

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CORRECTIONAL INSTITUTION VOCATIONAL :
EDUCATION ASSOCIATION, PSEA/NEA :
 :
v. : CASE NO. PERA-C-15-329-E
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :

PROPOSED DECISION AND ORDER

On November 30, 2015, the Correctional Institution Vocational Education Association (CIVEA, Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Corrections (Corrections, DOC or Employer) violated Section 1201(a)(1), (5) and (8) of the Public Employe Relations Act (PERA).

On January 29, 2016, the Secretary of the Board issued a complaint and notice of hearing designating April 6, 2016, in Harrisburg, as the time and place of hearing.

The Association requested a continuance of the hearing date without objection from the Commonwealth. The continuance request was granted and a hearing was ultimately held on May 12, 2016, in Harrisburg, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief on June 20, 2016. The Commonwealth filed a post-hearing brief on July 22, 2016.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of PERA. (N.T. 4).
2. The Association is an employe organization within the meaning of PERA. (N.T. 4).
3. Lori Locke-Soberdash (Locke-Soberdash) had been employed as an Education Guidance Counselor for the DOC at SCI-Greene since March 6, 2006. (Joint Exhibit 1, page 4).
4. On December 14, 2011, as a result of an investigation by the DOC into alleged incidents involving Locke-Soberdash, Locke-Soberdash was notified by the DOC that she was terminated effective December 15, 2012. (N.T. 34; Joint Exhibit 1, page 4).
5. CIVEA timely filed grievances with respect to Locke-Soberdash's termination and the case followed the contractual grievance procedure and, ultimately, the case was presented to Arbitrator Diana S. Mulligan (Mulligan). (N.T. 34; Joint Exhibit 1, page 5).
6. On June, 26, 2013, Mulligan issued an Award which ordered Locke-Soberdash to be "returned to her former position with no back pay, no restoration of lost benefits and is under a final warning." (Joint Exhibit 1, page 29).
7. In lieu of returning Locke-Soberdash to her position at DOC, the parties executed Settlement Agreement and General Release (Settlement Agreement) on September 23, 2013. (N.T. 35; Joint Exhibit 2).
8. Pursuant to the Settlement Agreement, Locke-Soberdash resigned from the DOC on September 27, 2013. ((Joint Exhibit 2, page 6).
9. The Settlement Agreement states, in relevant part:

6. By this Settlement Agreement and General Release, the [DOC] agrees that it will remove all documents and references related to Grievance No. PSEA-DOC-12-08 from [Locke-Soberdash's] Official Personnel File.

7. By this Settlement Agreement and General Release, the [DOC] agrees that it will provide a neutral recommendation regarding [Locke-Soberdash's] employment history with the [DOC]. It will simply verify the dates of employment and indicate that Locke resigned from Commonwealth employment.

(Joint Exhibit 2, page 3-4).

10. In the summer of 2015, Locke-Soberdash applied for a job as a Police Communications Officer (PCO) with the Pennsylvania State Police (PSP). (N.T. 35).
11. After interviewing for the position with the PSP, Locke-Soberdash was offered the POC position pending a background investigation. (N.T. 36, Commonwealth Exhibit 1).
12. Trooper William Large (Large) is an employe of the PSP. He conducted the background check for Locke-Soberdash. Large contacted the DOC and spoke to Gregory (Johnson) and Tammy Koratich (Koratich). In response to Large's questions, Koratich recommended Locker-Soberdash for employment with the PSP. In response to Large's questions, Johnson said that Locke-Soberdash's quality of work was unsatisfactory, her attendance was unsatisfactory, her punctuality was unsatisfactory, her dependability was unsatisfactory, and her relationship with co-wokers was unsatisfactory. Johnson would not comment further as he was afraid of litigation. In his report, Large noted that, on the page dedicated to the conversations he had with employes of the DOC, Locke-Soberdash was recommended for employment with the PSP. (N.T. 11-12, 14-15, 18, 29; Association Exhibit 1, page 18).
13. Locke-Soberdash was ultimately not hired by the PSP because PSP Captain Raymond Singley found ". . .insubordination lying and disruption to the workplace as reflected in the 2013 Arbitrator's Decision are serious concerns with regard to performing a PCO position within the PSP." (N.T. 37; Association Exhibit 2, page 2; Association Exhibit 3).

DISCUSSION

The Association first alleges that the DOC violated the Settlement Agreement when it failed to provide a neutral employment reference for Locke-Soberdash. A public employer who repudiates a settlement agreement commits an unfair practice in violation of section 1201(a) (5) of PERA. **Pennsylvania State Troopers Ass'n. v Pennsylvania Labor Relations Board**, 761 A.2d 645, 649 (Pa. Cmwlth 2000), **citing Millcreek Township School District**, 22 PPER 22185 (Final Order, 1991), **aff'd** 631 A.2d 734 (Pa. Cmwlth. 1993), **appeal denied**, 537 Pa. 626, 641 A.2d 590 (1994). 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. **St. Joseph ' s Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). The charging party must prove that 1) a settlement agreement exists, 2) the parties' intent is apparent from settlement agreement, and 3) the party has failed to comply with the agreement's provisions. **AFSCME District Council 47 LOCAL 2187 v. Philadelphia**, 36 PPER ¶ 124 (Final Order 2005).

