

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COURT ASSOCIATION OF :
PROFESSIONAL EMPLOYEES :
: :
v. : Case No. PERA-C-16-65-W
: PERA-C-16-174-W
COUNTY OF ALLEGHENY and :
ALLEGHENY COURT OF COMMON PLEAS :
:

PROPOSED DECISION AND ORDER

On March 4, 2016, the Allegheny Court Association of Professional Employees (ACAPE or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board), docketed at PERA-C-16-65-W, against the County of Allegheny (County) alleging that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On April 4, 2016, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 10, 2016, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing for PERA-C-16-65-W was necessary and was held on June 10, 2016, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

On June 16, 2016, the Association filed a charge of unfair practices with the Board, docketed at PERA-C-16-174-W, against the Allegheny County Court of Common Pleas (Court) alleging that the Court violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On July 6, 2016, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating September 23, 2016, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing for PERA-C-16-174-W was necessary. The hearing was continued on the request of the Association and was held on December 21, 2016, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

At the hearing on December 21, 2016, the parties agreed to consolidate PERA-C-16-65-W and PERA-C-16-174-W including consolidating the record in the respective matters.

The Association submitted a post-hearing brief in support of its charges on February 15, 2017. The County and Court submitted a post-hearing brief in support of their positions on March 15, 2017.

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

FINDINGS OF FACT

1. The Association is an employe organization within the meaning of PERA. The Association is the exclusive bargaining representative of all court-appointed professional employees. (N.T. 15, 19; PERA-R-2311-W, PERA-21-90-469-W).¹
2. The County is a public employer within the meaning of PERA. (N.T. 15).
3. The Court is a public employer within the meaning of PERA. (12/21/16 N.T. 3).
4. The Association represents approximately 280 probation officers in Allegheny County. (N.T. 19).
5. Shuman Juvenile Detention Center, in Pittsburgh, is the dedicated juvenile detention center in Allegheny County. (N.T. 23).
6. Two juvenile probation officers are assigned to Shuman to serve as intake officers during the day on Mondays through Fridays. One probation officer works from 7:00 a.m. to 3:00 p.m. and the other works from 8:30 a.m. to 4:30 p.m. (N.T. 24, 26).
7. Intake at Shuman involves taking from local police and making determinations about whether a child should be detained. This determination is based on a detention risk assessment, referred to as a "DRAI", which is a tool that probation officers use to score children based on risk factors which must be researched in County and Court records. The probation officers working intake at Shuman also file petitions on new charges, take complaints from and make referrals to Children, Youth and Families. (N.T. 24-25).
8. The supervisor for the juvenile probation officers working intake at Shuman is not located at Shuman but rather in downtown Pittsburgh at the main office. The probation officers working intake at Shuman communicate with their supervisor via phone calls or email. Generally, a probation officer will only contact a supervisor to override or underride a determination to admit or not admit a child that the probation officer has processed using DRAI. (N.T. 26, 29).
9. In addition to day intake, there was also night intake at Shuman. Shuman night intake includes evenings, weekends and holidays. There is one shift from 4:15 p.m. to 12:15 a.m. There is also one shift on Saturday and Sundays from 8:00 a.m. to 4:00 p.m. There is also a shift on Saturday and Sundays from 4:00 p.m. to 12:00 a.m. On holidays, a shift schedule identical to Saturdays is followed. These evening, weekend, and holiday shifts are collectively referred to as "Shuman night intake." (N.T. 29-31, 41-42).
10. From the mid-1990s to March, 2016, only juvenile probation officers worked the Shuman night intake shifts. Before the mid 1990s, one probation supervisor, Jerry Gorman, was paid for Shuman night intake hours. (N.T. 31, 42, 97-98).
11. Approximately 20 juvenile probation officers filled the Shuman night intake shifts. In order to be scheduled for Shuman night intake shifts, a probation officer would volunteer and their names would be put on a list. To work Shuman night intake, the probation officer would have to have at least two years of experience and have good job performance in their day job to be considered. Then, based on seniority and how many years the probation officer had been working Shuman night intake, the probation officer would have the opportunity to select desired Shuman night intake shifts. When a probation officer would retire or leave a selected shift, the person on the top of the list could be assigned that open shift. Eventually, probation officers received two regular night shifts a month. (N.T. 30-32, 40-41).
12. Pursuant to the collective bargaining agreement (CBA) between the Association and the County, juvenile probation officers are paid one and one-half times his or her

