COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COMMONWEALTH ASSOCIATION OF SCHOOL ADMINISTRATORS, TEAMSTERS LOCAL 502	:	
v.	:	CASE NO. PERA-C-22-158-E
SCHOOL DISTRICT OF PHILADELPHIA	:	

PROPOSED DECISION AND ORDER

On June 27, 2022, the Commonwealth Association of School Administrators, Teamsters Local 502 (Union or CASA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the School District of Philadelphia (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA).[1] The Union specifically alleged that the District refused to provide requested information pertaining to the allegations against Climate Manager Donyelle Barcus which resulted in his reassignment to the District's Central Office. The Union alleged that the District again refused to provide requested information at a meeting with Mr. Barcus, the Assistant Superintendent, the CASA representative and the District's investigator. The Union further alleged that, to date, the District has not provided the requested information to CASA or Mr. Barcus.

On July 20, 2022, the Secretary of the Board issued a Complaint and Notice of Hearing for September 21, 2022, in Harrisburg. After 2 granted continuance requests from the District, the hearing was rescheduled for and held on February 22, 2023. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimony, introduce documents, and to cross-examine witnesses.[2] On June 5, 2023, the Union filed its post-hearing brief. On June 7, 2023, the District filed its post-hearing brief.

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

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)

3. Donyelle Barcus has been a Climate Manager for the District for 6 years at multiple buildings throughout the District. In early 2022, he was assigned to George Washington High School. A Climate Manager is an

[1] Act 105 of 1996, as amended, provides that this Board has jurisdiction over the enforcement of the bargaining rights of administrators and supervisors at the City of Philadelphia School District. 71 P.S. § 371(a)(emphasis added), July 11, 1996, P.L. 619, No. 105, *amended*, November 26, 1997, P.L. 530, No. 57, *amended*, December 23, 2003, P.L. 282, No. 47.

[2] Hearing Examiner John Pozniak presided over the hearing in this case. On or about July 6, 2023, the matter was reassigned to this hearing examiner.

administrator who supports the climate in the school building by redirecting student behavior. In private schools or other districts, the position is referred to as a Dean of Students. (N.T. 11, 84)

4. Susan Thompson is the Principal at Washington High School. Principal Thompson reports to Dr. Noah Tennant, the Assistant Superintendent for Washington High School. (N.T. 12-13, 83, 86)

5. On March 3, 2022, Principal Thompson summoned Mr. Barcus to her office, where she hand-delivered him an envelope containing a letter reassigning him to the District's Central Office. The letter states, in relevant part, as follows: "As of March 3, 2022, you are to be removed from your regular assignment pursuant to the outcome of an investigation and disciplinary process. Therefore, pending completion of the investigation and disciplinary process, you are temporarily reassigned to The Education Center at 440 North Broad Street, Room 3068A, 3rd Floor, Philadelphia, PA 19130." The letter further provides a list of instructions. (N.T. 12-13, 91; UX-1)

6. In Principal Thompson's office, Mr. Barcus asked Principal Thompson if she could tell him more information, to which she responded: "You know what you did." Mr. Barcus did not know what behavior Principal Thompson was referencing. Mr. Barcus again asked Principal Thompson if she could tell him anything, and she repeated: "You know what you did." Principal Thompson then left the building, and Mr. Barcus then also left the building. (N.T. 14-15)

7. Dr. Robin Cooper is the full-time President of CASA. On March 3, 2022, after Mr. Barcus left the Washington High School Building, he called Dr. Cooper and explained what had just happened. Dr. Cooper instructed Mr. Barcus to return to Principal Thompson for more information. Dr. Cooper then called Principal Thompson. (N.T. 41-43)

8. On March 3, 2022, Dr. Cooper asked Principal Thompson to tell her and Mr. Barcus about the nature of the charges against Mr. Barcus. (N.T. 60-62)

9. Dr. Don Anticoli is the full-time Secretary/Treasurer for CASA. Deana Ramsey is the Lead Union Steward. (N.T. 22, 66-67, 74)

10. After speaking with Dr. Cooper, Mr. Barcus returned to speak with Principal Thompson the same day. During this second meeting, Principal Thompson informed Mr. Barcus that she did not know the nature of the charges against him, and she hand-delivered a second letter. Principal Thompson did know the nature of the charges against Mr. Barcus because she received the allegations/complaint which she reviewed and discussed with Dr. Tennant before giving the transfer letter to Mr. Barcus. (N.T. 15, 44, 91-93; UX-2)

11. The second letter was on a "204 Conference Notice" form and was mistakenly dated January 25, 2022. The letter stated, in relevant part, the following:

> A conference will be scheduled to discuss lack of professionalism and innapropriate [sic] sexual relations and sexual advances on staff.
>
> You are entitled to union representation at this conference and are responsible for sharing the Google Meet Link with that

representation. Please do not share any of the content of this notice nor communicate directly as that will lead to further disciplinary action.[3]

