COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 764	:	
	:	
	:	
v.	:	CASE NO. PERA-C-19-229-E
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	:	
NORTHUMBERLAND COUNTY	:	

PROPOSED DECISION AND ORDER

On October 22, 2019, Teamsters Local Union No. 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Northumberland (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that the County denied the Union's two requests for information to process Grievance No. 6442.

On December 4, 2019, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of February 17, 2020, in Harrisburg. On December 5, 2019, the Union filed an amended charge of unfair practices alleging that the Union requested additional information based on the information that the County provided in response to the initial unfair practice charge and that the County denied that latest request. On December 10, 2019, the Secretary of the Board issued an Amended Complaint and Notice of Hearing again designating February 17, 2020, as the hearing date. The hearing was continued by the examiner to April 8, 2020, because February 17, 2020, was a state holiday and Commonwealth property was closed to the public. Due to the COVID pandemic and the resulting closure of Commonwealth property to the public, the matter was again continued and rescheduled for October 28, 2020. During the in-person hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On February 24, 2021, the Union filed its post-hearing brief. On March 24, 2021, the County filed its post-hearing brief.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)

3. Ty Sees is the Secretary/Treasurer and Business Agent for the Union. The Union represents three bargaining units in the County, including the support staff in the Probation Department, and Mr. Sees is the Union representative for those units. (N.T. 9-11)

4. Jill Lahr was a Secretary II in the County Court's Adult Probation Department. While away from work around the Labor Day holiday in 2019, a coworker removed Ms. Lahr's journal from her personal filing cabinet

and shared it with coworkers. The writings in the journal caused some coworkers to become upset with Ms. Lahr, and they wrote complaints against her, which caused an investigation of Ms. Lahr. (N.T. 15-16; Union Exhibits 1 & 10)

5. The Court terminated Ms. Lahr, by and through the Chief Probation Officer, Tim Heitzman, on September 11, 2019. Officer Heitzman reports to and is supervised by President Judge Charles Saylor. Brian Updegrove is the Deputy Chief Probation Officer, and he reports to Officer Heitzman. Kevin O'Hearn is the Court Administrator; he is a state employe. (N.T. 12-14, 34, 45-46, 55; Union Exhibits 1 & 10)

6. Officer Heitzman's September 11, 2019 termination letter informed Ms. Lahr that, on January 30, 2019, she signed off that she read and acknowledged the Unified Judicial System Code of Conduct Policy. That Policy prohibits employes from engaging in any form of discrimination, harassment, or retaliation against any person and prohibits any form of violence, threat of violence or disruptive conduct. The Unified Judicial System Code of Conduct is a Policy that only the Court applies, not the County. (N.T. 70-71; Union Exhibit 10)

7. The termination letter further provides, in relevant part, as follows:

> On 3-21-19, Management had a meeting with you, a co-worker and your union representative regarding your work performance and your inability to work with others on a Professional level. At that meeting, you stated that you purposefully treat coworkers badly if you are mad at them and you admitted to doing so in an apology to your co-worker. You were instructed that this is a work place and regardless of being mad or angry, you must treat people professionally. You do not have to like people but you do have to act appropriately and professionally. Your inability to work well with other employees has been an ongoing issue that is detrimental to the effectiveness of the department.
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> On 9-5-19, it was heard and reported by no less than three other employees that you stated loudly on the phone that you "badly want to punch everyone here in the face." This is a threat of violence against coworkers, it is harassing to coworkers, and it is disruptive to this office. No less than 8 employees have put in writing complaints that say they feel threatened and harassed by your actions. It was also indicated that they felt bullied to the point of not feeling safe in their work environment.
>
> It has been determined that you have violated the County's Personnel Policy Manual Section 11. No employee shall: (t) Neglect of duty or failure to maintain reasonable work standards. No employee shall: (d) engage in malicious mischief, horseplay or disorderly conduct, which encroaches upon the rights or safety of a fellow employee, inmate or resident. No employee shall: (m) striking or harassing co-employees or supervisors.
>
> This serves as your written notice of your employment as Secretary II, with the Adult Probation Department is terminated effective the date of this letter.