¹ Unless stated otherwise, all references will be to the transcript of the June 10, 2016, hearing.

regular hourly base rate when working Shuman night intake. (Association Exhibit 2, page 13).

13. Juvenile probation officers working a Shuman night intake shift perform a variety of tasks. The probation officers receive calls from police officers who have arrested children throughout Allegheny County including the City of Pittsburgh. Based on what the police officer says, the probation officer will assess the charges and use their detention risk assessment tool, or DRAI. When using their DRAI, the probation officer will conduct research on his or her available databases to acquire the necessary information including prior history, severity of charges, and whether there have been warrants issued for failure to appear at a court proceeding or from absconding from residential homes or programs. If the probation officer determines that the case is active, the probation officer will at this time contact the probation officer responsible for the active case. If the case is new or inactive, the probation officer will make a determination to admit based on the DRAI. After the determination to bring the child to Shuman has been made by the probation officer, the probation officer will meet with the child and interview them as he or she is brought to the facility. The probation officer will explain the process to the child including explaining that he or she will have a detention hearing in three days. The probation officer also explains to the child that the probation officer will contact the child's family. The probation officer then contacts the parents or guardian of the child and explains the process and why the child was admitted. The probation officer may also be in contact with Children, Youth & Families (CYF) if the child is "CYF active". The probation officer may also call the victim and explain to the victim that the child is detained and that they have the right to appear at a detention hearing. The probation officer must also complete all necessary paperwork relating to the detention including photocopying police reports, redaction of information for the public defender's copy, assembling the required information into packets, schedule the detention hearing, and completing an intake checklist. The probation officer on the Shuman night intake shift usually receives the call from the arresting officer, makes a determination on detention, completes the necessary paperwork related to the child's detention, and interviews the child all within the Shuman night shift. On occasion, a call from the arresting officer will be made late in the shift and the probation officer will leave some duties to the next intake shift. (N.T. 24, 53-56, 66-67, 70-72).

14. During the Shuman night shifts, juvenile probation officers would contact his or her supervisor on an as-needed basis. The supervisor would not be located at Shuman. (N.T. 42-46).

15. During the time period of 12:00 am to 7:00 am the intake office at Shuman was not staffed. During these times, an arresting police officer could contact the Admission Office. The Admission Office takes as much info from the police officer as they can about the case. For new or inactive cases, an on-call supervisor then makes a determination as to whether a child should be brought to Shuman or not. The supervisor would not be at Shuman when he or she made this determination. If it is an active case, the juvenile probation office already assigned will take the call from the police officer. When an on-call supervisor makes a determination, they rely on what the Admission Office tells them and make a simple yes or no determination to admit. The supervisor does not complete the required paperwork, meet with the child, or make the required phone calls to parents, CYF, and victims. (N.T. 43-45, 62-63, 69, 72-73, 94-95).

16. When the on-call supervisor makes a determination during the 12:00 a.m. to 7:00 a.m. time period that a child should be detained at Shuman, the next juvenile probation officer to begin his or her shift at Shuman intake would complete the required paperwork, meet with the child, and make the necessary phone calls. (N.T. 44-45).