((N.T. 95-96; UX-2)

12. On March 4, 2022, Mr. Barcus reported to his new assignment at the District's Central Offices. Girna Mendez-Adkins oversees the reassignment room. Mr. Barcus repeatedly asked her verbally and via email for the reasons for his reassignment. Ms. Mendez-Adkins was his only contact other than the Union because he was ordered not to make contact with anyone. (N.T. 16-18; UXs-1 & 2)

13. Employes reassigned to the Central Office sit in a room without any work. Sometimes they just fall asleep. Often employes are not told why they are assigned there. Dr. Cooper has objected to this practice of reassigning employes without providing them with the specific allegations against them. Reassigning employes to the Central Office results in a loss of reputation. The perception is that the employee did something inappropriate with a child or another adult and that they are guilty until proven innocent. (N.T. 29, 47-49, 56, 67-68)

14. Climate Managers are mostly reassigned for child abuse after intervening in a fight among students. If they touch a child, they could be subject to abuse allegations. Climate Managers are reassigned based on reports to the City of Philadelphia DHS as a result of mandatory reporting. (N.T. 69-72)

15. In the past 6 years that Principal Thompson has been Principal at Washington High School, approximately 10 staff members have been reassigned to the Central Office. The allegations triggering those reassignments were unfounded, and the District did not impose further discipline. Principal Thompson never provided Mr. Barcus or the Union with information about the specific allegations against him. (N.T. 89-90, 96-97)

16. On March 4, 2022, Mr. Barcus emailed Ms. Mendez-Adkins stating: "Good morning. I'm just trying to get some information about what's happening with the allegations against me. I haven't been told who's accusing me or when the offense occurred." Ms. Mendez-Adkins responded that she did not have any information other than the reassignment, that Mr. Barcus should contact his Union representatives, and that he would be provided with the allegations and evidence at his conference. On April 7, 2022, and on May 2, 2022, Mr. Barcus again emailed Ms. Mendez-Adkins seeking information. He told her that he had not received any information since his March 3, 2022 reassignment and that his Union did not have any information either. Ms. Mendez-Adkins responded that she only knew that there was a preliminary inquiry. Mr. Barcus followed up with a question about the preliminary inquiry, and Ms. Mendez-

[3] The broad prohibition preventing Mr. Barcus from speaking to anyone about the content of the 204 notice arguably constitutes an unfair practice to the extent that it would also include communications with CASA representatives. However, the Union did not allege that the directive not to speak with CASA representatives constituted an unfair practice, and the District did not further discipline Mr. Barcus for his communications with his Union representatives.

Adkins repeated that she had no more information. On May 18, 2022, Mr. Barcus again emailed Ms. Mendez-Adkins for updates. (N.T. 18-19; UX-3)

17. After more than 6 weeks in the reassignment room, Mr. Barcus still did not know the nature of the charges or allegations against him. (N.T. 21)

18. On April 21, 2022, Mr. Barcus emailed Dr. Cooper and other Union representatives seeking information about the accusations against him stating that over 6 weeks had passed and he has no more information than he had on March 3, 2022, when he was transferred. On April 25th and 27th, 2022, Mr. Barcus again emailed his Union representatives seeking information stating that he was entering week 8 of his reassignment. Dr. Cooper responded on April 27th stating, "No news yet." On April 28, 2022, Mr. Barcus emailed Dr. Anticoli requesting to speak with him. That same day, Dr. Anticoli emailed Michele Chapman, Deputy of Labor Relations, requesting an explanation of why Mr. Barcus had been in reassignment for over 6 weeks without an investigatory conference. On May 9, 2022, Mr. Barcus emailed Dr. Anticoli seeking updates and reminding him that he was entering week 10 of his reassignment. On May 12, 2022, Dr. Anticoli responded that he had made another call and that he was looking into it. (N.T. 22, 44; UXs-4, 5, 9 & 10)

19. Dr. Cooper and Lead Steward Ramsey, on several occasions, contacted Ms. Chapman about Mr. Barcus during Labor-Management Committee meetings without resolution. During these meetings, Ms. Chapman took notes and stated that she would get back to Dr. Cooper and Ms. Ramsey, but she did not provide answers or information during those meetings. The matter was eventually sent to the Chief of Talent and Human Resources, Larisa Shambaugh. (N.T. 45-46, 66-67)

20. Ms. Ramsey also separately contacted Principal Thompson for more information who said that the matter was out of her hands and that she could not be more specific other than the matter was a Title IX case. Principal Thompson did in fact receive the allegations against Mr. Barcus from Assistant Principal Octavia Tokley, and she was aware of the nature of the allegations. She did not provide the information. (N.T. 66-67, 90-91, 95)

21. Kristin Johnson is an Investigative Officer with the Office of Employee and Labor Relations/Office of Talent for the District. She investigated the allegations of sexual harassment against Mr. Barcus. (N.T. 23-24, 110-101; UX-6)

