

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PA STATE CORRECTIONS OFFICERS :  
ASSOCIATION :  
v. : Case No. PERA-C-18-88-E  
: COMMONWEALTH OF PA :

**PROPOSED DECISION AND ORDER**

On April 13, 2018, the Pennsylvania State Corrections Officers Association (PSCOA or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania (Commonwealth or Employer), alleging that the Commonwealth violated Section 1201(a)(1) of the Public Employe Relations Act (PERA or Act) by denying Corrections Officer John Snook his Weingarten rights<sup>1</sup> to proper Union representation during an investigatory interview on April 4, 2018.

On May 22, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on July 27, 2018, if necessary. The hearing was continued multiple times at the request of each party and without objection. The hearing ultimately ensued on January 10, 2019, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Commonwealth filed a post-hearing brief on March 13, 2019. The Union filed a post-hearing brief on March 15, 2019.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. The Union is the exclusive bargaining representative for a unit of corrections officers employed with the Commonwealth. (PERA-R-01-153-E)
4. John Snook has been a corrections officer for the Commonwealth at SCI Benner for approximately four years. He is also a member of the Union. (N.T. 8, 12)
5. Zachary Hammers is a corrections officer for the Commonwealth, who has been working at SCI Benner for approximately five years. He is also a local elected secretary for the Union, who appears on a list of representatives the Union provides the Commonwealth for each institution. (N.T. 20-21)
6. Brian Taylor is a Lieutenant with the Bureau of Investigations and Intelligence within the Commonwealth's Department of Corrections. In

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<sup>1</sup> NLRB v. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975).

that position, he oversees and conducts investigations involving allegations of inmate abuse for the Commonwealth. (N.T. 29-30)

7. On April 4, 2018, Taylor conducted an administrative interview with Snook as part of an investigation into an allegation that an inmate at SCI Benner did not receive any food for several days in November 2017. Taylor testified that Snook and another officer distributed the meals for one of the dates in question, November 5, 2017. (N.T. 29-32)<sup>2</sup>

8. Snook requested that Hammers serve as his Weingarten representative during the interview, which began with Taylor and his partner showing the men video from the restricted housing unit and asking questions. (N.T. 12, 18)

9. On the date in question, Snook was pushing the food cart while another corrections officer was passing out the trays, which the video portrayed. Snook described the procedure in that part of the facility where the inmates turn on a light or stand in front of the cell door if they wish to receive a tray of food. If the inmates do not have a light on or do not stand up, it means they do not wish to receive a tray, and the officers move on to the next cell. (N.T. 13-14, 24)

10. During the interview, Taylor asked Snook if he was paying attention, to which Snook responded he did not know. Taylor repeated the question a number of times, and Snook repeated his answer that he did not know. Taylor raised his voice each time he asked the question until the situation became tense. Eventually, Hammers spoke up and calmly stated "respectfully sir he answered your question," and asked Taylor if he had any other questions. (N.T. 12-16, 24)

11. At that point, Taylor rebuked Hammers and stated that he could not answer for Snook. Hammers advised Taylor that he was not answering for Snook, but simply repeating Snook's answer instead. Taylor then told Hammers he could not speak at all, to which Hammers replied he would speak when necessary, as the Weingarten representative. Taylor then ordered Hammers to leave the interview. Hammers did not yell or raise his voice at all during the interview. (N.T. 13-16, 24-25)

12. Taylor allowed Snook to find another Union representative to be present before resuming the interview. Snook did not receive any discipline as a result of the investigation. (N.T. 16-17)

#### DISCUSSION

The Union has alleged that the Commonwealth violated Section 1201(a)(1) of the Act<sup>3</sup> by denying Snook his Weingarten rights to proper Union representation during an investigatory interview, which he reasonably believed could result in discipline. The Commonwealth contends that the

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<sup>2</sup> During that time, the inmate was in the restricted housing unit of the facility, meaning that he was in his cell full-time and essentially required manual feeding with the corrections officers providing the food trays. (N.T. 10).

<sup>3</sup> Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act... 43 P.S. § 1101.1201.

charge should be dismissed because the Commonwealth did not violate the Weingarten rights of Snook, given that Hammers disrupted the interview and transformed it into an adversarial confrontation, at which point the Commonwealth lawfully removed Hammers and secured another Union representative for Snook, before resuming the interview.

It is well settled that the Weingarten right of an individual employe, that is, the right to obtain a representative to accompany the employe during an investigatory interview when the employe reasonably fears that discipline may be imposed by the employer, includes the right to have the union representative of his or her choice, if the assisting union representative is reasonably available and absent extenuating circumstances. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 916 A.2d 541, 551 (Pa. 2007). The right only arises, however, when the employe requests representation. City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997); Plouffe v. SSHE, Kutztown University, F. Javier Cevallos et. al, 41 PPER 63 (Proposed Decision and Order, 2010), 41 PPER 82 (Final Order, 2010). The Board has recognized that “[t]he representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them.” Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, 33 PPER ¶ 33177 (Final Order, 2002) (quoting Weingarten, 420 U.S. at 260).

