

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION : PERA-C-21-29-E
 :
v. :
 : PERA-C-21-45-E
COMMONWEALTH OF PENNSYLVANIA :
 :

PROPOSED DECISION AND ORDER

On March 5, 2021, the Pennsylvania State Corrections Officers Association (Union or PSCOA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board), at Case No. PERA-C-21-29-E, alleging that the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth, Department, or DOC) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA). The charge specifically alleged that the Commonwealth failed to respond to a November 9, 2020 request for information (RFI) to process a September 25, 2020 grievance challenging the September 16, 2020 suspension pending investigation (SPI) of Correctional Officer and Union Vice President Andrew Garrison. On March 30, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of May 12, 2021, before Hearing Examiner John Pozniak.

On April 1, 2021, the Union filed a charge of unfair practices with the Board, at Case No. PERA-C-21-45-E, alleging that the Commonwealth violated Section 1201(a)(1) and (3) of PERA by retaliating against Officers Maximilian Kauert and Garrison for their Union activities as Union President and Vice President respectively. On April 14, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of May 24, 2021, before Examiner Pozniak. On May 7, 2021, the parties requested an indefinite continuance in Case No. 21-29 and agreed to submit that case on joint stipulations of fact. On July 6, 2021, Examiner Pozniak informed the parties that the joint stipulations and supporting briefs were due on August 20, 2021. In Case No. 21-45, there were multiple granted continuance requests.

On July 14, 2021, the Union filed an amended charge of unfair practices for Case No. 21-45 to include the May 6, 2021 termination of Garrison. On July 20, 2021, the Secretary of the Board issued an Amended Complaint and Notice of Hearing, designating September 28, 2021, as the hearing date. On July 27, 2021, Examiner Pozniak consolidated Case No. 21-29 with Case No. 21-45 for hearing purposes. After several more granted continuance requests, Examiner Pozniak rescheduled the hearing for February 28, 2022. On February 24, 2022, the cases were reassigned to me. Three hearings were eventually held on February 28, 2022, May 12, 2022, and July 1, 2023. I granted many continuance requests due to several COVID illnesses and a change in Commonwealth attorneys, which caused the extensive time period between the second and third hearing dates. During all three hearings, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. Post-hearing briefs were also delayed while the parties participated in post-hearing conciliation, which did not result in settlement and after which post-hearing briefs were scheduled. On January 12, 2024, the Union filed its post-hearing brief. On February 16, 2024, the Commonwealth filed its post-hearing brief.

The examiner, based upon all matters 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. 11-12)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 11-12)
3. Maximilian Kauert became a corrections officer at SCI Rockview in November 2013, and became a Local Union Secretary there in 2016 until he transferred to SCI Somerset in July 2018. In January 2019, Kauert became Union Treasurer and, in March 2019, he became Union Vice President. On July 11, 2019, Kauert was appointed Local Union President at Somerset with no prior discipline. The same day, PSCOA Business Agent (BA) Joseph Fox forwarded the notification of Kauert's appointment to management at Somerset and the notice was posted. In August 2019, labor-management meetings, in which Kauert participated as Union President, became hostile. There are 4 Jail administrators that make the meetings very hostile towards Kauert, Garrison, and Union members within the Jail. Multiple Union Executive Board (E-Board) members have resigned. In November 2019, Kauert was elected for a 2-year term as President beginning January 1, 2020, through December 31, 2021. In Kauert's annual performance review at Rockview for 2016, he received a "Commendable." His 2017 overall rating was a "Satisfactory" at Rockview. His first rating at Somerset in 2018 was also a "Satisfactory." After he became Union President, his performance review in December 2019 was "Needs Improvement." In November 2020, his overall rating was "Satisfactory." (N.T. 31-33, 37-39, 45-46, 58, 72-77, 268-269; UXs-16, 17, 18, 19, 20, 35)
4. Christine Grimm was a Human Resources Analyst III for Somerset and Laurel Highlands in 2020. She became a Field Human Resources Officer (FHRO) in March 2022. Grimm is responsible for entering investigation information into the Electronic Pre-Disciplinary Conference (PDC) tracking system. Grimm also responds to Requests for Information (RFI) filed by the Union, and she sits on PDC panels for management. (N.T. 479-491, 494-498, 532-533)
5. After he became president, Kauert received 8 disciplines between July 16, 2019, and February 2021. All 8 were settled and removed from his personnel file. (N.T. 37-39, 62-63, 77, 113-114, 278-279; UXs-22, 23, 31)
6. The parties' collective bargaining agreement (CBA) contains a grievance procedure. As Local President, Kauert processed many grievances with management; he disseminated information to members; he handled Heart and Lung claims and modified duty assignments; he oversaw other Union officers; he attended labor-management meetings to resolve grievances, discipline, and other disputed matters under the CBA, laws, and managerial policies or directives. The CBA requires parties to exchange information throughout the grievance procedure. The purposes of Step-2 grievance meetings are to timely resolve disputes, avoid arbitration, save time, and save costs. (N.T. 48-50, 548; UXs 4, 5)
7. In 2018, the Union filed approximately 52 grievances at Somerset. The Union filed approximately 241 grievances in 2019. During the 18-month period between July 2019, when Kauert became President, and December 2020, the Union advanced approximately 86 grievances to Step 2. In 2020, the Union

