

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DC 47 LOCAL 2187, AFL-CIO :
 :
 v. : Case No. PERA-C-20-2-E
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On January 6, 2020, the American Federation of State, County, and Municipal Employees District Council 47, Local 2187 (AFSCME or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City or Employer), alleging that the City violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) by pressuring AFSCME member, Ana Guzman, in October 2019 to report to management the activities of the Union and discouraging her from reporting health and safety issues to her employe organization, as well as directly dealing with Guzman with regard to health and safety matters.

On February 21, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on May 20, 2020, if necessary. The hearing was continued multiple times, initially because of the Covid-19 pandemic, and then several subsequent times at the request of the parties.

The hearing eventually ensued on July 14, 2022, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.¹ The parties each filed separate post-hearing briefs in support of their respective positions on November 21, 2022.

The Hearing 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 City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. AFSCME is the exclusive bargaining representative for a unit of professional employes at the City, which includes Social Service Managers working in the Office of Homeless Services (OHS). (Joint Exhibit 1; N.T. 10)
4. AFSCME and the City were parties to a collective bargaining agreement (CBA) effective July 1, 2017 through June 30, 2020. (Joint Exhibit 1)
5. The CBA provides, in Article 4(B) of the 1992-1996 Master Agreement, in relevant part as follows:

¹ The hearing was held by videoconference by agreement of the parties.

UNION MEETINGS - The parties agree that the Union shall have permission to hold meetings and conduct normal Union Business on City facilities provided that such space is available and that the use of such space does not interfere with the normal work of the City or Agency. Off-hours of bargaining unit employees shall be utilized for such meetings. The Director of Labor Relations or in his/her absence the Personnel Director may make an exception to the off-hours provision in an unusual circumstance...

(Joint Exhibit 1)²

6. The CBA also provides, in Article 4(E) of the 1992-1996 Master Agreement, in relevant part as follows:

ACCESS TO CITY PREMISES - A representative of the Union shall have reasonable access to the City's premises to confer with the City, stewards of the Union and/or employees, solely for the purpose of administering this Agreement. Such access shall not be permitted to interfere with the normal conduct of the City business...

(Joint Exhibit 1)

7. The CBA further provides in Article 11(A) of the 1992-1996 Master Agreement, which is entitled "Labor Management Committees," in relevant part as follows:

In recognition of the need for on-going [sic] labor management cooperative efforts during the term of the Agreement, the City and the Union agree to the establishment of a City-wide labor management committee. The Committee shall have no authority to change, delete or modify any terms of the existing agreement or to settle grievances.

The Committee shall consist of six (6) members, three (3) appointed by the Union and three (3) by the City. One representative of the Union and one representative of the City shall be designated as co-chairpersons of the Committee.

The Committee shall examine issues of labor management relations across City departments and shall also be authorized to examine and make recommendations concerning labor, management and productivity issues.

(Joint Exhibit 1)

8. The CBA additionally provides in Article 11(C) of the 1992-1996 Master Agreement, in relevant part as follows:

SAFE WORKING CONDITIONS COMMITTEE

² The parties have apparently agreed to carry over numerous contractual provisions from prior CBAs by simply stipulating that any provisions without an express expiration date remain in effect for successor agreements. (Joint Exhibit 1).

There shall be a joint labor management committee to study working conditions of City employees. Such committee shall meet on at least a monthly basis. The committee shall have the authority to review and inspect health and safety problems. The committee will make recommendations to remedy any health safety problems discovered during inspection and review. The City shall be responsible for providing and maintaining safe working conditions.

(Joint Exhibit 1)

9. The CBA also includes a Memorandum of Agreement (MOA) between the parties effective July 1, 2008 to June 30, 2009, which provides, in relevant part, as follows:

HEALTH AND SAFETY - EMPLOYEE INVOLVEMENT INITIATIVES

In accordance with Risk Management Directives, departments are responsible for developing a process for involving employees in their safety and health program. This involvement may include, but is not limited to: labor/management safety committees or involvement of employees in safety surveys and inspections, operational process review committees, involvement in environmental monitoring, and other practices.

Where joint labor/management safety committees exist or are created in a department, the committees will comprise relatively equal numbers of representatives from management and employees where operationally feasible. The Union shall choose its representatives for each committee consistent with the operational needs of the department and the structure of the committee approved by Risk Management. The committee's general responsibility will be to provide a safe workplace by recognizing hazards and recommending abatement of hazards and education programs following Risk Management Directives.

