

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :
INDEPENDENT UNION :
v. : Case No. PERA-C-22-120-W
ALLEGHENY COUNTY :

FINAL ORDER

Allegheny County (County) filed timely exceptions and supporting brief with the Pennsylvania Labor Relations Board (Board) on November 29, 2022, challenging a Proposed Decision and Order (PDO) issued on November 9, 2022. In the PDO, the Board's Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) when it denied a request by the Allegheny County Prison Employees Independent Union (Union) for information related to a ten-day suspension issued to Michelle Argotti (Grievant). On December 16, 2022, the Union filed a response and brief in opposition to the exceptions.

The facts of this case, as stipulated to by the parties, are summarized as follows. The County has certain procedures it uses to investigate a suspected violation of work rules. First, the County may schedule and hold fact finding hearings in which management staff questions a corrections officer who has allegedly violated work rules. The officer has the right to bring a Union representative to the fact-finding hearing. The County subsequently transcribes the questions posed by management and answers given by the officer into a fact-finding document. The Officer is provided a copy of the document to review and sign for his/her records. (FF 5). In addition to questioning at the fact-finding hearing, corrections officers often author and sign statements concerning the events giving rise to later investigative and disciplinary proceedings against the officer. (FF 6).

If, after completion of the fact-finding, the County determines that a violation of work rules has occurred, it may schedule and hold a pre-disciplinary conference (hereinafter "PDC") in which a panel of management staff questions the corrections officer on charges that he or she violated work rules. The officer has the right to bring a Union representative to the PDC. The County subsequently transcribes the questions posed by management and the answers given by the officer into a PDC document. The officer is provided a copy of the document to review and sign for his/her records. (FF 8). Following the PDC, discipline, if any, is imposed by the Warden in the form of a written disciplinary letter. (FF 9).

The County management staff held a fact-finding hearing in which Grievant appeared and answered questions, where a transcription of the questions asked and answers provided was drafted into a written fact-finding document. (FF 10). Thereafter, the County management staff held a PDC in which Grievant appeared and answered questions. The County then drafted a PDC document setting forth a transcription of the questions asked and answers provided at the PDC. (FF 11).

Following the PDC, Warden Harper issued a 10-day suspension letter to Grievant for the alleged violation of work rules. (FF 12). The Union filed a grievance challenging Grievant's 10-day suspension as having been issued without just cause. (FF 13).

On February 15, 2022 the Union made a written request for information concerning Grievant's suspension. (FF 14). The Union's request identifies the following information:

- a. The 10-day suspension letter to the grievant, Michelle Argotti.
- b. The grievance contesting the suspension and all subsequent appeals and responses to the grievance.
- c. The fact-finding document.
- d. The pre-disciplinary conference (PDC) document.
- e. Any and all statements written by the grievant (Argotti) and any other witnesses.
- f. The prior discipline letters issued to Argotti between January 1, 2013 and December 31, 2014.

(FF 15). The County has failed and refused to produce the fact-finding document, the PDC document, and any and all statements written by the Grievant and any other witnesses. (FF 17).

Based on the stipulated facts, the Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of PERA by refusing to produce investigatory statements of the Grievant. In so concluding, the Hearing Examiner recognized that under Board law, a union is entitled to a broad range of information under a liberal discovery standard that requires an employer to provide the union with information and documents the union requests for grievance handling and collective bargaining. *E.g. Commonwealth v. PLRB*, 527 A.2d 1097 (Pa. Cmwlth. 1987); *AFSCME Council 13 v. Commonwealth, Department of Corrections*, 18 PPER ¶18057 (Final Order, 1987). An exception to this general rule is in the case of the employer's investigation of workplace misconduct, where statements the employer receives from witnesses to the employe's misconduct do not need to be turned over to the union, but the employer must provide the name of the witness who provided the statement. *Gas Works Employees Union, Local 686 v. Philadelphia Gas Works*, 45 PPER 68 (Final Order 2013). In finding that the County violated PERA, the Hearing Examiner held that the statements of the Grievant were not witness statements that fall within the exception to the broad discovery available to the union for purposes of processing a grievance.