22. On May 18, 2022, Ms. Johnson emailed Mr. Barcus introducing herself as an investigator from Labor Relations and stating that she would have more information about his case in approximately 2 weeks. (UX-6)

23. Typically, the District provides employes who have been charged with the specific allegations before their investigatory interview. (N.T. 46)

24. On March 6, 2022, Ms. Johnson received the notice of the complaints which named only 1 complainant. Ms. Johnson later obtained the names of 2 other complainants from Principal Thompson. Ms. Johnson's investigation was delayed because 1 complainant refused to respond to her requests for an interview. Ms. Johnson eventually asked the Assistant Superintendent to pull her from her duties at the school to sit for an interview. All interviews were finished by mid-May 2022. Ms. Johnson

interviewed a total of 5 people: Principal Thompson, an alleged witness, and 3 complainants. (N.T. 102-103, 109, 112-115)

25. Ms. Johnson testified that the day before a video conference with Mr. Barcus in June 2022, she told Dr. Anticoli the following: 1 person had alleged that Mr. Barcus was having sexual relations with the other 2 women. Those 2 women flatly denied that they had any relationship with Mr. Barcus, and Ms. Johnson did not believe the other witness who made the allegations. The witness who made the allegations ultimately told Ms. Johnson that she never made any allegations against Mr. Barcus. Dr. Anticoli testified that Ms. Johnson did not tell him these details the day before the conference. Dr. Anticoli testified that Ms. Johnson only mentioned that the allegations against Mr. Barcus were unfounded and that the purpose of the video meeting was to discuss the next steps in assigning Mr. Barcus to a school to resume his duties as a Climate Manager. I resolved this conflict in testimony in favor of Dr. Anticoli. (N.T. 103-106, 121-128, 138-141)

26. Participating in the June 2022 video conference were Mr. Barcus, Ms. Johnson, Dr. Tennant, and Dr. Anticoli. During that meeting, Ms. Johnson informed Mr. Barcus that the allegations against him were unfounded, that there would be no further discipline, and that his reassignment to the Central Office was ending. The allegations against Mr. Barcus were not revealed during that meeting. (N.T. 24-25, 35, 63-64, 103-105, 121-128)

27. In an undated letter, Ms. Chapman informed Mr. Barcus that the allegations against him were unfounded and that the District was transferring him to Martin Luther King, Jr. High School. Mr. Barcus now works at James J. Sullivan Elementary School. He did not want to return to Washington High School. (N.T. 26-27, 36, 104-105; UX-7)

28. During the 3 months that Mr. Barcus was assigned to the Central Office, he and the Union were not informed of the allegations against him or the people who made them. Although the Union and Mr. Barcus learned of the nature of the allegations against Mr. Barcus at the hearing on February 22, 2023, they still do not know the identity of the employes who made those allegations. (N.T. 27-28, 77-79)

29. Since 2017, the District has not provided the Union or bargaining unit members with requested information concerning the specific allegations against members suspended pending investigation by being transferred to the Central Office, which has been an ongoing concern of the Union. The Union has been trying to work with the District on this issue at Labor-Management Committee meetings. (N.T. 56)

30. Article 4, Section 4.5 is titled "Communication." This Section addresses the parties' obligation to hold monthly Labor-Management Committee meetings regarding matters contained in the CBA and the application of other policies and regulations of the District. It does not specifically require the District to provide requested information. (UX-8)

31. Article 5 of the parties' CBA contains the grievance procedure and provides, in relevant part, as follows:

> 5.1 A grievance shall be defined as a claim of a violation of any specific provision of this Agreement or of any Personnel Policy or Regulation which has been or shall be adopted by the Board. Allegations raising issues of unwritten practice or

customs are not subject to this Article and may not be grieved or arbitrated.

(UX-8, Article 5, § 5.1)

32. Article 10 of the parties' CBA is titled "PERSONNEL PRACTICES" and provides, as follows: "Administrators may be disciplined for just cause. Discipline shall include discharge, suspension, demotion in salary or status, or any other action disciplinary in nature." (UX-8, Article 10, § 10.6)

33. Article 10 also provides that "The District will conduct and complete investigations in a timely manner." (UX-8, Article 10, § 10.3)

DISCUSSION

The Union argues that the District's duty to bargain includes the obligation to provide information potentially relevant to Mr. Barcus's reassignment to the Central Office and that the District's unreasonable delay in providing that information also constituted an unfair practice in violation of the employer's duty to bargain in good faith. (Union Brief at 8-12). The Union further maintains that, while Mr. Barcus was assigned to the District's Central Office, Union officials repeatedly requested information regarding the nature of the allegations against him and that Mr. Barcus and the Union were "kept in the dark" for over 3 months until Ms. Johnson informed them that the allegations were unfounded. (Union Brief at 10-12).