In Commonwealth, supra, the Board stated:

In New Jersey Bell Telephone Co., and Local 827 Int'l Brotherhood of Electrical Workers, 308 NLRB 277, 141 LRRM 1017 (1992), the NLRB explained that Weingarten permits “assistance and counsel” to the employe being interrogated. It is generally recognized that an employer is free to insist that it is only interested in hearing the employe’s account and that Weingarten does not allow the union representative to disrupt the interview or convert it into an adversarial confrontation. Yellow Freight System, Inc. and Otic Cross, et. al, 317 NLRB 115, 1149 LRRM 1327 (1995).

33 PPER at 414.

The permissible extent of participation of Weingarten representatives lies somewhere between mandatory silence and adversarial confrontation. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections (Retreat SCI), 34 PPER ¶ 140 (Proposed Decision and Order, 2003); Commonwealth of Pennsylvania, Department of Corrections (Greene SCI), 32 PPER ¶ 32103 (Proposed Decision and Order, 2001) (citing New Jersey Bell Telephone Co., supra).

In this case, the record shows that Snook requested that Hammers serve as his Weingarten representative during the April 4, 2018 interview, which began with Taylor and his partner showing the men video from the restricted housing unit and asking questions.<sup>4</sup> During the interview, Taylor asked Snook if he was paying attention, to which Snook responded he did not know. Taylor repeated the question a number of times, and Snook repeated his answer that he did not know. Taylor raised his voice each time he asked the question until the situation became tense. Eventually, Hammers spoke up and calmly stated “respectfully sir he answered your question,” and asked Taylor if he

<sup>4</sup> The Commonwealth does not dispute that the interview was investigatory in nature or that Snook reasonably feared the imposition of discipline.

had any other questions. At that point, Taylor rebuked Hammers and stated that he could not answer for Snook. Hammers advised Taylor that he was not answering for Snook, but simply repeating Snook's answer instead. Taylor then told Hammers he could not speak at all, to which Hammers replied he would speak when necessary, as the Weingarten representative. Taylor then ordered Hammers to leave the interview. Hammers did not yell or raise his voice at all during the interview.<sup>5</sup>

On this record, I am unable to conclude that Hammers disrupted the interview or transformed it into an adversarial confrontation, as the Commonwealth maintains. Indeed, these facts are readily distinguishable from those present in New Jersey Bell Telephone Co., wherein the union representative impermissibly interfered with the employer's investigation by repeatedly objecting to the employer's repetitive questions and insisting that the employee refuse to respond to questions asked more than once. See Purple Communications, Inc. et. al. and Pacific Media Workers Guild, Local 39521, the Newspaper Guild, Communications Workers of America, AFL-CIO, 2018 WL 3727400 (NLRB Division of Judges, 2018) (ALJ finding that a Weingarten representative is not relegated to the status of a silent observer, but is entitled to give active assistance to the represented employee, especially where the conduct is not violent, verbally abusive, arrogant or insulting, or attempting to limit the scope of the employer's questions).

While Taylor was certainly entitled to ask repetitive questions and insist that the answers come from the subject of the interview, and not the Weingarten representative, it does not follow that Taylor was also permitted to silence and/or remove the representative from the interview simply because the representative intervened in an escalating situation, respectfully noted that the question had been answered, and asked whether the Employer had any other questions. Hammers was not violent, verbally abusive, arrogant or insulting, nor did he attempt to limit the scope of the Commonwealth's investigation or direct Snook not to answer any questions. Nor does it follow that Hammers disrupted the interview or transformed it into an adversarial confrontation by stating that he would speak when necessary, as the Weingarten representative, in response to Taylor ordering him to be silent. Hammers, as the Union representative, was not relegated to the status of a silent observer, and he did not yell or raise his voice at all during the interview. Accordingly, the Commonwealth's reliance on New Jersey Bell Telephone Co. is misplaced, and as a result, it must be concluded that the Commonwealth violated Section 1201(a)(1) of PERA by denying Snook the Weingarten representative of his choice when that representative was clearly available. However, because Snook was not disciplined in connection with the investigation, the remedy will be limited to a cease and desist order, along with the Board's usual posting requirements.

#### **CONCLUSIONS**

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

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<sup>5</sup> The Commonwealth offered the testimony of Taylor, who gave a different account of the events that transpired during the April 4, 2018 interview. However, this testimony has not been accepted as credible, and instead, the testimony of Snook and Hammers has been specifically credited over that of Taylor.

1. The Commonwealth 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 Commonwealth has committed unfair practices in violation of Section 1201(a)(1) of PERA.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Examiner

**HEREBY ORDERS AND DIRECTS**

that the Commonwealth shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of their rights;

2. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(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.

(c) Serve a copy of the attached Affidavit of Compliance upon the Union; and

**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 16<sup>th</sup> day of May, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PA STATE CORRECTIONS OFFICERS :  
ASSOCIATION :  
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COMMONWEALTH OF PA :

AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; 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.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public