(Union Exhibit 10)

8. Human Resources Director, Joseph B. Picarelli, provided information to the Court involving Ms. Lahr, but he did not make the determination to terminate Ms. Lahr; President Judge Saylor made that decision. Director Picarelli processed the termination, which may have involved emails with the Court. It is normal for the Commissioners and the Human Resources Director to be copied on termination letters involving Court employes. (N.T. 62-66, 70-74)

9. Also on September 11, 2019, Ms. Lahr and Mr. Sees composed Grievance No. 6442 therein alleging that the County Adult Probation Department violated the parties' Collective Bargaining Agreement (CBA) by wrongfully terminating Ms. Lahr resulting in a loss to her income, health insurance, vision and dental insurance, life insurance, pension contributions, vacation, holidays, sick leave and personal days. (N.T. 12-14, 32-33; Union Exhibit 1).

10. The same day, Mr. Sees wrote a letter to Officer Heitzman requesting information regarding Grievance No. 6442. The information request and the Grievance were attached to an email filed with the County on September 12, 2019. The information request provides, in relevant part, as follows:

> I'm requesting that you provide me with ALL information relevant to the charges pertaining to the termination of employee, Jill Lahr. This information includes, but is not limited to ALL documentation (write-up, notes, emails, conversations, discussions, etc.) provided to Jill Lahr and the Union pertaining to the 3-21-19 meeting, the names of the three employees who allegedly overheard Jill state loudly while in her office on the phone that she, "badly wanted to punch everyone here in the face", the name of the person who Jill was talking to at the time the three employees were eavesdropping and the time this took place; the names of the eight employees who've provided written complaints, and complete copies of the written complaints, alleging said employees feel threatened and harassed by Jill's actions, as well as bullied to the point of not feeling safe in their work environment, a copy of the 1-30-19 signed acknowledgment of the Unified Judicial Systems Code of Conduct, a complete copy of the Code of Conduct, and a complete copy of the County's Personnel Policy Manual.

(Union Exhibit 1)

11. The September 12, 2019 email and attachments were also sent to Jimmy Little, the Union President, and Director Picarelli. (N.T. 12-14, 34, 62; Union Exhibit 1)

12. Mr. Sees did not receive a response from Officer Heitzman or Director Picarelli to his information request letter dated September 11, 2019. (N.T. 15)

13. On September 13, 2019, Officer Heitzman sent an email to Mr. Sees stating that the Grievance was denied and that "[President Judge Saylor] utilized his 1620 rights (See Article II, Section 1) and as such, the employee [Ms. Lahr] is not allowed to utilize the grievance procedure based

on the fact it is only allowed for economic issues and not for the termination of employment." (Union Exhibit 2)

14. On September 16, 2019, Mr. Sees sent an email to Officer Heitzman attaching a second request for information to process Grievance No. 6442. The second information request was identical to the first request sent on September 12, 2019. (N.T. 37; Union Exhibit 2)

15. On September 25, 2019, Mr. Sees sent an email to the Attorney for the County, Benjamin Pratt, Esquire. Among other statements, this email stated, in relevant part: "I've made two requests for information pertaining to Grievance # 6442 that I've not received to date. I informed Joe [Picarelli] that if I don't have the information by the close of business Friday, I will have no other choice, but to file labor charges." (Union Exhibit 3)

16. That same day, Attorney Pratt responded, in relevant part, as follows: "Mr. Picarelli is out of the office through the end of the week. If you feel you need to file something with the Labor Board, that is your prerogative to do so." (Union Exhibit 4)

17. On October 11, 2019, Mr. Sees emailed Attorney Pratt and stated the following:

> Per our meeting after negotiations this morning, you informed me verbally, that the County Commissioners aren't participating in Jill Lahr's grievance arbitration because it's their position that they would be infringing on [President Judge Saylor's] 1620 rights and therefore you weren't selecting an arbitrator. Also, because of the County's position, I am being denied the requested information relevant to the arbitration. I expressed my displeasure to you regarding the County's decision. I informed you the Union does not agree with the County's decision and will still be pursuing the grievance through arbitration.

