board finds that the Hearing Examiner thoroughly considered the evidence presented by both parties and made the findings that are necessary to support the proposed decision.

To determine whether a particular issue in dispute is to be collectively bargained or is a non-negotiable matter of inherent managerial policy, the Board applies the balancing test in State College Area School District, supra. Under the balancing test announced by the Pennsylvania Supreme Court in State College, "when an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy." Id. at 268. Rather, to be considered a non-negotiable managerial prerogative, the probable effect on the employer's basic policy of the system as a whole must outweigh the impact of the issue on the interests of the employes in their wages, hours and working conditions. Id.

In determining whether a disputed item is a mandatory subject of bargaining or a matter of inherent managerial policy, the Board properly relies on its prior application of the State College balancing test to the disputed item, unless a party presents new or different facts that may alter the weight the matter at issue bears on the interests of the parties. Pennsylvania State Corrections Officers Association v. Department of Corrections, Fayette SCI, 35 PPER 84 (Final Order, 2004); Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 33 PPER ¶ 33087 (Final Order, 2002). The burden is on the party requesting departure from established precedent to demonstrate on the record facts warranting such departure. Id.

On exceptions, the Union first argues that the Hearing Examiner erred in concluding that the Jail's rule changes concerning the use of "solitary confinement" by requiring that inmates be out of their cell for at least four hours a day is within the County's managerial authority. The Union asserts that the changes to "solitary confinement" effectively eradicated a progressive discipline policy that had historically been highly effective in correcting inmate behavior. After the Referendum, the "Informal Resolution Policy", whereby an inmate in the General Population who committed a minor infraction of the Jail rules could be kept in their cell for a graduated length of time up to three days, was limited to a maximum of twenty hours, and the only disciplinary option available to address misbehavior in the General Population was to restrict the inmates use of their electronic devices (tablets), or the threat of transfer to the RHU. As a result, the Union maintains that the officers were impacted in multiple ways including, the lack of appropriate staffing to properly supervise more RHU inmates at one time, and increasingly more defiant behavior by General Population inmates who now have an opportunity to "get away with" more misbehavior before being transferred to RHU. According to the Union, the "Informal Resolution Policy" kept the correctional officers and the other General Population inmates safe.

The Board has held that a public employer's decision that strikes at the core of its public purpose to provide necessary standards of services is within its managerial prerogative under Section 702 of PERA. APSCUF v. PLRB, 226 A.3d 1229 (Pa. 2020)(policy requiring employes to submit to background checks is proper exercise of managerial authority because it touches upon the core aspect of providing a safe educational environment); Fraternal Order of Transit Police v. SEPTA, 36 PPER 115 (Final Order, 2005)(SEPTA's policy of requiring transit police officers to take lunch within walking distance of their assigned beat was a managerial prerogative because it was in furtherance of its public purpose of providing a safe public transportation system); Easton Area Education Association v. Easton Area School District, 32 PPER ¶ 32163 (Final Order, 2001)(school district's creation of developmental reading assessment program for education of its students is a managerial prerogative). Here, as noted by the Hearing Examiner, the County's change in the policy which increased the amount of recreation time the inmates receive per day and restricted the use of the "Informal Resolution Policy" relates to the County's core public purpose of the care, custody, and control of the inmates. Indeed, the Warden stated that he observed a decline in the mental health of inmates who were alone too long in their cells and that the increase in recreation time would benefit the mental health of the inmates.

Concerning the Union's assertion that "the Jail does not have the officer staffing available to safely monitor an inmate, or even several inmates, on four hours of recreation time per day," (Union Brief at 14-15), the Board notes that the courts have "drawn a very fine line in distinguishing" between the total number of persons employed by a public entity, which is not bargainable, and the number of persons assigned to a task undertaken by that entity, which is bargainable when rationally related to the employes' safety. International Association of Firefighters, Local 669 v. City of Scranton, 429 A.2d 779, 781 (Pa. Cmwlth. 1981); City of Philadelphia v. IAFF, Local 22, 999 A.2d 555 (Pa. 2010). Here, much like the situation in City of Scranton, the ultimate decision concerning the appropriate number of employes on staff at the prison to provide care, custody and control of inmates is not a mandatory subject of bargaining. Relevant here, the record is devoid of evidence that the Referendum change to require each inmate have four hours of time out of their cell affected a correctional officer's safety in any material way by restricting the number of correctional officers escorting an inmate during that time. *See* City of Scranton, *supra.*