filed approximately 735 grievances. Kauert credibly testified that he and the Union never had an annual grievance filing goal or quota at Somerset and that the merit of those grievances is evidenced by the large number of grievance settlements.¹ (N.T. 45, 58-60, 615-618; UXs-9, 11, 12, 13)

8. The Union uses RFIs to police the CBA and obtain information from management to represent the membership and to prepare grievance packets for presentation to management and arbitrators. When management withholds or delays providing information, the Union is unable to determine whether to file or pursue a grievance. The Union is also unable to settle its grievance claims at Steps 1 & 2, which occur within certain deadlines. (N.T. 66-69)

9. In 2021, management increasingly delayed responding to RFIs. The Union often made at least 3 requests for some information before receiving a response that the information would not be provided. Ms. Grimm and other management personnel at Somerset know the Union leaders and how to communicate with them. (N.T. 69, 72-73; UX-35)

10. PDCs are held when allegations against an officer, if sustained, would result in suspension or termination. PDC panelists from Management are typically hand selected by the Superintendent. Kauert was scheduled for PDCs on multiple occasions. The PDCs prior to Kauert's termination had resulted in written or verbal reprimands because the PDC panel concluded that there was a lack of cause for suspension or termination. Verbal reprimands, written reprimands, demotions, bid-post removal, suspension, and termination all constitute discipline. (N.T. 78-80)

11. The Union and the Commonwealth are parties to a negotiated SPI settlement agreement dated June 26, 2020. The agreement provides, in relevant part, as follows:

1. The parties recognize and agree that a Suspension Pending Investigation is a serious employment action that must stem from factual allegations against an employee that, if proven, could result in the termination or imposition of severe discipline upon that employee.
2. The Department agrees that it will impose Suspensions Pending Investigation upon its employees only where supported by requisite cause, and that the practice will not be utilized in an arbitrary or capricious manner or for punitive purposes.
3. The Department agrees that prior to imposing a Suspension Pending Investigation upon an H-1 bargaining unit member, that employee shall be afforded the right to an informal Loudermill hearing with management where they will be given notice of the allegation(s) against them and an explanation of the evidence, then-known, giving rise to those allegations. The employee shall

¹ I credit the testimony of Kauert over the conflicting testimony of Christopher Stains. Stains transferred to Somerset in August 2018, as a Utility Plan Operator. Stains became Union Secretary in March 2020. He was the Acting Utility Plan Supervisor at Somerset between April 2021 and November 2022, when he became a Facility Maintenance Manager, which is a non-unit position. (N.T. 571-573).

also be afforded the opportunity to respond to the allegations, but will not be obliged to do so.