(Union Exhibit 4)

18. On October 22, 2019, Mr. Sees filed the first charge of unfair practices. On October 29, 2019, Attorney Pratt emailed Union President Jimmy Little and stated, in relevant part, as follows:

> As a follow up to our phone call I offer the following information related to the investigation of Lahr's complaint related to her file cabinet and review of material(s) found in the cabinet.
>
> The investigation was conducted by Tim Heitzman and Brain Updegrove. 9 employees were interviewed during the investigation. Out of those interviews, one individual admitted to the act, that was Meghan Weisen. She was disciplined and she received a written reprimand for her actions. All others interviewed claimed they did not know how the book was obtained.
>
> The employee who admitted to her involvement was provided her Weingarten rights and she declined union representation, present during this action was Tim Heitzman and Supervisor Kriner.

> I hope this satisfies your inquiry. May I suggest you all following up with the employee to obtain any further questions related to this information.

(Union Exhibit 5)

19. That same day, Union President Little responded: "Thank you Ben [Pratt.] My inquiry included 'Names of the people who were questioned in this matter[.]'" The next day, Attorney Pratt responded: "The employees who were talked to during the investigation [were] as follows: Derek [F]isher, Nina Weir, Maddie Bird, Brianne Herring, Greg McCreary, Meghan Weisen, Mel Neidig, Justina Martin and Dylan Tamecki." Attorney Pratt concluded the email response as follows: "Please tell Ty [Sees] I am working on the information from his request and I am putting in my appearance for the ULP he filed as I am now in receipt of the filing." (Union Exhibit 5)

20. Attorney Pratt and Mr. Sees met on November 15, 2019, at which time Attorney Pratt gave Mr. Sees a packet of documents in response to Mr. Sees' information request. (N.T. 26, 38-39; Union Exhibit 6)

21. On November 26, 2019, Mr. Sees emailed Attorney Pratt attaching a request for additional information based on the packet of documents that he received from Attorney Pratt on November 15, 2019. The attached information request was addressed to Officer Heitzman, Director Picarelli and Attorney Pratt and stated the following:

> Based on the information provided to the Union on November 15, 2019, I'm requesting that you provide me with ALL additional information relevant to the charges pertaining to the termination of employee, Jill Lahr. This documentation includes, but is not limited to ALL documentation such as, emails, text messages, pictures, copies, videos or phone records, etc., regarding Tim Heitzman, Brian Updegrove, Kevin O'Hearn, President Judge Saylor, Megan Kriner, Esther Rhodes, Derek Fisher, Nina Weir, Maddie Bird, Brianne Herring, Greg McCreary, Meghan Weisen, Mel Neidig, Justina Martin, and Dylan Tamecki, beginning August 30, 2019 through November 15, 2019, related to the termination.

(Union Exhibit 6)

22. On December 2, 2019, Attorney Pratt emailed Mr. Sees that he "passed on [his] request and the Court has indicated they will not be providing you the emails requested. The Judge has asserted his 1620 rights in this case and thus no further information is needed to be provided to this matter." Within the hour, Mr. Sees emailed him back asking whether text messages, pictures, copies and phone records are to be provided." And a few minutes later, Attorney Pratt responded: "Ty: none of the information you requested in your latest request will be provided." On December 5, 2019, the Union filed an amended charge of unfair practices. (Union Exhibit 6)

23. On January 14, 2020, the Attorney for the Union, Amy Rosenberger, Esquire sent another information request to Attorney Pratt. This letter provides, in relevant part, as follows:

> To put this request in context, I note that the County's Personnel Policy Manual provides, in pertinent part:

> All County communications services and equipment, including messages transmitted or stored by them, are the sole property of the County. The County may access and/or monitor employee communications and files as it considers appropriate. Communication equipment and services, including . . . electronic mail ("email"). . . telephone systems, personal computers . . . computer networks . . . computer files . . . [and] cellular phones. . . .
>
> In keeping with this policy, the Union is seeking the following information that is within the County's custody and control, and/or located on County property: For the period August 30, 2019 to November 15, 2019, all emails, text messages, photographs, video or audio recordings (including security camera footage), other communications, or computer files located on the County's computer system, the County's telephone system, or County-owned cellular telephones, or any other County property, relating to any of the following:
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> *The removal of Jill Lahr's notebook from her filing cabinet located under her desk in early September 2019;
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> *The decision as to whether and when to return Ms. Lahr's notebook to her;
>
> *The contents of Ms. Lahr's notebook;
>
> *The allegations contained in the September 2019 complaints regarding Ms. Lahr's alleged conduct toward coworkers and the employer's investigation of those allegations;
>
> *The decision to terminate Ms. Lahr's employment.

(Union Exhibit 7)

24. The County Personnel Policy Manual applies to all County employes including Court employes. The County Personnel Policy Manual contains provisions governing the use of communication systems, as outlined in Attorney Rosenberger's January 14, 2020 letter, and provides as follows:

> (3) All County communications services and equipment, including the messages transmitted or stored by them, are the sole property of the County. The County may access and/or monitor employee communications and files as it considers appropriate. Communication equipment and services include mail, electronic mail ("email"), courier services, facsimiles, telephone systems, personal computers, printers, copiers, computer networks, on-line services, internet connections, websites, computer files, telex systems, video equipment and tapes, tape recorders and recordings, pagers/pages, cellular phones, and bulletin boards.

(Union Exhibit 11, Section 31 (C) (3))

25. By letter dated January 28, 2020, Attorney Pratt responded to Attorney Rosenberger as follows:

> We presented your request to President Judge Charles Saylor and accessing certain information on the Court's computers. In particular, we identified certain individuals who were under his supervision as the subject of the request by your office.
>
> The President Judge has instructed the County of Northumberland and its Commissioners that they have no right to access any information from computers utilized by the Court or its departments.
>
> The President Judge stands by the fact that, as a matter of law, court computers are confidential. The President Judge stands by the fact he has the exclusive right to supervise Court employees, and the Commissioners have no legal authority to interfere with his right of supervision. He has cited the separation of powers doctrine and provided the Supreme Court decision in *Jefferson County v. PLRB* (2009) as his legal support.
>
> Therefore, based on the President Judge instituting the rights provided to him, as outline above, the County of Northumberland is unable to provide the information requested by your client and you.

(Union Exhibit 8)

26. The Union is seeking information about employes under the direction and control of President Judge Saylor. To date, the Union has not received the emails, text messages, videos, photographs as requested by Mr. Sees in his November 26, 2019 letter and as requested by Attorney Rosenberger in her January 14, 2020 letter. (N.T. 49-51)

27. All County probation officers have a County issued cell phone. Ron McClay is an Adult Probation Officer for the County, and he is a Union steward. He personally received a text message on his County issued cell phone regarding Ms. Lahr's circumstances which he gave to the Union. Mr. McClay was not the only recipient of that text message. Nina Wier and Derek Fisher were also included on the text message, and there was a total of 6-7 people included. (N.T. 54-58)

28. At some point in time, Director Picarelli reached out to the Court and asked for the information requested by the Union regarding Ms. Lahr's Grievance. Communication between Director Picarelli and the Court regarding a Court-appointed employe's discharge could be verbal or by email. Mr. Picarelli testified that he did not specifically remember whether he had any email exchanges with the Court regarding Ms. Lahr's termination, but he stated that he imagined that those emails would exist. On January 28, 2020, Court Administrator Keven O'Hearn responded by way of an email which contained an attachment. The email was addressed to Attorney Pratt, but Director Picarelli also received the Court's response. The attachment was a December 31, 2009 letter from former President Judge Robert B. Sacavage with an attached Supreme Court opinion to support his position. (N.T. 73-74, 77-81)