17. On January 20, 2016, Shawn Forbes sent an email to juvenile probation officers. Shawn Forbes is the Assistant Chief for Allegheny County Juvenile Probation who handles Shuman night intake scheduling. Forbes' email states in relevant part:

Subject: Shuman Night Intake
Importance: High

All - Effective March 2016, the following changes will be made to the Shuman Night Intake regarding scheduling:

Staff currently with 2 shifts will begin to alternate 1 month with 2 shifts, then the next month with 1 shift.

. . . .

These changes will allow us to add approximately 12 new staff that will have the opportunity to earn OT in the performance of Shuman night intake position.

(Association Exhibit 5, N.T. 92).

18. Forbes is a supervisor within the Court of Common Pleas. (12/21/16 N.T. 8).

19. The change announced by Forbes opened up the Shuman night intake shift scheduling for supervisors to take over shifts as well as other juvenile probation officers who were on the waiting list and had not yet been scheduled any shifts due to more senior probation officers occupying those shifts. (N.T. 47).

20. Beginning on March 2, 2016, supervisors began working the newly opened Shuman night intake shifts. The first supervisor to work a Shuman night intake shift was Mark Kelley on the March 2, 2016, 4:15 p.m. to 12:15 a.m. shift. Supervisors thereafter continually worked on various Shuman night intake shifts. (N.T. 48-49, 73).

21. Bargaining unit members were required to train supervisors on how to perform the duties of Shuman night intake. (N.T. 75-76).

22. Neither the County nor the Court bargained with ACAPE regarding the assignment of supervisors to Shuman night intake shifts. (N.T. 49; 12/21/16 N.T. 4-5).

23. Juvenile probation officers are paid by the County based upon information provided to the County by the Court. (N.T. 99-101).

DISCUSSION

The County and Court argue that the charges against the Court must be dismissed because they are untimely. The four-month limitations period for the filing of an unfair labor practice charge under Section 1505 of the PERA is triggered when the complainant has reason to believe that the unfair practice has occurred. **Lancaster Cty. v. Pennsylvania Labor Relations Bd.**, 62 A.3d 469, 473 (Pa. Commw. Ct. 2013); **Commonwealth v. Pennsylvania Labor Relations Board**, 438 A.2d 1061, 1063 (1982). The complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. **Hazleton Area Education Support Professionals v. Hazleton Area School District**, 45 PPER ¶ 20 (Final Order, 2013).

The Board looks to the date of implementation of a unilateral change in evaluating timeliness of a claim that a policy was unlawfully, unilaterally implemented. **Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township**, 32 PPER § 32101 (Final Order, 2001).

In this matter, the record is clear that the change in policy complained of by the Association happened on March 2, 2016, when supervisors were first scheduled on the Shuman night intake shift. The charge against the Court was filed on June 16, 2016, well within four months from March 2, 2016. Therefore, the Association's charge against the Court is timely.

The County and the Court further argue that Allegheny County is not the employer and as such must be dismissed from this action. For court-appointed employees certified under PERA, there is no single employer. **Sweet v. Pennsylvania Labor Relations Board**, 457 Pa. 456, 463 (1974). The courts control decisions regarding hiring, firing and supervision of court-appointed personnel. **Jefferson County Court Appointed Employees Association v. Pennsylvania Labor Relations Board**, 603 Pa. 482, 501 n. 22 (2009). However, the County Commissioners are responsible for negotiation and implementation of employee wages and benefits. See **Pennsylvania Labor Relations Board v. American Federation of State, County and Municipal Employees, District Council 84, AFL-CIO**, 515 Pa. 23, 36-37 (1987).

In its brief, the County and Court rely on **American Federation of State, County and Municipal Employees, District Council 87 v. Luzerne County**, 35 PPER ¶ 126 (2004). In **Luzerne County**, the Board found that it was improper to charge the County in a matter involving charges of unfair practices by a court-appointed unit because: "The [County] Commissioners in [Luzerne County] simply did not exercise authority or control over the Detention Center or the furloughed court-appointed employees such that they would be able to effectuate a Board order possibly directing the Commissioners to cease and desist or reinstate the furloughed employees." **Id.** I agree that **Luzerne County** applies in this matter on the issue of whether the County is a proper party. The County in this matter was not part of the decision to place supervisors on Shuman night intake shifts and is not a necessary party needed to effectuate a remedy. The charge against the County is dismissed.