In PSCOA v. Commonwealth, Greene SCI, 34 PPER 52 (Final Order, 2003), the Board opined that an employer is required to provide the union with information it needs to represent employes in bargaining, for policing the existing contract, and for processing grievances, even though a grievance is not pending at the time of the information request. Id. When no grievance is filed, the requested information must relate to a matter which arguably would be governed by the parties' contract, and the union is not entitled to witness statements. Id. The standard for relevance is a liberal discovery type standard allowing the union to obtain a broad spectrum of probably or potentially useful information. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). *See also*, PSCOA v. Commonwealth of Pennsylvania, 53 PPER 71 (PDO, 2022). Moreover, "[a]n unreasonable or inexcusable delay in providing relevant information is a violation of an employer's statutory obligation to bargain in good faith." United Steelworkers of America v. Ford City Borough, 37 PPER 11 (Final Order, 2006)(citing Commonwealth of Pennsylvania, Dept. of Corrections (SCI Muncy) v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988)). A union is not required to demonstrate that a grievance will succeed, but merely that the information is factually relevant to a potential grievance. The fact that no grievance is pending does not eliminate a union's right to information relevant to monitoring collectively bargained agreements or the bargaining relationship. Commonwealth v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987).

On March 3, 2022, Principal Thompson informed Mr. Barcus that he was "temporarily" reassigned to the Central Office pending an investigation. Later that same day, she informed him that a conference would be held to discuss his alleged inappropriate sexual relations and advances on staff. When Mr. Barcus repeatedly asked Principal Thompson for more information, she twice stated: "You know what you did." At the time, Principal Thompson did in fact know the details of the complaints and allegations made against Mr. Barcus, which she had discussed with Dr. Tennant. However, Principal Thompson

withheld the nature of the charges and allegations from Mr. Barcus. Principal Thompson clearly credited the complaints against Mr. Barcus by saying: "You know what you did." Except, Mr. Barcus, who as it turns out did nothing wrong, did not know what he did.

Mr. Barcus reported to the Central Office as directed where he experienced dehumanizing inactivity for over 3 months. He sat in detention with no work assignment for the entire time. The record shows that an involuntary transfer to the Central Office ruins the transferred employe's reputation because it is generally understood that the transfer was the result of inappropriate behavior with a student or other staff. Mr. Barcus's transfer was an in-house suspension pending investigation with pay based on charges of misconduct. Suspensions pending investigation are disciplinary, adverse employment actions negatively affecting terms and conditions of employment as well as reputation. Although an employer has a managerial prerogative to transfer and assign employes to satisfy operational requirements, the District in this case did not reassign Mr. Barcus to perform his duties at another location for operational needs. The District, rather, suspended Mr. Barcus from performing his job duties altogether.

In Pennsylvania State Police v. Pennsylvania State Troopers Ass'n, 840 A.2d 1059 (Pa. Cmwlth. 2004), the Commonwealth Court affirmed an arbitration award concluding that that a disciplinary transfer was arbitrable where matters of discipline are grievable pursuant to the parties' CBA. In this case, the parties' grievance procedure provides that a grievance may be filed to challenge any provision of the CBA or the policies and regulations of the District. Moreover, Section 10.6 of the CBA provides that administrators may be disciplined for just cause and that discipline shall include "suspension . . or any other action disciplinary in nature." (emphasis added). The CBA does not differentiate between suspensions served with or without pay or suspensions served at the District or at home. Also, Mr. Barcus's involuntary transfer to a room, while suspended from his duties and his position, constitutes "any other action disciplinary in nature," under the CBA. Additionally, the March 3, 2022 transfer letter that Principal Thompson handed to Mr. Barcus stated: "Therefore, pending completion of the investigation and disciplinary process, you are temporarily reassigned to The Education Center at 440 North Broad Street, Room 3068A, 3rd Floor, Philadelphia, PA 19130." (emphasis added). The 204 form further stated: "Please do not share any of the content of this notice nor communicate directly as that will lead to further disciplinary action." (F.F. 5 & 11)(emphasis added). Accordingly, the District understood that Mr. Barcus's involuntary transfer and suspension was disciplinary.

As discipline, the District's in-house suspension and disciplinary transfer of Mr. Barcus was grievable under the CBA, even if more discipline could have been imposed had the allegations against him been sustained.[4] Moreover, "[i]nformation sought by the union which directly involves matters of negotiable wages, hours and working conditions of represented employes is

[4] Notably, suspensions pending investigation for allegations of misconduct warranting the removal from the workplace in the Commonwealth's Department of Corrections constitutes discipline for which accused employes are entitled to a pre-suspension hearing with an opportunity to respond to allegations, a written summary of the pre-suspension meeting, a written review of the issues discussed, and a listing of the attendees. PSCOA v. Commonwealth, Department of Corrections, SCI Somerset, PERA-C-21-218-E (PDO, 2022).

presumptively relevant." IAFF v. City of Lancaster, PF-C-21-79-E (Final Order, 2003)(emphasis added). In this case, the specific allegations against Mr. Barcus were presumptively relevant to his discipline, and representing disciplined bargaining unit employes is a primary responsibility of the Union in its capacity as collective bargaining representative. Also, the information request was not overly broad; the request, rather, was very specific to the nature of the pre-investigatory allegations against Mr. Barcus. Having not done anything wrong, Mr. Barcus and the Union could not have known why the District was suspending him for sexual misconduct, contrary to Principal Thompson's accusation that "you know what you did."

