

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : Case No. PERA-C-10-51-E
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
DALLAS SCI :

PROPOSED DECISION AND ORDER

On February 18, 2010, the Pennsylvania State Corrections Officers Association (Union) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that on January 21, 2010, the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth), Dallas State Correctional Institution (Dallas), violated Section 1201(a)(1) of the Public Employe Relations Act (PERA). The Union specifically alleged that the Commonwealth engaged in unfair practices when it denied Corrections Officer Joshua Zofcin a requested Union representative during an investigatory interview where he reasonably feared discipline and was subsequently re-assigned.

On March 10, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing directing that a hearing take place on Friday, June 11, 2010, in Harrisburg, Pennsylvania. After several continuances and change of counsel for the Union, the hearing was held on Friday, June 17, 2011, in Harrisburg, Pennsylvania. At the hearing, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7; PERA-R-01-153-E, Order and Notice of Election).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7; PERA-R-01-153-E, Order and Notice of Election).
3. For approximately six-to-nine months prior to January 21, 2010, Corrections Officer Joshua Zofcin was assigned to Alpha Block (A-Block) at the State Correctional Institution at Dallas on the 2:00 to 10:00 shift. A-Block, the A-Annex and B-Block are in Unit One. (N.T. 9-13, 45-47).
4. In January 2010, Louise Cicerchia was the acting unit manager of Unit One. She works the 8:00-4:00 shift and is in charge of the daily operations of Unit one. (N.T. 13, 18, 46-47).

5. Prior to January 21, 2010, issues arose between the corrections officers on A-Block and Ms. Cicerchia regarding the placement and movement of inmates, the release of inmates from their cells and the position of day room tables. (N.T. 14-17).

6. Officer Zofcin discussed these issues with the shift commander, Lieutenant Vodzak. (N.T. 19-20).

7. Lieutenant Vodzak, prior to January 21, 2010, spoke with Captain Cirelli about Ms. Cicerchia's request to have officers removed from A-block. Captain Cirelli directed Lieutenant Vodzak to investigate and make recommendations. Prior to January 21, 2010, Lieutenant Vodzak recommended re-assigning officers, at the rate of two officers per month, due to personality conflicts that interfered with the proper function of A-Block. (N.T. 67, 76).

8. On January 21, 2010, Officer Zofcin was summoned to the Captain's office, which is located in the control center of the institution and which is a secure location. Access to the control center is obtained through a sally port system. (N.T. 20-21).

9. Upon entering the Captain's office, Officer Zofcin noticed the following individuals in attendance: Major Zakarakus, Lieutenant Starzinski, Lieutenant Vodzak, Ms. Cicerchia, Counselor Jason Bohinski, Officer Lear, Officer Barry, Officer Dearmitt and Officer Berrenger. (N.T. 22-24).

10. Major Zakarakus, who was present at the meeting, is the Major of the Guard who is responsible for issuing discipline after reviewing investigations and fact-findings. (N.T. 23-24, 41).

11. Upon entering the Captain's office for the meeting, Officer Zofcin asked: "Do I need a Union rep?" (N.T. 48, 65).

12. Major Zakarakus replied: "This is a team meeting. There's no discipline. You don't need one." (N.T. 34-35, 48, 65).

13. Lieutenant Vodzak also responded: "This is a team meeting. There's no discipline going to be handed out." (N.T. 34-35, 48, 65).

14. Officer Barry also responded: "I'm a Union steward. If anything needs to be settled Union, I will handle it." (N.T. 35, 48, 66).

15. After hearing those responses, Officer Zofcin shrugged his shoulders and sat down. He made no comment. He did not object to Officer Barry as Union representative. (N.T. 48-49, 66).

16. Ms. Cicerchia did not arrange the meeting, and she did not know the subjects to be discussed at the meeting. Ms. Cicerchia brought to the meeting a pre-written document with key points to ensure that officers followed established policies and procedures for cell movements. She did not have a list of questions. She did not ask any officers about prior conduct. (N.T. 48-50, 59-60).

17. No questions were directed to Officer Zofcin. Officer Zofcin did not respond to any questions at the meeting. He did not speak during the meeting after asking for a Union representative. (N.T. 34, 50, 66-67).

DISCUSSION

The Union claims that the Commonwealth committed unfair practices by denying Officer Zofcin a Union representative during the January 21, 2010 meeting. The Board's application of NLRB v. Weingarten, 420 U.S. 251 (1975) to public sector labor relations in the Commonwealth has been affirmed by both the Supreme Court of Pennsylvania and the Commonwealth Court of Pennsylvania. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007); Commonwealth of Pennsylvania, Pennsylvania Emergency Management Agency (PEMA) v. PLRB, 768 A.2d 1201 (Pa. Cmwlth. 2001). The PEMA Court described the Weingarten right and its application in the following manner: "The Board and this Court have held that a public employee, covered by a collective bargaining agreement, has the right to union representation at an investigatory interview with his or her employer, which the employee reasonably believes may result in the imposition of discipline." PEMA, 768 A.2d at 1205.