Where departments choose other employee involvement mechanisms, and after Risk Management has approved the program, the Union shall choose which members will be asked to participate, consistent with the operational needs of the department and the Safety Program.

Any dispute arising over the implementation and administration of this Employee Involvement Initiatives provision shall be resolved through discussions between Risk Management and District Council 47 exclusively, not through the grievance and arbitration procedure...

(Joint Exhibit 1)

10. Ana Guzman is a Social Service Manager who works for the City's OHS. She has been employed with the City since 2008. She serves as a Union steward and is also part of the Health and Safety Committee. She testified that her responsibilities as a steward include reporting unsafe conditions to the Union, as well as any conflicts or complaints. She also has the authority to file grievances. (N.T. 10-11, 29)

11. Guzman testified that the function of the Health and Safety Committee is to meet once a month and report any unsafe conditions existing at the worksite. She explained that the Health and Safety Committee includes a bargaining unit member from OHS, along with a City representative. She described how the Union also has a designated health and safety officer on the Committee, in addition to a member of the City's administration. (N.T. 12-13)

12. In October 2019, the Union's designated health and safety officer was Michelle Jamison. (N.T. 13)

13. In September 2019, Guzman's work location was 802 North Broad Street. Her direct supervisor was Cynthia Pace. (N.T. 11, 13-14)

14. In October 2019, the City moved Guzman's work location with little notice to the building next door located at 804 North Broad Street. (N.T. 14, 28)

15. Guzman testified that there were several issues with the new location, including ongoing and unfinished construction, loud disruptive drilling, improperly installed cameras, low ceilings so that people could hit their heads, and lack of a doorbell. She also described how the cubicle dividers were stained with and reeked of mold and mildew. (N.T. 15-16)

16. Guzman reported the problems with the new work location in October 2019 to her direct supervisor, Cynthia Pace, along with Linda Ricci, who was the administrator at the time. She also reported the issue to the Union. She specifically told Jesse Jordan, who is an AFSCME staff representative. (N.T. 17-18, 30)

17. After Guzman reported the problems to the Union, Michelle Jamison advised Guzman that she would come to the building. Guzman informed her supervisor that Jamison was going to visit. (N.T. 18)

18. Guzman testified that Jamison performed a walk through of the building upon her arrival, at which time Guzman showed her the damaged cubicles. (N.T. 18-19)

19. Guzman testified that, after Jamison visited the jobsite, she was approached by Ricci and Pace and instructed to always inform the City first if the Union was coming to visit. (N.T. 22)

20. By emailed dated October 30, 2019, Pace indicated the following, in relevant part, to Guzman:

Ana:

As it was discussed in past conversations and in today's supervision, please notify [Roosevelt Darby Center] management ahead of time when union officials are planning to visit the RDC building. We are requesting not only to be notified, but to be provided the date, time, and reason for the visit. If the union visits involve a walk through, as much notice as possible is needed so that our director, Bruce Johnson[,] can be present.

RDC/OHS management is again asking that if there are any concerns with the staff or building that you present them to management

and give them a reasonable time to address the matter prior to contacting union officials.

Thanks you for your time on this matter...

(Union Exhibit 1)

21. Guzman testified that she does not have the authority in her Union positions to schedule health and safety visits. (N.T. 23)

22. Guzman testified that, after the October 30, 2019 email, she would run upstairs and tell her supervisor if Jamison called to inform her that the Union was doing a site visit. She explained, however, that if Jamison did not tell her, then there was no way she could give the City any advance notice of the visits. (N.T. 23)

23. Guzman testified that she feared discipline from the City because she was supposed to tell the City ahead of time if the Union was going to visit the jobsite, but it was not something she had any control over. She also feared discipline from the City because she was not supposed to report any complaints to the Union. (N.T. 24)

24. AFSCME also introduced the testimony of its staff representative, Jesse Jordan, who described how the Union has stewards that represent the employees at each jobsite. However, Jordan explained that only the staff representatives have the authority to negotiate terms and conditions of employment. He also claimed that stewards can only enforce the contract at the step 1 or 2 level of a grievance, meaning the stewards cannot go beyond the first level supervisor. He testified that stewards lack the authority to sign on a step 3 grievance, move a case to arbitration, or file an unfair practices charge. He stated that the staff representative or executive board has to sign off at those levels. (N.T. 42-44)

