

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYES :
INDEPENDENT UNION :
: :
: CASE NO. PERA-C-13-89-W
v. :
: :
: ALLEGHENY COUNTY :
:

PROPOSED DECISION AND ORDER

On May 20, 2013, the Allegheny County Prison Employes Independent Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Allegheny County (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the County violated the floater pool preference assignment policy, on April 3, 2013, when Captain McCall refused to assign Senior Officer Younkins to his first preference in intake and instead assigned less senior officers to that job.

On June 14, 2013, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of December 6, 2013, in Harrisburg. After several granted continuance requests, the matter was rescheduled for August 6, 2014, in Pittsburgh. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties presented closing arguments on the record, in lieu of filing post-hearing briefs.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3)

3. The County maintains a published seniority list that is available to everyone. (N.T. 18)

4. In 2008, the former Warden, Ramon Rustin, signed a grievance settlement agreement (Rustin Agreement) with the Union agreeing that corrections officers in the floater pool will receive their job assignment preference based on seniority. An officer who does not express a preference can be assigned anywhere. Since 2008, the County has consistently followed the Rustin Agreement. (N.T. 16-20, 59-60; Union Exhibit 2)

5. Captain McGovern is responsible for the scheduling of shifts and pass days at the institution. Additionally, there is a scheduling Captain for each shift. (N.T. 21-22)

6. Officers send an e-mail to Captain McGovern to express their shift preference, and they e-mail their shift captain for job assignment preference. Officers list three separate job assignment preferences. (N.T. 19-21, 24-25)

7. An officer high on the seniority list will not have his shift or pass days moved. An officer low on the seniority list can be moved to fill in vacancies created by vacations or injury leave. An exception to the seniority preference rule

established by the Rustin Agreement is when an officer is under investigation relating to his preference assignment. (N.T. 23, 36)

8. In 2012, Corrections Officer David Younkins received his shift preference on the 3-11 shift in the floater pool. When Officer Younkins arrived on the 3-11 shift, he emailed his shift scheduler three job assignment preferences. His first preference was intake. Since that time, Officer Younkins was always assigned to intake as long as his seniority permitted. (N.T. 41-45)

9. In 2013, Captain McCall came to the 3-11 shift, and she moved Officer Younkins off his intake assignment four times when his seniority over other officers in intake should have dictated that he receive that job assignment. (N.T. 45; Union Exhibit 3)

10. On April 3, 2013, Officer Younkins wrote an incident report documenting that, on that date, he was not assigned to intake when he should have been. Both Captain McCall and Deputy Warden Emmerick refused to remedy the situation that day. (N.T. 46, 49; Union Exhibit 3)

11. Officer Younkins was instead assigned to level 3-E, which is a housing unit pod, not intake. Younkins' two other preferences were in visits and the central booth, not any of the housing unit pods. There were numerous officers with less seniority than Officer Younkins assigned to intake on April 3, 2013. (N.T. 48-50)

12. Officer Younkins was not under any investigation that would require his removal from intake, on April 3, 2013. (N.T. 51-53)

13. Deputy Warden Emmerick admitted that, on April 3, 2013, Captain McCall "mis-assigned" officer Younkins. The 2008 Rustin Agreement was not followed on April 3, 2013. (N.T. 58, 60-61)

DISCUSSION

The County entered into a final and binding grievance settlement agreement with the Union in 2008, when Warden Rustin entered a second level grievance settlement on March 7, 2008, providing that floaters will receive their job assignment preferences based on seniority. A grievance settlement reached at a lower level of the grievance procedure, that is not advanced to the next step or to arbitration, is final and binding on the employer, provided it complies with the contractual grievance procedure. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991).

The record in this case clearly shows that the Rustin Agreement complies with the parties' collective bargaining agreement and that the County consistently complied with the Rustin Agreement for five years until Captain McCall repeatedly "mis-assigned" Officer Younkins by refusing to assign him to his preference job assignment in intake when less senior officers were assigned to intake during his 3-11 shift. Therefore, the County violated the Rustin Agreement on April 3, 2013, and thereby engaged in unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

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 within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

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 PERA.

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 Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes for the appropriate unit, including but not limited to the discussing of grievances with the exclusive representative;

3. Take the following affirmative action:

(a) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(b) 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this second day of July, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased and desisted from refusing to bargain collectively in good faith with an employe representative, which is the exclusive representative of employes for the appropriate unit; that it has posted a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and had the same remain so posted for a period of ten (10) consecutive days; 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