To establish a Weingarten violation, the Union has the burden of proving that there was an investigatory interview with the employe who reasonably believed in the imposition of discipline, that the employe requested union representation at the interview and that the employer held the interview after denying the employe's request. PLRB v. Township of Shaler, 11 PPER ¶ 11347 (Nisi Decision and Order, 1980). In PEMA, the Court further explained that, for the meeting to be considered investigatory, it "must have been calculated to form the basis for taking disciplinary or other job-affecting actions against [the employe] because of past misconduct." PEMA, 768 A.2d at 1205. An employer may rebut employe claims that he/she reasonably believed that discipline may result from the meeting by demonstrating that the employe was assured that no discipline would result. PSCOA v. Commonwealth of Pennsylvania, 34 PPER 21 (Final Order, 2003).

The Commonwealth maintains that a Weingarten right for Officer Zofcin did not attach at the January 21, 2010 meeting because the meeting was not investigatory. The Commonwealth alternatively argues that, even if the meeting was deemed investigatory, Officer Zofcin was afforded a Union representative.¹ I agree with the Commonwealth.

I have credited the testimony of Ms. Cicerchia that she did not question Officer Zofcin at the meeting and that she utilized the meeting to present ideas to align the officers to the same goals and practices on A-Block regarding cell movements. I have also credited the corroborating testimony of Lt. Vodzak that he did not recall hearing Ms. Cicerchia question any of the officers present at the meeting. Indeed, Ms. Cicerchia did not ask any officers about prior conduct. Rather, she utilized a pre-written list of topics that she presented at the meeting. There is no evidence that Ms. Cicerchia sought the input or ideas of any of the officers regarding her goals for A-Block. There is no evidence that she entertained or accepted any of the officers' input or ideas regarding the alignment of goals or management of A-block. Certainly, no questions were directed to Officer Zofcin, and he did not speak during the meeting.

¹ The Commonwealth presented other arguments that I need not address given the disposition of the matter.

Moreover, the Commonwealth met its burden of establishing that it gave adequate assurances to Officer Zofcin that no discipline would result from the meeting. In response to Officer Zofcin's inquiry into Union representation, Major Zakarakus, responsible for discipline at Dallas, stated that Zofcin did not need a union representative because there would be no discipline. Therefore, on this record, the behavior of Major Zakarakus, Lt. Vozzak and Ms. Cicerchia establishes that the January 21, 2010 meeting was not "calculated to form the basis for taking disciplinary or other job-affecting actions against [A-Block officers] because of past misconduct." Accordingly, the January 21, 2010 meeting was not investigatory, and Officer Zofcin did not possess a Weingarten right to a Union representative.

Moreover, Officer Zofcin was provided with Union representation at the meeting. Officer Zofcin would have been entitled to a particular Union representative of his own choosing, provided that person was reasonably available and provided the meeting was investigatory. Commonwealth, Office of Administration, supra. However, Officer Zofcin expressed his satisfaction with Officer Barry. When Officer Zofcin arrived at the meeting, he asked: "Do I need a Union rep?" Officer Barry responded: "I'm a Union steward. If anything needs to be settled Union, I will handle it." At that point, Officer Zofcin shrugged his shoulders and sat down. He made no comment and did not object to Officer Barry acting as Union representative for the meeting. Officer Zofcin, therefore, exercised his free choice of Union representative by agreeing to the provision of Officer Barry in the role of Union representative. Accordingly, even if the meeting was investigatory, the Commonwealth met its obligations under Weingarten of providing Officer Zofcin with Union representation at the meeting. Accordingly, the Commonwealth has not engaged in unfair practices, and the charge is hereby dismissed.

CONCLUSIONS

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

1. The Commonwealth of Pennsylvania, Department of Corrections, Dallas SCI is a public employer under PERA.
2. The Pennsylvania State Corrections Officers Association is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair practices within the meaning of Section 1201(a)(1).

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

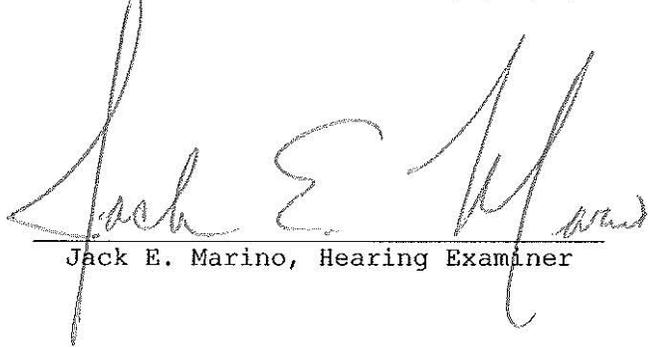
That the charge is dismissed and the complaint is rescinded.

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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of October, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD



Jack E. Marino, Hearing Examiner