Next, the County and Court argue that the charges against the Court must be denied as they are within the Court's constitutional and statutory rights. The County and Court again rely on **Luzerne County**. In **Luzerne County**, the Board considered exceptions to a hearing examiner's proposed order dismissing the union's claim that the County of Luzerne violated Section 1201(a)(1) and (5) of PERA when the Court of Common Pleas unilaterally closed a juvenile detention facility and furloughed court-appointed child care employees. The PLRB made final and absolute the hearing examiner's determination that the charge was improperly filed because the court exercised control over the center, and because the separation of powers doctrine precluded the review of the court's action by the Board. In so doing, relevant to the matter before me now and the County and Court's argument that the Court's constitutional authority includes subcontracting, the Board in **Luzerne County** held:

Although the Board may not intrude upon the judiciary's exclusive authority to perform its judicial role in the administration and dispensation of justice . . . the Board has the authority to evaluate, under the principles of PERA, a court's relationship with court-appointed employees who are covered by PERA. . . .

. . .

[T]he powers of the unified judiciary in Pennsylvania are granted by Article V, Section 1 of the Pennsylvania Constitution. The separation of powers doctrine recognizes the wholly distinct and separate functions of the respective branches of government and prohibits the intrusion upon those functions by other branches. Pa. Const. Art. V § 1; **Beckert v. AFSCME**, 425 A.2d 859 (Pa. Cmwlth. 1981). The Pennsylvania Constitution empowers the courts of the Commonwealth "to do all such things as are reasonably necessary for the administration of justice." **Beckert**, 425 A.2d at 862 (citing **Sweet v. PLRB**, 457 Pa. 456, 322 A.2d 362 (1974)). In **Beckert**, the Commonwealth Court expressly held that "the discharge of a judicial employee is a judicial power vested by our Constitution in the courts. That power may not, consistent with the constitutional doctrine of separation of powers, be policed, encroached upon, or diminished by another branch of government." **Beckert**, 425 A.2d at 862. "PERA cannot constitutionally be interpreted as immunizing [judicial] employees from the inherent judicial power of discharge. Given that such a power is a

judicial one under the Pennsylvania Constitution, it would cease to be a judicial power if its exercise was subject to the monitoring and review of another branch of government." ***Id.*** at 863. "For some non-judicial branch of government to be given the power to review such decisions would represent an encroachment on the judiciary's control of hiring and discharging court employes." ***Id.***

The Pennsylvania Juvenile Act expressly grants care, custody and control of detained children to the Court exclusively for both temporary and long-term detentions and for both pre-adjudication and post-adjudication detentions. 42 Pa.C.S.A. §§ 6325-6352. In this case, the record clearly established that the Detention Center had a long history of rodent and cockroach infestation, a leaky roof, inadequate handicap access, no facilities for schooling or physical activity, no rooms for physical examinations, inadequate heating, plumbing and ventilation and no air conditioning. The Detention Center was originally constructed as a women's prison, not a therapeutic detention facility for children. The statutorily mandated therapeutic purposes of juvenile detention could not be served by the Detention Center, and the rodent and insect infestation threatened to infect the detained children with disease. **The Court, in the exercise of its judicial function to effectuate its statutory and constitutional obligations to properly provide for the care and custody of detained children, removed them from the Detention Center.** The Court's action was a lawful exercise of its judicial function within the meaning of Beckert. Accordingly, the separation of powers doctrine mandates that this Board is unauthorized to review or evaluate the Court's closure of the Detention Center or the furlough of the court appointed child care employes under PERA.