29. In the December 31, 2009 letter to the Chairman of the County Board of Commissioners at the time, Former President Judge Sacavage was responding to a County wide computer-use investigation that attempted to

include the investigation of Court computers. Judge Sacavage stated, in relevant part, as follows:

> The Commissioners have no right to access any information from computers utilized by the Court and its departments. Court computers, as a matter of law, are confidential and any unauthorized access to court computers may be regarded as a criminal violation for interfering with the administration of justice. As President Judge, I have the exclusive right to supervise court employees. The Commissioner[s] have no legal authority to interfere with my right of supervision. If any Court computers have been compromised by unauthorized access, I will request an investigation by the Pennsylvania State Police. As you know, I am a State Judicial Officer and violations of criminal law fall within PSP jurisdiction. If any member of the Board of Commissioners has knowledge of any breach, you have an ethical obligation to disclose that information. Please share this communication with your fellow Commissioners and IT Department.

(County Exhibit 1)

30. Judge Saylor, at the time, was copied on then President Judge Sacavage's letter. (County Exhibit 1)

31. President Judge Sacavage attached the Supreme Court's decision in Jefferson County Court Employees Association v. PLRB, wherein the Court concluded that, although the county commissioners had a legislative right to reduce the budget appropriation to the county judiciary, that power encroached on the judiciary's authority to hire, fire, and supervise its employes when the salary board voted to eliminate five trial court employes. As a co-equal branch of government, concluded the Supreme Court, the judiciary has the right to decide how to reconcile its operating needs within the budget allocated to it. (County Exhibit 1)

32. Based on Administrator O'Hearn's response to Director Picarelli's requests for information from Court equipment, the County did not obtain the requested information from the County equipment, computers or servers used by Court employes. The County did provide the Union with some amount of the requested information that was not on Court-used equipment. The County provided witness statements provided by employes at the Probation Department to other people in Probation. (N.T. 81-83)

DISCUSSION

The Union argues that the County has refused to provide relevant requested information necessary to process Grievance No. 6442 contained on County owned equipment and that the information that the County did provide was unreasonably delayed in violation of its collective bargaining duties under Section 1201(a)(1) and (5) of PERA. (Union Post-hearing Brief at 6-8). The Union further contends that the County does not dispute the existence or relevance of the requested information and that the County's assertion that the information is in the possession of the Court is unsupported by the record. (Union Post-hearing Brief at 9). The Union emphasizes that the County Policy Manual applies to all County and Court employes and provides that all messages stored or transmitted on County property, which includes computers and cell phones, are the sole property of the County and that the

County may monitor and access any or all employe communications and files. (Union Post-hearing Brief at 9). The Union additionally maintains that even the Court agrees that the County Policy Manual applies to Court employes as evidenced by Ms. Lahr's termination letter. (Union Post-hearing Brief at 9-10).

The Union also distinguishes this case from Fayette County, 36 PPER 72 (Proposed Decision and Order, 2005), and Lehigh County, 22 PPER 22106 (Proposed Decision and Order, 1991). In those cases, argues the Union, the county employer did not have possession of the information requested by the union and the requested information was in the sole possession of the court. (Union Post-hearing Brief at 10). Consequently, the hearing examiners' remedies were limited to directing the counties in those cases to request the information from the court. However, in this case, the Union contends that the requested information is indeed in the County's possession because it owns all the equipment and servers where the information has been stored. (Union Post-hearing Brief at 10).

The Union further dismisses the County's position that it does not possess the information on phones and computers because President Judge Saylor has refused to allow the County access to court-used equipment and the data stored on that equipment. (Union Post-hearing Brief at 10). The Union posits that the County's assertion that the Court refused to allow it to access the equipment utilized by Court employes is uncorroborated hearsay that cannot support a finding of fact that the Court refused the County access to its computers, files and other equipment.(Union Post-hearing Brief at 10). Furthermore, argues the Union, President Judge Saylor's reliance on Jefferson County v. PLRB, is misplaced because that decision does not address access to County property or systems used by Court personnel. (Union Post-hearing Brief at 11).