4. The Department agrees that all subsequent formal letters confirming the imposition of a Suspension Pending Investigation upon an H-1 bargaining unit member shall include, at minimum: notification of the decision to suspend pending investigation; a summary of the pre-suspension Loudermill hearing and review of the issues discussed therein (including the aforesaid notice of allegations and explanation of evidence), and a listing of the attendees thereto.
5. The Department agrees that all investigations it initiates in connection with a Suspension Pending Investigation upon an H-1 bargaining unit member will be undertaken and completed as expeditiously as possible, without unnecessary or undue delay.
6. The parties agree that the recent Memorandum concerning Suspensions Pending Investigation that was issued by Secretary of Corrections John E. Wetzel on May 22, 2020 shall be appended to this settlement letter and thereby incorporated into this settlement agreement. This Memorandum shall act to memorialize the minimum set of rights to be afforded to all H-1 bargaining unit members as it relates to the imposition of Suspensions Pending Investigation by the Department.

(UX-6)

12. Secretary Wetzel's May 22, 2020 Memorandum provides, *inter alia*, that, "[b]ased upon the information provided [at the pre-suspension hearing], the Superintendent/Facility Manager (Acting Facility Manager/Bureau Director/District Director) will consult with their respective Deputy Secretary/Executive Deputy Secretary to determine whether to suspend the employee pending investigation. . . ." (UX-6)

13. Article 4.1.1, Section 5 of the DOC's Human Resources and Labor Relations Procedures Manual contains similar provisions to the SPI settlement agreement. This Section provides that, "[i]n deciding to suspend an employee pending investigation, the Department must be able to demonstrate that the 'nature of the allegations' are such that there is cause to remove the employe from the institution pending investigation and not that the employee committed the offenses." It further provides that SPI "should only be considered when the alleged offenses are of such a severe nature that it warrants immediate removal from the workplace." (UX-7)

14. The same policy further provides that, "[i]n the event a Civil Service employee is suspended pending investigation, a personnel action must be taken within 60 working days from the date of the suspension, unless the investigation is being conducted by an outside agency." The Bureau of Investigations and Intelligence (BII) is within the DOC. (N.T. 98-99, 404; UX-7)

15. On May 7, 2019, Superintendent Eric Tice issued a 3-day suspension to CO1 Ryan Conn who had a record of previous verbal and written discipline. The discipline was based on video and Conn's admission establishing that, while working the metal detector, he took the jacket of a female staff member who was cleaning the metal detector and rubbed it on his

genitalia. Conn was also removed from his bid post and required to complete sexual harassment training. Allegations that Conn made sexual noises while rubbing the jacket on his genitalia were unsubstantiated. (UX-34)

16. On July 16, 2019, Kauert received a written reprimand for allegedly refusing to cooperate with an internal investigation on May 16, 2019, for a use of force incident on March 12, 2019. On August 5, 2019, the Union filed a grievance on behalf of Kauert for that discipline. (N.T. 77; UX-22)

17. In October 2019, Garrison ran unopposed for Union Vice President for a term beginning January 1, 2020. Since he was unopposed, he was guaranteed the position and began performing Vice President duties in October 2019. He attended the October 2019 Western Joint Area Committee (WeJAC) meeting for labor-management hearings. Tice discharged Garrison on October 21, 2019 for an incident that occurred on May 14 2019, where he allegedly recruited inmates to harass a staff member. The Union filed a grievance the same day. On December 20, 2019, that grievance settled for a 5-day suspension at Step 2 with backpay. On December 23, 2019, Garrison returned to work and to performing Vice President duties. On January 1, 2020, Garrison officially became Union Vice President. (N.T. 84-85, 335-337, 502; UXs-36, 37)