25. Jordan testified that the City's human resources office and the Mayor's office of labor relations are aware of these limitations to the stewards' authority. He described how AFSCME has a Health and Safety Director, Michelle Jamison, who is assigned to oversee contract enforcement as it relates to health and safety issues in the workplace. Jordan explained how AFSCME instructs its stewards to always notify management first of any health and safety issues and to copy the Union if they do so by email. He testified that Jamison then tries to nudge management into rectifying concerns by visiting health and safety committees and performing walkthroughs at the jobsite to ensure issues are being addressed. (N.T. 44-45)

26. The City introduced the testimony of Bruce Johnson, who was the Director of Prevention, Diversion, and Intake at OHS in October 2019, in support of its position. Johnson testified that his office provides homeless prevention services for those at risk of entering the system, along with diversion assistance to find temporary housing alternatives, as well as intake assessments for those households forced to enter into the system. (N.T. 58-59)

27. Johnson testified that the October 30, 2019 email to Guzman, on which Johnson was copied, was motivated by an impromptu meeting the Union had with the staff. Johnson claimed that the City has no issue with the Union performing site visits or walkthroughs, as that has been done for years. Johnson testified that the City's issue was that this alleged incident

disrupted workflow for the employees. He described how the City simply wants to coordinate with the Union to schedule a time when the work volume is down. (N.T. 64-65, 68)

28. On cross-examination, Johnson admitted that he did not direct Pace or Ricci to send the October 30, 2019 email to Guzman, nor did he direct Pace or Ricci to have any conversations with Guzman regarding her complaints to the Union. (N.T. 74-75)

DISCUSSION

AFSCME argues that the City violated Section 1201(a)(1) and (5) of the Act³ by pressuring AFSCME member, Ana Guzman, in October 2019 to report to management the activities of the Union, by discouraging her from reporting health and safety issues to her employe organization, and by directly dealing with Guzman with regard to health and safety matters. The City contends that the charge should be dismissed because AFSCME has not sustained its burden of proving that the City engaged in direct dealing with Guzman on any health and safety issues. The City also maintains that AFSCME failed to demonstrate that the City interfered with, restrained, or coerced Guzman in the exercise of her rights under the Act.

The Board has long held that a public employer commits an unfair practice by bypassing the designated bargaining representative of the employes and negotiating directly with employes in the bargaining unit. AFSCME Local No. 1971 v. Philadelphia Office of Housing and Community Development, 31 PPER ¶ 31055 (Final Order, 2000). It is equally well settled, however, that no direct dealing will be found where the public employer simply communicates with an agent of the union and does not try to negotiate a change to employe terms and conditions of employment. Utility Workers of America Local 433 AFL-CIO v. White Oak Borough, 40 PPER 41 (Proposed Decision and Order, 2009) (*citing AFSCME District Council 86 v. Commonwealth of Pennsylvania, Dept. of Public Welfare, Selinsgrove Center*, 37 PPER 36 (Proposed Decision and Order, 2006)).

In this case, AFSCME has not sustained its burden of proving that the City violated Section 1201(a)(5) of the Act by directly dealing with bargaining unit members. To the contrary, the record shows that the City simply requested that the Union steward notify management ahead of time when Union officials are planning to visit the building. In making this request, the City did not attempt to negotiate a change to employe terms and conditions of employment. Moreover, in making the request, the City did not communicate directly with individual employes. On this point, Guzman serves as a steward, and is therefore an agent of the Union. Indeed, Guzman has the authority to represent the employes at her jobsite and to file and resolve grievances at least with the first level of supervision. See Teamsters Union Local 764 v. Columbia County, 54 PPER 22 (Proposed Decision and Order, 2022) (holding that stewards were agents of the union where they served as the

³ 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...(5) 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. 43 P.S. § 1101.1201.

union's representative at the jobsite and were involved in the grievance process) (citing Kovach v. Service Personnel and Employees of the Dairy Industry, Local Union 205, 58 F.Supp. 3d 469 (W.D. Pa. 2014); (NLRB v. Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Ass'n, 1992 WL 372381 at 20-21 (3rd Cir. 1992) (union steward was an agent of the union where he was "the union's conduit for members to air their grievances to the employer" and "the union's representative for the members on the jobsite")). Furthermore, Guzman specifically testified that she also serves as a Union representative on the Health and Safety Committee pursuant to the parties' CBA. As such, Guzman was not only an agent of the Union at all relevant times in this matter, but she was also a specific point of contact for the Union as their representative on a labor-management committee for the express purpose of reviewing and inspecting health and safety problems. As a result, it was not direct dealing for the City to ask Guzman to notify management if the Union was planning to visit the jobsite.