Also, argues the Union, the information request in this case is different than the County's 2009 wide-ranging investigation to locate abuse or misuse of the computer systems in all County departments which then-President Judge Sacavage was rejecting with respect to Court used equipment. (Union Post-hearing Brief at 12). In contrast, the Union claims that, in this case, it is requesting narrowly focused information related to Ms. Lahr's Grievance and her termination which is entirely unrelated to the administration of justice and does not interfere with the Court's authority to supervise its employes. (Union Post-hearing Brief at 12). Both the County and the Court have taken the position that the County Policy Manual applies to the Court-appointed employes and that Policy explicitly preserves the County's access to the systems owned by the County and used by Court employes.

Furthermore, the Union contends that, even if the County were correct that, without President Judge Saylor's permission it cannot access the records on County owned systems used by the Court, the County can produce documents and information on County systems used by non-court, County employes reflecting their involvement in and actions taken regarding the decision to terminate Ms. Lahr. (Union Brief at 13). The record, argues the Union, shows that such information exists and the County has not yet provided it. Mr. Picarelli was involved in the decision to terminate Ms. Lahr and testified that he imagined that there were emails between him and the Court regarding her termination. According to the Union, the County did not even check to see whether non-Court employes emails or other systems contained such information. (Union Brief at 13).

By providing the Sacavage letter and the Supreme Court decision in Jefferson County, Court Administrator O'Hearn, on behalf of President Judge Saylor, was directing the County not to access Court computers and other equipment because it would encroach on the independence of the Judiciary's supervision over its employes and confidential Court matters. (County Exhibit 1). The Union argues that the O'Hearn letter to Picarelli attaching the 2009 Sacavage letter is uncorroborated hearsay that does not establish that President Judge Saylor has ruled that, based on separation of powers and the Constitutional independence of the Judiciary, the Court will not provide access to court used equipment and the County has no authority to search that equipment.

However, Administrator O'Hearn's email does not contain statements from President Judge Saylor, and there is no need to accept the email or the attachments for the truth of any statements. The O'Hearn email and attachments simply provide notice that the Court has taken the position that the County cannot access equipment used by Court employes. I have accepted and admitted the O'Hearn email as notice to the County of the Court's position. Court Administrator O'Hearn is an employe of the unified judicial system. As such, O'Hearn has the managerial authority to responsibly represent the position of the Court on behalf of the President Judge. Although the letter was not authored by President Judge Saylor, it is sufficient that Court Administrator O'Hearn has represented the Court's position, which has not been changed by President Judge Saylor. O'Hearn's letter was admitted into the record without objection.

Also, the Court's notice to the County that it will not permit any access to information on Court-used equipment is indeed corroborated by Attorney Pratt's December 2, 2019 email and his January 28, 2020 letter to Attorney Rosenberger. In the email, Attorney Pratt informed Mr. Sees as follows: "I passed on your request and the Court has indicated they will not be providing you the emails requested. The Judge has asserted his 1620 rights in this case and thus no further information is needed to be provided to this matter." (Union Exhibit 6). In the letter, Attorney Pratt stated: "The President Judge has instructed the County of Northumberland and its Commissioners that they have no right to access any information from computers utilized by the Court or its departments." (Union Exhibit 8). In the same letter, he further stated: "the President Judge stands by the fact [that] he has the exclusive right to supervise Court employees, and the Commissioners have no legal authority to interfere with his right of supervision. He has cited the [S]eparation of [P]owers [D]octrine. . . ." (Union Exhibit 8). Accordingly, the record contains unobjected to, corroborating evidence from several sources that the Court notified the County and its attorney that the County may not access information on Court-used equipment, which constitutes substantial, competent evidence to support a finding of fact related to the Court's notification of its position, notwithstanding the lack of an admissible statement from President Judge Saylor himself.