The record in this matter completely supports the Association's charge. There is no dispute a settlement agreement exists. Indeed, it was a joint exhibit. The parties intent with regard to references is explicitly stated in the Settlement Agreement. The language of the Settlement Agreement clearly says: "By this Settlement Agreement and General Release, the [DOC] agrees that it will provide a neutral recommendation regarding [Locke-

Soberdash's] employment history with the [DOC]." And there is no doubt in this record that the DOC failed to comply with the agreement. There was ample evidence to support that Johnson gave a thoroughly negative recommendation to Large. Johnson admitted to doing so during his testimony. (N.T. 28-29).

In its brief, the Commonwealth argues that the DOC did not violate the Settlement Agreement because "[b]ased on the responses from Johnson and Koratich, Trooper large concluded that [DOC] had effectively given [Locke-Soberdash] an overall recommendation of "favorable" . . . Paragraph 7 of the settlement requires the Department to provide a neutral recommendation for employment and, cumulatively, the Department did just that." (Commonwealth's Brief, page 10). While it is true that Large did find that, overall, the recommendation from DOC was favorable, that was entirely the decision of Large and his prerogative. The Settlement Agreement binds the actions of the DOC and it is the DOC's actions, through its agent Johnson, that are complained of here. And it is clear that Johnson did in fact give a negative recommendation which is a breach of the Settlement Agreement, notwithstanding whatever conclusion Large may have reached with additional context.

The Association also charges that the DOC committed an unfair practice when it allegedly gave the PSP a copy of the Arbitration Award and Settlement Agreement itself, in violation of Section 6 of the Settlement Agreement. However, this charge is not mentioned in the Specification of Charges and therefore is not properly before the Board. **Bucks County Detectives Association v. County of Bucks**, 45 PPER 2 (Final Order, 2013). This charge is dismissed.

In its charge the Association also alleged that the DOC violated section 1201 (a) (8) of PERA. However there is no evidence or argument on the record to support this charge. It is also dismissed.

Since I find that the DOC violated Section 1201 (a) (5) of PERA when Johnson did not give a neutral review to DOC, the question now turns to proper remedy. Two principles guide me in establishing a remedy of an unfair practice violation. First, the Board has long held that the purpose of remedies under PERA is remedial and not punitive. **Pennsylvania Department of Education**, 15 PPER 15206 (Final Order, 1984). Second, the Board should be faithful to the terms of the agreement that has been violated. **Transport Workers Union of America, Local 282 v. Bristol Township**, 46 PPER 69 (Proposed Decision and Order, 2015).

The Association in this matter urges that I order a make-whole remedy. (Association's Brief, page 8). The Association cites **AFSCME, District Council 47, supra**, in which the Board ordered the employer to compensate affected employees for monies which would have been earned but for the unfair practice. That case is clearly distinguishable from this matter, however, because the employer in that case violated terms of settlement agreement which explicitly obligated the employer to compensate employees. In this case, the DOC violated a section of the Settlement Agreement that had nothing to do with compensating Locke-Soberdash. Moreover, the record in this matter cannot support a "but for" argument that would link the DOC's actions to any monetary loss by Locke-Soberdash. More specifically: the record does not support the conclusion that, **but for** the DOC's violation of the Settlement Agreement, Locke-Soberdash would have been hired by the PSP. At most, the record shows the Locke-Soberdash was not hired by the PSP because the PSP reviewed the Arbitration Award. While it is clear the PSP had a copy of the Award, no facts in this record indicate how they obtained it. Thus, the record in this matter does not support a logical link between any action by the DOC and the PSP's possession of the Arbitration Award.

The most appropriate remedy in this matter, therefore, is direction to the DOC to cease and desist its violation of PERA and an order directing it to provide neutral recommendations for Locke-Soberdash pursuant to the Settlement Agreement.

CONCLUSIONS

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The Commonwealth of Pennsylvania, Department of Corrections is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth of Pennsylvania, Department of Corrections has not committed unfair practices within the meaning of Section 1201(a)(8).
5. The Commonwealth of Pennsylvania, Department of Corrections 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 Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Commonwealth of Pennsylvania, Department of Corrections shall:

1. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
2. Take the following affirmative action:
 - (a) Comply with Section 7 of the Settlement Agreement and provide neutral recommendations for Locke-Soberdash;
 - (b) 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;
 - (c) 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; and
 - (d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourth day of August, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

the Commonwealth of Pennsylvania, Department of Corrections hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it shall comply with Section 7 of the Settlement Agreement and provide neutral recommendations for Locke-Soberdash; that it has posted a copy of the 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