

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 :  
v. : Case No. PERA-C-20-219-E  
 :  
COMMONWEALTH OF PA :

**PROPOSED DECISION AND ORDER**

On September 16, 2020, the Pennsylvania State Corrections Officers Association (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 Employee Relations Act (PERA or Act) by denying a request for Union representation by Corrections Officer Daniel Moser, who underwent an investigatory interview on June 29, 2020.

On October 30, 2020, the Board Secretary issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on April 29, 2021, if necessary. The hearing ensued as scheduled on April 29, 2021, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.<sup>1</sup> The parties each filed post-hearing briefs in support of their respective positions on July 22, 2021.

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. 6)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. Daniel Moser is employed as a Corrections Officer at the Commonwealth's State Correctional Institution in Dallas (SCI-Dallas). He has been a Corrections Officer for the Commonwealth for 16 years. (N.T. 10-11)
4. Jeremiah Campbell is employed as a Corrections Criminal Investigator for the Commonwealth's Department of Corrections (DOC), Bureau of Investigations and Intelligence (BII). He is a sworn police officer, who is not a member of the bargaining unit. He is responsible for conducting criminal and administrative investigations of wrongdoing within the purview of the DOC. (N.T. 34-36, 48; Commonwealth Exhibit 1)
5. Amanda Witiak has been employed as a Corrections Criminal Investigator with the Commonwealth's DOC, BII since November 2018. She is also a sworn police officer, who is responsible for conducting criminal and administrative investigations. (N.T. 48, 60)

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<sup>1</sup> The hearing was by videoconference in light of the covid-19 pandemic.

6. On June 29, 2020, Moser was working his shift when he was relieved by another corrections officer, who advised him to report to the security office. When Moser reached the security office, he encountered a lieutenant and captain, both of whom are managerial employees and not part of the bargaining unit. The captain instructed him to report to the "band room." (N.T. 11-14)<sup>2</sup>

7. When Moser reached the band room, he encountered Campbell and Witiak, who identified themselves as BII agents. Moser did not request a Union representative at any time during the ensuing interview with the BII agents. (N.T. 14-16, 28, 36, 38, 49-50, 61-62)

8. Campbell advised Moser that the interview was related to a criminal investigation, and not an administrative investigation. Campbell told Moser that the interview would not serve as grounds for any discipline and that Moser did not have to speak to him. (N.T. 18, 28, 40, 49)

9. At the start of the interview, Campbell presented Moser with a Miranda waiver form, which Moser signed. Campbell then questioned Moser for approximately 45 to 60 minutes regarding allegations of contraband. (N.T. 18-19, 28-29, 41, 51-52, 63; Commonwealth Exhibit 1)

10. The Miranda Rights Warning and Waiver form specifically provides, in relevant part, as follows:

My name is Jeremiah Campbell [sic] a Police Officer with the Pennsylvania Department of Corrections, Bureau of investigations and Intelligence. You have an absolute right to remain silent and anything you say can and will be used against you in a court of law. You also have the right to talk to an attorney before and have an attorney present with you during questioning. If you cannot afford to hire an attorney, one will be appointed to represent you without charge before questioning. If you do decide to answer questions, you may stop any time you wish and you cannot be forced to continue. If you do exercise your right to remain silent, your refusal will not be grounds for administrative or disciplinary action up to and including dismissal by the Pennsylvania Department of Corrections...

I fully understand the statement warning me of my rights and I am willing to answer questions. I do not want an attorney, and I understand that I may stop answering questions any time during the questioning. No promises have been made to me, nor have I been threatened in any manner. I also understand that my refusal to answer questions will not be grounds for administrative or disciplinary action up to and including dismissal...

(Commonwealth Exhibit 1)

11. Moser did not receive any discipline as a result of the June 29, 2020 interview and is still employed as a Corrections Officer at SCI-Dallas. Moser did not face any criminal charges either. (N.T. 31, 53, 66)

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<sup>2</sup> It is unclear from the record what the purpose for the "band room" is or in what context it is used.

## DISCUSSION

The Union has alleged that the Commonwealth violated Section 1201(a)(1) of the Act<sup>3</sup> by denying Moser's request for Union representation during an investigatory interview, which he reasonably believed could result in discipline. The Commonwealth contends that the charge should be dismissed because Moser could not have held a reasonable belief that discipline might result from the interview, as the interview was exclusively criminal in nature. The Commonwealth also maintains that the charge should be dismissed because the record shows that Moser did not actually request a Union representative be present for the interview. The Commonwealth further asserts that the charge must fail because there is no credible evidence the Commonwealth compelled Moser to continue to answer questions following his alleged request for a Union representative.

It is well settled that a public employe has the right to union representation at an investigatory meeting with his or her employer that the employe reasonably believes may result in the imposition of discipline. Sayre Area Education Ass'n v. Sayre Area School District, 36 PPER 54 (Final Order, 2005) citing Commonwealth of Pennsylvania Emergency Management Agency v. PLRB, 768 A.2d 1201(Pa. Cmwlth. 2001). The right only arises, however, when the employe requests representation. City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997).

In this case, the Union has not sustained its burden of proving that the Commonwealth committed a violation of the Act. Indeed, the credible evidence of record shows that Moser did not actually request a Union representative during the June 29, 2020 interview with the Commonwealth's BII agents. Of course, Moser testified that he did, in fact, request such representation at the start of the interview. (N.T. 14-16). However, the Commonwealth offered the testimony of the two BII agents, Campbell and Witiak, who both credibly refuted this assertion and whose testimony has been deemed more persuasive and worthy of belief. As such, the charge must be dismissed as a matter of law.

## CONCLUSIONS

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

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 not committed unfair practices in violation of Section 1201(a)(1) of PERA.

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<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.

**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 complaint is rescinded, and the charge is dismissed.

**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 23<sup>rd</sup> day of August, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak  
John Pozniak, Hearing Examiner