The circumstances surrounding Mr. Barcus's suspension are not analogous to the circumstances in Greene SCI, supra. In that case, no discipline had been effectuated by the employer and the union was seeking the employer's pre-disciplinary, investigatory information. Here, the Union was not seeking the employer's investigation materials and Mr. Barcus had already been disciplined. The Union, rather, was seeking the pre-investigation allegations submitted to Principal Thompson. The fact that the Union had the right to grieve Mr. Barcus's discipline entitled the Union to more specific information about the nature of the charges and allegations against Mr. Barcus to evaluate whether the District's actions were for just cause and/or whether the District was in compliance with the District's policies and regulations, which is also grievable under the CBA. The potential for grieving the suspension pending investigation gives the Union the right to evaluate whether to pursue a grievance and evaluate the actions of the District under the CBA and the District's policies and regulations, even where the charges may eventually be unfounded. The fact that the Union did not have a pending grievance in this case does not negate its right to the requested information. North Hills Education Ass'n, v. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998); Greene SCI, 34 PPER 52.

Significantly, in applying the standard of "presumptive relevance," the Lancaster Board affirmed the hearing examiner's conclusion that the union in that case was under no duty to specify to the employer why it needed the information. Thus, although, the Union may not have told District management that it was evaluating whether to file a grievance over Mr. Barcus's suspension, it was under no obligation to do so when its information request was undeniably related to Mr. Barcus's discipline, his conditions of employment, and enforcement of the CBA.

Additionally, the Board, in Lancaster opined that "[b]lanket refusals to produce documents or information based on claims of confidentiality do not suffice as a defense to an unfair labor practice where information is potentially relevant. The employer must make a good faith effort to accommodate its confidentiality interests with the union's need for information." Lancaster, supra. Here, the Union was not seeking confidential information or witness statements. It was simply seeking the specific nature of the allegations of misconduct against Mr. Barcus. The Union was not even seeking the identities of the accusers, even though it was entitled to those names. Gas Works Employees Union Local 686 v. Philadelphia Gas Works, 45 PPER 24 (PDO, 2013)(citing Board caselaw holding that an employer must provide the union with the names of witnesses). In this regard, the Union is entitled to conduct its own parallel investigation with this information. Moreover, the District did not at any time attempt to negotiate with the Union a way to accommodate any confidential interests. Accordingly, the District does not have a viable confidentiality defense in this case.

Also, the parties' CBA requires that the District will conduct and complete investigations in a timely manner. (F.F. 33). The record shows that the Union made repeated attempts to obtain the nature of the charges against Mr. Barcus or any information that could help the Union evaluate Mr. Barcus's suspension. Mr. Barcus asked Principal Thompson on March 3, 2022. He also repeatedly asked Ms. Mendez-Adkins, who oversees the reassignment room at the Central Office, for more information about the reasons for his disciplinary reassignment. Dr. Anticoli emailed Ms. Chapman in April 2022, with no response. Dr. Cooper and Lead Steward Ramsey both met with Ms. Chapman during Labor-Management Committee meetings on several occasions asking about information regarding Mr. Barcus's transfer. Ms. Chapman simply took notes without providing any information on each occasion they met. When Steward Ramsey contacted Principal Thompson, Principal Thompson told her that the matter was out of her hands without providing any information.

Investigator Johnson received the notice of the complaints against Mr. Barcus on March 6, 2022. Yet, Ms. Johnson did not contact Mr. Barcus until more than 2 months later on May 18, 2022, and even then she informed him that she would have more information in 2 more weeks. Typically the District provides employes and the Union with the specific allegations against the accused employe before their investigatory interview. Ms. Johnson unreasonably delayed the interview with Mr. Barcus, and so the District did not complete its investigation within a reasonable time, in violation of the CBA. Ms. Johnson delayed until sometime in June 2022, the day before Mr. Barcus's scheduled investigatory conference, to inform Dr. Anticoli that the allegations against Mr. Barcus were unfounded. Also, I have not credited Ms. Johnson's testimony that she provided Dr. Anticoli with a summary of the allegations the day before that conference. I have credited Dr. Anticoli's rebuttal testimony that Ms. Johnson did not provide the summary. The District's refusal to timely provide this information undermines the Union's ability to serve its members and results in unreasonably long suspensions, especially where allegations are unfounded, which is a frequent occurrence. Also, the District did not need to wait for Ms. Johnson to complete her investigation because the Union was requesting pre-investigation information which was already in the District's possession and which was unrelated to the investigation or Ms. Johnson's conclusions.