18. On May 8th and 12th 2020, officers on the search team were ordered to pass out commissary (snacks) to the inmates on E Unit and then on B Unit. Kauert allegedly refused to distribute commissary to the inmates on those dates. In a written statement dated May 16, 2020, Corrections Officer Rebecca Evans alleged that, while on E Unit on May 8, 2020, Corrections Officer Courtney Trout told Evans that Trout overheard Kauert tell Officer David Yoder that "Trout and Evans suck management asshole to get good posts" and that "Trout sucks inmate dick." Evans also alleged that both comments were made in the presence of staff and inmates. In a written statement also dated May 16, 2020, Courtney Trout alleged that, while on I Unit on May 12, 2020, she overheard Kauert tell Yoder that "Trout sucks inmate dick," and that Kauert told her that "Evans and myself suck management ass to get put on good posts." On July 15, 2020, FHRO Talley emailed Tice expressing concerns over the investigation of Kauert regarding the alleged Trout-Evans incident and Kauert's alleged refusal to distribute commissary. Talley was concerned in part that the incidents allegedly occurred on May 8th and 12th 2020, but the investigation was not completed until July 2, 2020. The same day, Tice responded by email stating that the Equal Employment Office (EEO) should have been involved, and that "[a]ll investigations should be completed in 30 days." (N.T. 115-116, 264-266, 297-301; UXs-28, 39, 69; CX-2)

19. On August 17, 2020, EEO Investigator Stacey Waters interviewed Yoder. Yoder expressly denied hearing Kauert state, on or about May 8, 2020, that Evans and/or Trout suck management asshole to get good posts or that Kauert said that Trout sucks inmate dick. Yoder added that Trout and Evans have a giant witch hunt for Kauert, and they previously submitted sexual harassment paperwork against Yoder in the prior year. (N.T. 168-169; UX-40)

20. On August 18, 2020, Grimm emailed Garrison and Kauert informing them that there would be an orientation for 1 Corrections Officer Trainee (COT) the following week, and asked when they could meet with her. Kauert responded the same day that he would meet with the COT on Friday, August 28, 2020, at 2:00 p.m. The COT was Erin Linhart. However, Kauert was unable to meet with COT Linhart on Friday, August 28, 2020, and he sent Garrison. (N.T. 123-124)

21. A list of officer check-ins and check-outs for August 28, 2020, from 6:26 a.m. to 10:00 p.m., shows that Kauert was not inside the secured part of the Jail that day. A pay record shows that Garrison was on paid Union business on Friday, August 28, 2020, because he was in State College at Step-2 hearings before the WeJAC panel. Kauert was also in State College at the Step-2 hearings, but he took personal leave because only 1 elected Union official can be off on paid Union Business at a time. The shift schedule for August 28, 2020, also shows that Kauert was off on leave that day for the 6:00 a.m. to 2:00 p.m. shift. (N.T. 125-130, 135; UXs-42, 43 & 45)

22. A hotel reservation from the Wyndham Garden hotel in State College shows that Kauert stayed at the hotel overnight in State College from August 28, 2020, to August 29, 2020. Kauert confirmed with credible testimony that he stayed overnight in State College on August 28th into August 29th. After Garrison finished his grievance presentations in State College, he drove back to Somerset to give COT Linhart her Union orientation. Garrison did conduct the Linhart orientation on August 28, 2020. Kauert remained in State College to serve as a WeJAC panel member until 6:00 p.m. State College is approximately a 2-hour drive from Somerset. Management personnel at WEJAC in State College on August 28, 2020, knew that Kauert was at WeJAC until 6:00 p.m. (N.T. 130-133, 137-138, 227; UXs-44, 90)