At the hearing, AFSCME offered the testimony of its staff representative, Jesse Jordan, who claimed that only staff representatives have the authority to negotiate terms and conditions of employment and that the City was aware of this limitation to the stewards' authority to act on behalf of the Union.⁴ What the Union fails to recognize, however, is that the City did not try to negotiate a change to any employe terms or conditions of employment in the October 30, 2019 email. Instead, the City simply confirmed Cynthia Pace's prior discussions with Guzman and requested that Guzman notify management ahead of time when Union officials are planning to visit the City's premises. While Pace did, in fact, request to be notified of the date, time, and reason for the visit, it was only so that the City could have its Director, Bruce Johnson, present to address any potential safety issues that were discovered during the visit. This does not constitute direct dealing, as alleged by AFSCME, but rather an attempt to cooperate with the Union's representatives for the purpose of meeting to address health and safety issues pursuant to the CBA. That Guzman allegedly lacked the authority to schedule health and safety visits is of no consequence, as there is no evidence she ever communicated this purported fact to the City. In any event, the fact remains that the City did not try to negotiate a change to employe terms and conditions of employment or communicate directly with individual employes. Therefore, the City did not violate the Act by requesting that Guzman alert management ahead of time when the Union was planning to visit the jobsite. Accordingly, the charge under Section 1201(a)(5) must be dismissed.

The same result does not obtain, however, with regard to the Union's independent 1201(a)(1) allegation. The Board has held that an independent violation of Section 1201(a)(1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown in fact to have been coerced. Bellefonte Area School District, 36 PPER 135 (Proposed Decision and Order, 2005) (citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 1201(a)(1). Northwestern School District, supra. However, an

⁴ Although this testimony appears at first glance to be credible, it was nevertheless internally inconsistent, as Jordan acknowledged that the stewards have the authority to negotiate grievance settlements at the step 1 level with the first-level supervisor, thereby potentially changing terms and conditions of employment, depending on the circumstances.

employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

In the instant matter, the record shows that the City has committed an independent violation of Section 1201(a)(1) of the Act. Indeed, the record shows that Pace's October 30, 2019 email to Guzman specifically stated: "RDC/OHS management is **again** asking that if there are any concerns with the staff or building that you present them to management and give them a reasonable time to address the matter **prior to contacting union officials.**" (Union Exhibit 1) (Emphasis added). Thus, the Union has demonstrated that the City, on more than one occasion, has interfered with, restrained, and coerced Guzman's right to consult the Union and seek mutual aid and protection consistent with Article IV of PERA. At the hearing, the City offered the testimony of its Director, Bruce Johnson, who indicated that the City was simply trying to coordinate with the Union to schedule a time to meet when the work volume was down. However legitimate this reason may be, it nevertheless does not justifiably outweigh concerns over the interference with employe rights to assist their employe organization and to engage in lawful concerted activities for the purpose of mutual aid and protection. Simply stated, the City cannot lawfully direct its employes to avoid or delay consulting their employe organization regarding matters of health and safety at the workplace, as this undoubtedly has a tendency to coerce employes in the exercise of their rights. Therefore, it must be concluded that the City has committed an independent violation of Section 1201(a)(1) of the Act.

CONCLUSIONS

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

1. The City is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The City has committed unfair practices in violation of Section 1201(a)(1).
5. The City has not committed unfair practices in violation of Section 1201(a)(5).

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

(a) Immediately rescind any and all directives, in digital or hard copy format, issued to Ana Guzman in October 2019 to avoid or delay consulting the Union with regard to health and safety matters at the workplace and any discipline related thereto;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed 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 13th day of February, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DC 47 LOCAL 2187, AFL-CIO :
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 v. : Case No. PERA-C-20-2-E
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AFFIDAVIT OF COMPLIANCE

The City 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 immediately rescinded any and all directives, in digital or hard copy format, issued to Ana Guzman in October 2019 to avoid or delay consulting the Union with regard to health and safety matters at the workplace and any discipline related thereto; 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