Luzerne County, supra. (emphasis added).

The County and Court argue that **Luzerne County** thus stands for the proposition that the Court's authority to hire, fire and control employes includes the right to subcontract the positions occupied by those employes. (County and Court Brief at page 11). The County and Court argue "Just as the Court did in [Luzerne County], the [Court] exercised its authority to control its employees when it concluded that this work would be distributed to all employees." ***Id.*** I disagree with the County and Court's interpretation of **Luzerne County** and its application to this case. I find that, relevant to this matter, **Luzerne County** stands for the proposition that a Court's actions will be shielded from Board review under PERA pursuant to the separation of powers doctrine when the Court exercises its judicial function to effectuate constitutional or statutory obligations upon the Court. Further, evidence that the Court has exercised its judicial function must come from the record, as was the case in **Luzerne County**. In **Luzerne County**, the Board relied on the following facts:

On December 6, 2002, President Judge Conahan, Juvenile Judge Ciavarella and other Court officials held a meeting with Union officials regarding the planned closing of the Detention Center due to the unsanitary conditions that threatened the health safety and welfare of the juvenile detainees and increased the risk of liability. There was no representative from the Commissioner's Office at the meeting. **One week later, President Judge Michael Conahan determined the Detention Center unfit, directed the cessation of Detention Center operations and informed court-appointed bargaining unit employes that the Detention Center would cease operation as of 11:59 p.m. on December 31, 2002 and that staff would be furloughed effective January 1, 2003.**

Id. (emphasis added). Thus, in **Luzerne County**, there was (1) a clear and distinct act by the Court, in the form of a determination and communication of the President Judge, and (2) a clear reliance by the Court upon the Court's statutory obligations

supporting the Board's decision that the Board was barred by the separation of power doctrine from reviewing the Court's actions in **Luzerne County**.

Importantly, the record in this case does not show that the decision by Shawn Forbes, an employee of the Court, was made at the behest of the President Judge. Further, the record in this matter does not show how, if at all, Forbes' decision to place supervisors on the Shuman night intake shift is at all related to an exercise of the Court's judicial function to effectuate constitutional or statutory obligations upon the Court. The only explanation for Forbes' determination, on the record, is a line in his email memorandum from January 20, 2016, which states: "These changes will allow us to add approximately 12 new staff that will have the opportunity to earn OT in the performance of Shuman night intake position." The record does not show, nor do the County or Court make any argument, as to how Forbes' concern that new staff having the opportunity to earn overtime is at all related to the Court's exercise of its judicial function. This is distinguishable from **Luzerne County**, where the Court was clearly concerned with unsanitary conditions that threatened the health, safety and welfare of the juvenile detainees and increased the risk of liability. In this case, there has been no argument or showing that Board review of the alleged removal of bargaining-unit work would hinder the ability of the Court to administer justice.

As there is no clear exercise of the judicial function to effectuate constitutional or statutory obligations upon the Court in this matter, what remains is a charge of removal of bargaining-unit work. The removal of bargaining-unit work is a mandatory subject of bargaining and the bargaining of mandatory subjects does not necessarily infringe upon the Courts' authority to select, discharge, and supervise court personnel. **Ellenbogen v. Allegheny Cty.**, 479 Pa. 429 (1978); **Commonwealth ex rel. Bradley v. Pennsylvania Labor Relations Board**, 479 Pa. 440 (1978). While subcontracting or removal of bargaining-unit work by the Court has not been reviewable by the Board in some very limited cases due to the doctrine of separation of powers, this case is not one where there has been an exercise of the judicial function to warrant such deference by the Board. Thus, this matter is distinguishable from **Luzerne County** and the Court's action to remove bargaining unit work may be properly reviewed by the Board.

Turning to the merits of the Association's charges, The Association claims that the County and Court violated Section 1201(a)(5) by unilaterally diverting the bargaining-unit work of Shuman night intake shifts to non-bargaining-unit member probation supervisors. Above, I have already dismissed the charge against the County. The County and Court further argue that the charges must be dismissed on their merits given the absence of actionable subcontracting.

An employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining-unit work to an employee outside the unit. **Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District**, 37 PPER 30 (Proposed Decision and Order, 2006); citing **Midland Borough School District v. PLRB**, 560 A.2d 303 (Pa. Cmwlth. 1989); **PLRB v. Mars Area School District**, 389 A.2d 1073 (Pa. 1978). The analysis for removal of bargaining-unit work is a refined and focused factual inquiry into whether the public employer transferred any unit work to non-members without first bargaining with the unit. See **City of Harrisburg v. PLRB**, 605 A.2d 440, 442 (Pa. Cmwlth. 1992) (holding that a public employer commits an unfair labor practice when it unilaterally transfers any unit work). To determine whether an employer committed an unfair labor practice by unilaterally removing work from a bargaining unit, the Board focuses on the circumstances at the time of the unilateral transfer of work. **City of Allentown v. PLRB**, 851 A.2d 988, 990 (Pa. Commw. Ct. 2004). The complainant in an unfair practices proceeding has the burden of proving the charges alleged. **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977).

As an initial matter, it is not contested that the Court did not bargain, or offer to bargain, with the Association at any relevant time in this matter.

The Association has clearly established that Shuman night intake shifts were exclusive bargaining-unit work. The Shuman night intake shifts occurred on weekdays from

4:15 p.m. to 12:15 a.m. There is also Shuman night intake shifts on weekends and holidays from 8:00 a.m. to 4:00 p.m. and from 4:00 p.m. to 12:00 a.m. Only one probation officer would work each shift.

The record shows that the exclusive Shuman night intake work includes the following. The probation officers receive calls from police officers who have arrested children throughout Allegheny County including the City of Pittsburgh. Based on what the police officer says, the probation officer will assess the charges and use their detention risk assessment tool or "DRAI". When using DRAI, the probation officer will research on his or her available databases to acquire the necessary information including prior history, severity of charges, and whether there have been warrants issued for failure to appear at a court proceeding or from absconding from residential homes or programs. If the probation officer determines that the case is active, the probation officer will at this time contact the probation officer responsible for the active case. If the case is new or inactive, the probation officer will make a determination to admit the child based on the DRAI. After the determination to bring the child to Shuman has been made by the probation officer, the probation officer on night shift will meet with the child and interview them as they are brought to the facility. The probation officer will explain the process to the child including explaining that they will have a detention hearing in three days. The probation officer also explains to the child that the probation officer will contact the child's family. The probation officer then contacts the parents or guardian of the child and explains the process and why the child was admitted. The probation officer may also be in contact with Children, Youth and Families (CYF) if the child is CYF active. The probation officer may also call the victim and explain to the victim that the youth is detained and that they have the right to appear at a detention hearing. The probation officer must also complete all necessary paperwork relating to the detention including photocopying police reports, redaction of information for the public defender's copy, assembling the required information into packets, schedule the detention hearing, and completing an intake checklist. The probation officer on the Shuman night intake shift usually receives the call from the police, makes a determination on detention, completes the necessary paperwork related to the child's detention, and interviews the child, all within the Shuman night shift. On occasion, a call from the police will be made late in the shift and the probation officer will leave some duties to the next intake shift.

The record is clear that immediately before the time supervisors were scheduled to work Shuman night intake shifts, the work had been exclusive to bargaining-unit members. **City of Allentown, supra**. Indeed, the record shows that the work had been exclusive to bargaining-unit members for at least the past twenty years.

Thus, when supervisors were unilaterally assigned to Shuman night intake shifts starting in March, 2016, the Court violated Section 1201(a)(1) and (5) of PERA by removing or transferring bargaining unit without bargaining with the exclusive representative, ACAPE.