Even though Ms. Johnson concluded that the allegations against Mr. Barcus were unfounded and Mr. Barcus was reassigned to another building after his suspension, the unfair practice charge against the District for refusing to provide information related to his suspension is not moot. In this case, there still remains a controversy because the District did not provide the specific nature of the allegations against Mr. Barcus. Moreover, even had the District provided information the day before the June 2022 conference, which it had not, the unreasonable delay itself constitutes an unfair practice that is not remedied or mooted by the subsequent provision of information. North Hills Education Association v. North Hills School District, 29 PPER 29063 (Final Order, 1998). The Board in North Hills opined that, by delaying the provision of requested information, an employer may prevent the union from filing a timely grievance. Id. The Board further stated that "[i]n order to facilitate effective policing of the collective bargaining agreement by the employe bargaining representative, the employer must promptly respond to its requests for relevant information." Id. In this case, the 3-month delay in providing information already accessible and in the District's possession was not a prompt response by the District and constituted an unfair practice.

Notwithstanding the unremedied statutory bargaining violation caused by the refusal to provide any information and by the ongoing controversy, however, the Board has the discretion to hear cases that no longer present a controversy where an exception to the mootness doctrine exists. APSCUF V. PLRB, 8 A.3d 300, 302, 607 Pa. 461. The Board has recognized that cases will be heard when the matter presents an important issue capable of repetition and evading review. Id. The Board will decline to hear a case as moot where a bargaining controversy is resolved by a bargained-for agreement resolving the issues, Id. *see also*, Temple University, 25 PPER ¶ 25121 (Final Order, 1994), because "[c]ontinued litigation over past misconduct which has no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future." Medical Rescue Team South Authority v. Association of Professional Emergency Medical Technicians, 30 PPER 30063 (Final Order, 1999).

The record in this case demonstrates that the District has been refusing to provide requested information regarding the specific allegations or charges against employes suspended and transferred to the Central Office, since at least 2017. Clearly, the District's consistent refusal to comply with its bargaining obligations to provide the information has been repeated while evading review where the charges are deemed unfounded and no discipline in addition to the suspension is imposed on the bargaining unit member. Also, the parties have not bargained an agreement resolving the issue of the District's failure to timely provide information regarding the nature of the allegations against suspended employes. Accordingly, the District's refusal to provide the nature of the pre-investigatory allegations and charges against Mr. Barcus is not moot and constitutes an unfair practice.

The District contends that the Union failed to place the District on notice of the conduct alleged to have violated the Act or the CBA, which deprived the District of an opportunity to present a defense. The District maintains that it was, therefore, ill prepared to defend against the Union's evidence about the CBA, which was not mentioned in the specification of charges, and the evidence of multiple communications that Union officials had with District management requesting information about the allegations against Mr. Barcus. The District asserts that it heard for the first time at the hearing that the Union was relying on Article 4.5 of the CBA to support the Union's claim that it was entitled to the requested information and that evidence should be disregarded, even though the examiner permitted its admission over the objection of the District during the hearing. Moreover, the District contends that the Union specifically alleged only one request for the information on April 21, 2022, made to Principal Thompson, which the record does not establish ever occurred.

In Philadelphia Federation of Teachers v. Philadelphia School District, 54 PPER 59 (Final Order, 2023), the Board reversed this examiner's conclusion that the District committed unfair practices for using investigators where the Union did not allege those facts in its original specification of charges, even though the union complained of the use of those investigators in email attachments to the charge. The Board, in that case, as does the District here, relied on Section 95.31(b)(3) of the Board's Regulations stating as follows:

> Section 95.31(b)(3) of the Board' s Rules and Regulations requires that specifications of charges contain the specific conduct alleged to be a violation of PERA stating, in relevant part, that charges filed with the Board shall include "[a] clear and concise statement

> of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged." 34 Pa. Code § 95.31(b)(3). The Board has recognized that strict rules of pleading do not apply in administrative proceedings, but that fundamental due process requires that an employer be given notice of the factual allegations that support the charge. *Bucks County Detectives Association v. Bucks County*, 45 PPER 2 (Final Order, 2013). To satisfy this due process concern, the Board has consistently held that the charging party must put the responding party on notice of the precise nature of the conduct which is at issue in the charge, and is limited to the presentation of evidence as to the specific allegations contained in the charge. Therefore, the Board has jurisdiction only over those unfair practices that are timely alleged in the charge. Id.

Philadelphia School District, 54 PPER 59 (citations omitted).