Indeed, a review of the record indicates that there was no testimony to show a change to the number of correctional officers escorting RHU inmates, or any increased risk to correctional officer safety resulting from the policy change. Thus, the Board concurs with the Hearing Examiner's conclusion that the Union did not establish that the correctional officers' interests in wages, hours, or working conditions (safety) outweighed the probable effects of the new policies' intended purpose of promoting the health and welfare of the inmate population in its care. Accordingly, the Court did not violate Section 1201(a)(1) and (5) of PERA by restricting "solitary confinement" or increasing the inmates time out of their cells to four hours per day.

The Union next asserts that the Hearing Examiner erred in concluding that the Jail's changes concerning the use of leg shackles, restraint chairs and chemical agents (such as pepper spray) were within management prerogative because the changes significantly impacted the safety of the correctional

officers thereby rendering these matters mandatory subjects of collective bargaining. In making this argument, the Union alleges that the restraint chair had been effective in transporting inmates who were violent and/or uncooperative from one part of the jail to another, and that after its prohibition, at least four officers were required to move an unruly inmate. As to the leg shackles, the Union states that prior to their eradication, the Jail had used them for "cell extractions," when taking inmates to the hospital, or transferring them to another facility. The Union asserts that the potential for both inmate assaults and escape has increased since discontinuance of leg shackles at the Jail. Finally, the Union asserts that prior to the Referendum, the use of chemical agents safely allowed for a "cell extraction" without endangering the officers, and that although tasers have been used for that purpose following the rule changes at the Jail, the latter does not gain inmate compliance as effectively as pepper spray, such that the potential for officer injury has been increased.

The Board caselaw on this point is clear that the County's prohibition on the use of leg shackles, restraint chairs and pepper spray was within its managerial authority to direct the correctional officers in the use of force permitted to restrain and pacify inmates. *See* FOP Lodge 5 v. City of Philadelphia, 52 PPER 67 (Final Order, 2019); FOP, Lodge No. 5 v. City of Philadelphia, 45 PPER 105 (Proposed Decision and Order, 2014); *see also,* Teamsters Local 77 & 250 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001). Further, based on the credibility determinations and weight of the evidence, the Hearing Examiner found there was not substantial evidence presented that established an increased risk of any correctional officer suffering actual physical harm resulting from the policy changes eliminating the leg shackles, restraint chair and chemical agents. Neither was substantial evidence presented that the County Jail's policies forbade or unduly limited the number of correctional officers needed to transport an unruly inmate. As such, the Hearing Examiner properly concluded that the Union did not establish that the correctional officers' concerns over safety did not outweigh the Jail's interest in the manner utilized for the care, custody and control of the inmate population. Therefore, the County did not violate Section 1201(a)(1) or (5) of PERA by unilaterally changing its policy as to the use of leg shackles, restraint chair, and chemical agents.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the County's implementation of new rules at the Jail regarding the use of solitary confinement, leg shackles, restraint chair and chemical agents did not violate Section 1201(a)(1) or (5) of PERA.[3] Accordingly, the Board shall dismiss the Union's exceptions and make the Proposed Decision and Order final.

ORDER

[3] The Union has not alleged, nor identified, or even made a demand to bargain over any demonstrable impact on any separate issue of wages, hours and working conditions that is capable of severance from the Referendum and is not a necessary consequence of the County Jail's managerial policy changes to "solitary confinement", increased time inmates have out of their cells, leg shackles, restraint chairs, or use of chemical agents. Thus, on these facts, the Union has not alleged, nor established a violation of the County's duty to "impact bargain" under Section 1201(a)(5) of PERA.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Allegheny County Prison Employees Independent Union are dismissed, and the November 2, 2022, Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this nineteenth day of September, 2023. 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.