On exceptions the County challenges the Hearing Examiner's determination that the statements of the Grievant were not witness statements that the County was privileged to withhold from the Union. Based on the stipulated facts of this case, the Union's right to receive the fact-finding document and the PDC document are controlled by the Board's holding in *Department of Corrections, supra*. In *Department of Corrections*, the Commonwealth questioned an employe who was under investigation for alleged misconduct. During the pre-disciplinary hearing, at which the employe had a union representative present, the Commonwealth had a stenographer to take

notes and transcribe the questions and the employe's answers. Following the meeting the employe and union were permitted to review the transcript. In Department of Corrections, the Board discussed the witness statement exclusion as regards the statements provided by other employes or third-persons, and directed the employer to produce only the names of those witnesses. However, with regard to the questions and answers provided by the employe being investigated during the pre-disciplinary hearing, the Board rejected the numerous arguments raised by the Commonwealth, and held that under the broad discovery standards, the union was entitled to receive a copy of the transcript taken during the pre-disciplinary hearing.

The stipulated facts of the County's fact-finding and PDC process in this case fall squarely within the holding of Department of Corrections. Indeed, with regard to both the fact-finding conference and the PDC, the parties stipulated as follows:

Jail management staff questions the corrections officer on charges that he violated Jail rules. The officer has the right to bring a Union representative to the [fact-finding hearing or PDC]. The County subsequently transcribes the questions posed by management and the answers given by the officer into a [fact-finding or PDC] document. The Officer is provided a copy of the document to review and sign for his/her records.

(FF 5 and 8). Just as in Department of Corrections, the Grievant is questioned by the County during a fact-finding or PDC; the Grievant has union representation during those meetings; notes are taken and a transcription of the questions and answers are prepared by the County; and the transcript of the fact-finding or PDC is reviewed by the Grievant. Thus, as similarly held by the Board in Department of Corrections, on these facts it is clear that the transcript (or notes) of the fact-finding hearing and PDC is relevant to the Union's pursuit of the grievance, and thus must be provided to the Union. Accordingly, the Hearing Examiner did not err in concluding that the County violated Section 1201(a) (1) and (5) of PERA by failing to produce the fact-finding and PDC documents to the Union upon request.

With regard to statements of the Grievant that are reflected in written documents provided to the County, we note that some clarification of the Board law may be warranted. Here, the Union requested "[a]ny and all statements written by the grievant (Argotti)..." (FF 15). The Hearing Examiner, and Union, recognized that written statements of employes other than the Grievant, were witness statements exempt from disclosure under Philadelphia Gas Works, supra. Indeed, this is true even if the statement prepared by another employe witnessing the events contains assertion of what the Grievant may have said or done in their presence. Pennsylvania Department of Corrections, 19 PPER ¶19039 (Final Order, 1988).

However, a written statement prepared by the Grievant is not a statement of a witness that would fall within the exemption from disclosure. None of the concerns in Philadelphia Gas Works about witness intimidation or confrontation are applicable to a written statement of the Grievant. Indeed, where an employe is asked by the employer to prepare a written statement concerning events for which they are being investigated, the grievant is generally entitled to union representation and assistance in completing that written statement. City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997). Accordingly, it would follow in line with the holding of Department of Corrections, 18 PPER ¶18057, that where the Grievant would have been entitled

to Union representation in drafting or reviewing the statement before submitting the statement to the County, the Union would be entitled to obtain the Grievant's written statement. Thus, here, the Hearing Examiner did not err in concluding that the Union was entitled to "[a]ny and all statements written by the grievant (Argotti)" in furtherance of the Union's role in processing grievances, and the County's failure to provide written statements drafted by the Grievant, if any, was an unfair practice under Section 1201(a)(1) and (5) of PERA.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the County violated Section 1201(a)(1) and (5) of PERA by failing to provide the Union with the requested fact-finding document, the PDC document, and "[a]ny and all statements written by the grievant (Argotti)". Accordingly, the Board shall dismiss the County's exceptions and make the Proposed Decision and Order final.

ORDER

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 Allegheny County are hereby dismissed, and the November 9, 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 twenty-first day of February, 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.

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AFFIDAVIT OF COMPLIANCE

Allegheny County hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has complied with the Final Order and Proposed Decision and Order as directed therein; that it has immediately provided the Union with the requested fact-finding document, the pre-disciplinary conference document, and any and all written statements by Argotti; that it has posted a copy of the Final Order and Proposed Decision and Order as directed therein; and that it has served an executed 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