In the specification of charges, the Union's factual allegations provide that:

> On or about April 21, 2022, CASA inquired as to the reason for Barcus' reassignment, but his principal refused to provide the reason.
>
> Thereafter, a meeting was conducted among Barcus, CASA representative Don Anticoli, Assistant Superintendent Noah Tennant and School District Investigative officer Kristin Johnson at which time, again, no details of the accusations against Barcus were provided other than to state that they were unfounded.
>
> Barcus was finally assigned to a school other than Washington High School after approximately 13 weeks. To date neither Barcus nor CASA has been apprised of the underlying charges that resulted in the investigation of Barcus. Although Barcus suffered no loss in pay, the stigma of being reassigned remains and neither he nor CASA are able to rebut whatever allegations resulted in the investigation and reassignment.

(Specification of Charges ¶s 2-4).

This case, however, is distinguishable from the other Philadelphia School District case cited above. In that case, the Union amended its charge specifically alleging that the use of investigators, instead of building supervisors, to interview employes accused of misconduct constituted an unfair practice, an allegation not included in the original charge. The amendment was over 4 months after the union learned that the District was using the investigators. Also in that case, the union presented evidence about the use of investigators and two negotiated side agreements that designated the number of interview steps, which did not include a step for interviews by outside investigators. The Board dismissed that part of the amended charge as untimely.

Here, however, the Union specifically claimed as an unfair practice that the Union inquired about the allegations that triggered Mr. Barcus's suspension and that Principal Thompson refused to provide the information.

There is only one act or omission alleged by the Union to have violated PERA which is the District's refusal to provide the nature of the allegations against Mr. Barcus upon request. The charge further specifies that, at a subsequent meeting with Mr. Barcus, CASA representative Dr. Don Anticoli, Assistant Superintendent Noah Tennant and School District Investigator Kristin Johnson, the Union was not provided with the information.

The Union did not have to explain in detail, in its charge, its legal theory in support of its rights to the information as the collective bargaining representative because the information was presumptively relevant to its representation of a disciplined employe. Lancaster, supra. The Union identified Principal Thompson as refusing the information as well as Ms. Johnson and Dr. Tennant. The Union further identified on its unfair practice charge form that its claim was a violation of Section 1201(a)(5), which placed the District on notice that it allegedly violated its statutory duty to bargain, either under the CBA or because the Union is the bargaining representative for discipline and other conditions of employment. The alleged date of April 21, 2022, as the date of Principal Thompsons refusal to provide the information, was indeed incorrect. However, the specification of charges contains allegations which are to be proved or disproved at a hearing. The requirement that dates be included in the charge are mostly to establish timeliness. An incorrect date in the charge is not itself fatal unless the actual date results in an untimely filed charge.

The District was on notice that the Union was denied requested information by Principal Thompson during that time period, and subsequently by Ms. Johnson, and Dr. Tennant. The Union was not required to plead the factual details related to each and every instance that the Union requested information from Principal Thompson, Ms. Johnson, Ms. Chapman, or Dr. Tennant. Principal Thompson's initial refusal on March 3, 2022 constituted the unfair practice, and it occurred within 4 months of the filing of the charge. The allegations in the charge were sufficient to direct the District back to Principal Thompson, Ms. Johnson, and Dr. Tennant to prepare for the hearing. Indeed, Principal Thompson and Ms. Johnson were witnesses at the hearing. Hearing Examiner Pozniak, therefore, properly admitted the CBA and other evidence relevant to establish the allegation that the District violated its bargaining obligation by refusing to provide requested information to the Union during its representation of a disciplined employe and his working conditions.

The District was on notice that the Union was alleging that the District did not provide the nature of the accusations against Mr. Barcus while he served 13 weeks in suspension and thereafter. The Union specifically alleged that "to date" it has not received the information requested. This allegation clearly means that, from the time of the initial request to the date of the filing of the charge, the Union had not received the requested information. The Union was not obligated to allege specific contract provisions, after pleading a violation of Section 1201(a)(5), in order to present the CBA or evidence that it was policing negotiable working conditions for a disciplined employe.

The District also argues that the charge is untimely because the District has provided the same information to the Union and Mr. Barcus as it has done to other employes since at least 2017 and constituted a frequent past practice since then. However, the Board has held that a union's past acquiescence to bargaining violations does not constitute a waiver of the union's right to challenge new instances of bargaining violations and does

not render an unfair practice claim for each new instance untimely. Capital City Loge No. 12, Fraternal Order of Police v. City of Harrisburg, 22 PPER 22081 (Final Order, 1991). Every time the District refuses to provide the Union with requested information to evaluate a disciplinary suspension and reassignment to the Central Office of a bargaining unit member as discipline under the contract, it gives rise to a new, discrete cause of action and bargaining violation. The Union does not waive its right to enforce the disciplinary provisions of the contract because it has not done so in the past. The charge alleging that the District violated its bargaining obligation by refusing to provide information is, therefore, timely.