At issue in this case is whether the Board has the authority to order the County to extract information from equipment used by Court employes. The County, i.e., the Commissioners, sit as the collective bargaining agent for the County Court. Ellenbogen v. County of Allegheny, 479 Pa. 429, 437, 388 A.2d 730, 734 (1978). Most of the outstanding, requested information yet to be provided to the Union is on equipment used by the Court and its appointed employes. As the Court's collective bargaining agent, the County has an

obligation to go to the Court and request the information sought by the Union here. United Mine Workers of America District 2 v. Fayette County, 36 PPER 72 (Proposed Decision and Order, 2005)(concluding that, where the court of common pleas controls requested relevant information, the county's obligation is limited to requesting that the court of common pleas provide a copy of the court-controlled information to be submitted to the Union); PSSU v. Lehigh County, 22 PPER 22106 (Proposed Decision and Order, 1991). However, the County has already made those requests and fulfilled its bargaining obligation to the Union in that regard.

The Court expressly invoked its rights under the Separation of Powers Doctrine by citing Jefferson County and Former President Judge Sacavage's 2009 letter to the Former Chairman of the County Commissioners. The President-Judge-Saylor Court has asserted that it has complete independence over supervising Court employes, and it has denied the County access to equipment used by Court employes. Independence of the judiciary, as a co-equal branch of government, exceeds a row officer's rights to hire, fire and supervise employes under Section 1620 of the County Code. The Court, therefore, has expressly asserted its control over Court operations and any information on Court-used equipment, notwithstanding that the County's Policy claims to own and control all County issued hardware for the Court's employes and anything on it.

However, the Union is of the position that the County, not the Court, controls the Court-used equipment. In Court of Common Pleas of Lackawanna County v. Pennsylvania Office of Open Records (OOR), 2 A.3d 810 (Pa. Cmlwth. 2010), the Commonwealth Court definitively resolved the question of a county accessing information on court-used equipment supplied and maintained by the county. In OOR, the county denied two Right-to-Know requests submitted to the county for emails to or from accounts used by a suspended employe paid by the county but under the direct supervision of the court of common pleas. The court administrator submitted to the OOR that the employe's e-mails were records of the judiciary, and that the Right-to-Know Law (RTKL) was not applicable to the judiciary. The OOR granted the Requestors' appeal and ordered the County to release the records, reasoning that the employe, who was paid by the county but supervised by the judiciary was a County and not a judicial employee. The OOR concluded that, "[e]ven if he was a judiciary employee, [his] e-mails were records of the [c]ounty because the [c]ounty had access to them and control over them as it provided the court with its computer system on which they were located," Id. at 812, and that "the e-mails were 'records' for purposes of the RTKL and that they did not fall under any exceptions to disclosure." Id.

The Commonwealth Court, in OOR, opined as follows:

> The fact that [the employe] was paid by the [c]ounty does not affect his status as a judicial employee. Likewise, the fact that the [c]ounty had access to [the employe's] e-mails because it provided the [c]ounty's court computer system is irrelevant. . . . Just because the [c]ounty provides logistic support to the courts does not mean that every record stored on what the [c]ounty provides as part of its function to support the court makes it a [c]ounty record—those records always remain the records of the court. Otherwise, every record ever generated by a [c]ounty court, including the draft opinions and law clerk memorandums, would be accessible through the RTKL simply by submitting the request to the

> [c]ounty instead, an absurd result that would make Section 304 of the RTKL meaningless.
>
> Besides violating the RTKL, AOPC is correct that the OOR's order constituted a blatant and unconstitutional violation of the separation of powers doctrine. Separation of powers is inherent in our system of democracy. The Pennsylvania Constitution, like the United States Constitution, establishes three separate, equal and independent branches of government: the legislature, executive and judiciary. Among the judiciary's powers is the ability to supervise its own personnel without interference from another branch of government. An inescapable corollary to this power is that no administrative agency may exercise control over the records generated by personnel of a judicial agency.