The County and Court argue that "ACAPE has failed to establish the requisite foundation supporting a claim of subcontracting bargaining unit work in that the parties have consistently acknowledged that work of this type is a shared duty between ACAPE members and supervisors". (County and Court Brief at page 13). In support of this argument, the County and Court generally cite the testimony of Stephen Bechtold on pages 43-44 and 62 of the hearing transcript. On those pages, Bechtold describes the general duties of supervisors assigned to oversee Shuman. Bechtold describes at N.T. 43-44 and 62 how supervisors are "on-call" from 12:00 a.m. to 7:00 a.m. or 8:00 a.m. to make intake decisions on new cases based on information provided to them from and admissions officer in the Admissions office. The supervisors are not at Shuman when they make an intake decision as Shuman intake is not staffed at that time. The work of the supervisor is substantially and significantly different from the work performed by probation officers on Shuman night intake. The supervisor only makes an intake determination during hours Shuman intake is not staffed. The supervisor makes his or her determination merely from information given to him or her by the admissions officer and does not utilize or perform a DRAI. Importantly, unlike probation officers, the on call supervisor does not talk

directly to the arresting police officer to determine relevant facts about the arrested child. The supervisor does not perform or conduct any of the meetings regularly done by probation officers in intake. The supervisor does not complete any of the necessary paperwork related to an intake or schedule the necessary hearings. Indeed, all of the work normally performed by a probation officer in relation to an intake of a child at Shuman is done by a probation officer at the next available shift.

The County and the Court also cite the testimony of Forbes at N.T. 93 for the proposition that supervisors testified they "regularly work with ACAPE employees and perform the same functions." (County and Court Brief at page 14.) A review of the testimony on N.T. 93 indicates that Forbes, as a supervisor, has covered detention hearings and court hearings for probation officers in the past. However, attending detention or court hearings is not part of the exclusive Shuman night intake work defined above. Forbes also describes how he filed documents on behalf of probation officers. However, this testimony is vague and unclear regarding whether he was helping officers working Shuman night intake, or some other probation officer working in a different function. I therefore give it little weight. Indeed, as Forbes himself testifies on N.T. 94, he has never performed Shuman night intake functions.

As I have found the Court has violated Section 1201(a)(1) and (5) of PERA, the analysis moves to remedy. It is clear that it is proper to order the Court to cease and desist from utilizing non-unit supervisors in Shuman night intake shifts and to restore the Shuman night intake work to the bargaining unit. The Association also asks for an order directing the County and the Court make all adversely effected bargaining unit members whole for overtime shifts lost to non-unit supervisors from March, 2016, to present. However, on this record, back pay for lost overtime shifts is too speculative because it is not known which bargaining member would have lost shifts due to the voluntary nature of Shuman night intake shift scheduling and the fact that the Court also changed the system of scheduling bargaining-unit members to Shuman night intake shifts at the same time it unilaterally placed supervisors on Shuman night intake shifts. **See Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania (Pennsylvania State Police)**, 46 PPER ¶ 18 (Proposed Decision and Order, 2014).

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. The Court is a public employer within the meaning of Section 301(1) of PERA.
3. The Association is an employe organization within the meaning of Section 301(3) of PERA.
4. The Board has jurisdiction over the parties hereto.
5. The Court has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.
6. The County has not 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 charge against the County is dismissed and that the Court 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 in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action:
 - (a) Restore the Shuman night intake work to the bargaining unit;
 - (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 Association.

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 April, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COURT ASSOCIATION OF :
PROFESSIONAL EMPLOYEES :
: :
v. : Case No. PERA-C-16-65-W
: PERA-C-16-174-W
COUNTY OF ALLEGHENY and :
ALLEGHENY COURT OF COMMON PLEAS :
:

AFFIDAVIT OF COMPLIANCE

The Allegheny Court of Common Pleas 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 has restored the Shuman night intake work to the bargaining unit; 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