Additionally, the District's refusal to provide requested information regarding suspended employes did not constitute a past practice since 2017, as argued by the District. Our Supreme Court has defined a past practice, in part, as follows: "[a] custom or practice is not something which arises simply because a given course of conduct has been pursued by [m]anagement or the employees on one or more occasions. A custom or a practice is a usage evolved by [individuals] as a normal reaction to a recurring type situation. It must be shown to be the *accepted* course of conduct characteristically repeated in response to the given set of underlying circumstances." County of Allegheny v. Allegheny County Prison Employees Independent Union, 476 Pa. 27, 34 n.12, 381 A.2d 849, 852 n.12 (1977)(emphasis added).

The record in this case shows that the District's past refusal to provide the charges against suspended employes was not at any time an accepted course of conduct. The credible testimony from Dr. Cooper was that the Union has been working for a long time at Labor-Management Committee meetings to persuade the District to provide the pre-investigation allegations against suspended employes when requested. Therefore, the District's past conduct of refusing to provide information does not meet the definition of past practice because the Union has been consistently objecting to these refusals for years, and it was never an accepted course of conduct.

The District further contends that the District's actions had a sound arguable basis in the CBA because the Union failed to identify any provision in the CBA that required the District to provide the information requested. The District argues that the disciplinary process only begins in the event that the investigation reveals that a policy violation occurred. The District posits that the record shows that Mr. Barcus was never charged with policy violations subject to challenge under the CBA. The District's argument here seems to be that the absence of a contractual provision requiring the District to provide the requested information gives the District a sound arguable basis for not providing it.

In PSTA v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000), the Commonwealth Court sanctioned the Board's recognition of a contractual privilege defense which "calls for the dismissal of . . . charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the employer's action was permissible under the agreement." Id. However, the defense does not permit the dismissal of charges where the employer asserts that there is no contractual provision that arguably governs the employer's behavior or the union's position. The District's contractual privilege defense is, therefore, unavailing.

Also, the District's assertion that Mr. Barcus had not been disciplined because he was not charged with a policy violation after the completion of an

investigation is a characterization not supported by the record. As previously stated herein, Principal Thompson and Dr. Tennant assumed that Mr. Barcus engaged in sexual misconduct and violated District policy. Principal Thompson stated: "You know what you did." She also stated in her 204 letter that "[a] conference will be scheduled to discuss lack of professionalism and inappropriate sexual relations and sexual advances on staff." These statements assumed that Mr. Barcus was guilty of policy violations. Mr. Barcus was suspended from his duties for 3 months based on Principal Thompson's crediting charges that he engaged in the conduct to the detriment of his reputation. Mr. Barcus suffered adverse employment action constituting suspension and discipline under the CBA. The untimely completion of Ms. Johnson's investigation alone, while Mr. Barcus was suspended for over 3 months, was a violation of the CBA and the refusal to timely provide any pre-investigatory information in the District's possession was a statutory violation, as charged by the Union.

Accordingly, the record shows that the District refused to provide the specific pre-investigatory allegations against Mr. Barcus to the Union, as alleged in the charge. The Union was entitled to the requested information as the collective bargaining representative attempting to represent a disciplined, suspended bargaining unit member. The Union did not have to specifically reference why it had a right to the requested information because it was presumptively relevant to the representation of the disciplined employe under the CBA. Lancaster, supra.

CONCLUSIONS

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

1. The District is a public employer under PERA.

2. The Union is an employe organization under PERA.

3. The Board has jurisdiction over the parties hereto.

4. The District violated its bargaining obligation to the Union in violation of Section 1201(a)(1) and (5) of PERA by refusing to timely provide requested pre-investigatory information specifying the nature of the allegations against Mr. Barcus while he was serving an involuntary suspension at the Central Office.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner:

HEREBY ORDERS AND DIRECTS

that the District 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 provide the Union with the requested pre-investigation information regarding the nature of the charges and allegations against Mr. Barcus;

(b) Immediately cease and desist from denying and delaying the provision of pre-investigation, presumptively relevant, requested information to the Union regarding disciplinary suspensions and transfers of bargaining unit members to the Central Office for alleged misconduct;

(c) 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

(d) 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 twenty-seventh day of July 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/ JACK E. MARINO

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COMMONWEALTH ASSOCIATION OF SCHOOL ADMINISTRATORS, TEAMSTERS LOCAL 502	:	
v.	:	CASE NO. PERA-C-22-158-E
SCHOOL DISTRICT OF PHILADELPHIA	:	

AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased and desisted from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, under Section 1201(a)(1) and (5) of the Act; that it has immediately provided the Union with the requested, pre-investigation information regarding the nature of the allegations against Mr. Barcus triggering his suspension; that it has ceased and desisted from denying and delaying the provision of presumptively relevant, pre-investigation, requested information to the Union regarding disciplinary suspensions and transfers of bargaining unit members to the Central Office for alleged misconduct; that it has posted a copy of this decision and order in the manner 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