Id. At 813-814 (citations omitted)(emphasis added).

The OOR case is controlling in the matter sub judice. Here, like in OOR, the Union is claiming that the County is obligated to provide the Union with information on equipment used by Court employes because it provides and owns that equipment and, under County policy, it controls that equipment. However, the OOR Court explicitly held that the County's provision of Court equipment is irrelevant and that an administrative agency's order requiring a county to access court records pertaining to court employes, that are not financial records, as is the case here, constitutes "a blatant and unconstitutional violation of the separation of powers doctrine." Id. At 813.

Accordingly, the Board, an administrative agency of the Commonwealth, like the Office of Open Records, lacks the authority to order the County to retrieve information on Court-used equipment related to the employment, investigation and termination of Ms. Lahr. Pursuant to the OOR decision, this result must obtain regardless of the County's Policy that it owns and controls all County used equipment, where the Court has explicitly asserted the independence of the judiciary under the Separation of Powers Doctrine in refusing to supply that information or allow the County to access it. Significantly, the OOR Court did not base its decision on whether the information on court-used equipment did or did not fall within the RTKL. Rather the OOR Court broadly held that an administrative agency cannot order a county to access information on court equipment when that court refuses. Consequently, it is not relevant to this decision that the Board would enforce the Union's entitlement to this information under its own statutory and case law had Ms. Lahr worked for a different type of employer. In other words, I am not applying a RTKL standard for obtaining information in this case. This ruling is simply governed by the Commonwealth Court's interpretation of the Separation of Powers Doctrine.

The Union also claims that it has a right to the information not yet provided on equipment used by non-Court, County employes, such as emails between Director Picarelli and the Court. Director Picarelli testified that he imagined that such emails would exist. The inference from this record is that the County has not conducted an investigation into whether Director Picarelli has emails from the Court regarding the termination of Ms. Lahr. The County has an obligation to investigate whether equipment used by County, non-Court employes contains emails, texts and other requested information regarding Ms. Lahr. Should an investigation reveal the existence of relevant requested information on County, non-Court employe equipment and files, the

County has an obligation to provide the information. Also, the Board has jurisdiction to order the County in this case to look for and provide that information, if it exists. Although the Union did not directly address its information request to Director Picarelli seeking his emails, texts and phone records from equipment used by him, Attorney Rosenberger did expressly request information that was under County control, and Director Picarelli was copied on the information requests.

Accordingly, the County has not engaged in unfair practices by refusing to extract data, emails, texts, files, video and other information from Court-used equipment in defiance of the Court's position that the County has no right to obtain that information. Given the Court's position, the County is not liable under PERA for the delays caused in attempting and failing to obtain that information from the Court. However, the County did not meet its collective bargaining obligations to the Union by failing to investigate whether emails, texts,, files, documents, electronic data or other information existed on Director Picarelli's and other non-Court, County employes' equipment that related to the discharge of Ms. Lahr, and by failing to provide that information, if it exists. Had the County conducted such an investigation, Mr. Picarelli would have known whether or not those emails existed.

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 in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative;

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately investigate whether files, data, emails, texts, photos, videos and other Union requested information related to the investigation and discharge of Ms. Lahr exist in or on equipment or files used by non-Court, County employes and provide that information, to the extent that it exists, to the Union;

(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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(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.

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 fifteenth day of April, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

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JACK E. MARINO, Hearing

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 764	:	
	:	
	:	
v.	:	CASE NO. PERA-C-19-229-E
	:	
	:	
NORTHUMBERLAND COUNTY	:	

AFFIDAVIT OF COMPLIANCE

The County of Northumberland hereby certifies that it has ceased and desisted from interfering with and coercing employes in the exercise of their protected activities; that it has ceased and desisted from violating its collective bargaining obligation to investigate and provide information on equipment and computers used by non-Court, County employes in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has searched non-Court, County used equipment for the information requested by the Union and provided the information to the Union should it exist; that it has posted a copy of the decision and order as directed therein; 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