23. Ardith Mammay was also present in the room with Linhart at the time that Garrison was orienting Linhart. Mammy is a Records Specialist, who is not in the H-1 bargaining unit. She was taking unrelated web-based training for new hires. While orienting Linhart, Garrison allegedly told Linhart that she had "resting bitch face," and that some inmates might call her a "cunt." Ms. Mammay later relayed to co-workers in the Records Department at Somerset that the statement was made. Kauert's name was given to Mammay, and she did not know Kauert. Kauert told management that he was not at the Jail that day, that he did not make the statement, and that he had never met COT Linhart or Mammay. Management disregarded Kauert's alibi and his assertion that he could not have made the statement. Christine Grimm attended the WEJAC meeting with Kauert. (N.T. 116-117, 122, 142-143, 147, 314; UXs-48, 90)

24. In her September 2, 2020, written statement, Mammay wrote that Kauert made the alleged statements to Linhart. On September 17, 2020, Waters interviewed Mammay during which Mammay again identified Kauert as the officer who made the statement. Neither Linhart nor Mammay could have known who Kauert was, and Kauert still does not know what Mammay looks like. Kauert did not meet Linhart until December 2020. (N.T. 142-147, 314; UX-48)

25. On September 5, 2020, management issued Kauert a written reprimand for refusing to distribute commissary on May 8th and May 12th 2020. The reprimand makes no mention of the statements allegedly overheard by Trout on those dates. The grievance for that written reprimand was settled for the removal of the discipline from Kauert's personnel file effective November 12, 2020. (N.T. 265-266; UX-28)

26. On September 16, 2020, Tice SPIed Garrison for allegedly making an inappropriate statement in the presence of inmates, on September 11, 2020, after an inmate suicide on a different unit at Somerset. An inmate told Officer Philipi that Garrison allegedly stated something to the effect that more inmates should hang themselves or commit suicide. Garrison denied making the statement. The Union filed grievance No. SMR-20-201 for Garrison's SPI on

September 25, 2020, challenging the use of SPI against Garrison in violation of the parties' CBA, the Civil Service Act, and the negotiated SPI settlement agreement. (N.T. 86-88, 342; UXs-47, 59, 96; CXs-5, 8; JX-1)

27. Sergeant Lavan, who was supervising E-Unit during the 2:00 p.m.-10:00 p.m. shift when the statement was allegedly made, gave a written statement, dated September 21, 2020. The statement was not provided to the Union until the May 5, 2021 Garrison SPI arbitration hearing. He also corroborated that statement during the arbitration hearing. Lavan stated that no one reported to him anything about inappropriate comments by Garrison and that he observed no inappropriate behavior. (N.T. 100-104; UXs-49 & 85)

28. The Garrison SPI notice provides, in relevant part, the following:

Upon completion of the investigation, a Pre-Disciplinary Conference (PDC) will be conducted based on the findings of the investigation, if warranted. At the PDC, you will be given the opportunity to present any information or facts you may have regarding this matter and, based upon the information brought out at this conference, it will be decided whether or not disciplinary action is warranted and, if warranted, the degree of disciplinary action to be imposed.

(UX-47)

29. On October 23, 2020, Waters conducted a telephone interview with Linhart. During the interview, Waters asked: "What did Officer Kauert say to you in terms of having a resting bitch face and using the word cunt." Waters wrote that Linhart identified Kauert as having made the statement. (N.T. 151-153; UXs-53, 75)

30. Linhart unequivocally told Waters during her October 23, 2020 interview that Garrison, not Kauert, made the remarks because Garrison introduced himself to her as Garrison on August 28, 2020. Also, via email dated December 2, 2020, Linhart told Waters again that Garrison, not Kauert, made the remarks to her stating: "It is Officer Garrison, not Officer Kauert that was the one talking to me during this exchange." Linhart refused to sign the witness statement authored by Waters designating Kauert as making the remarks. Waters subsequently accused Linhart of changing her story, which conflicts with Linhart's BII interview of March 16, 2021. I credit Linhart's BII testimony. Linhart never changed her identification of Garrison. (N.T. 170-171, 601-605; UXs-57, 58, 72, 73, 75)

31. On October 29, 2020, Waters interviewed Kauert. Kauert noted that he was not given any notice of the interview and that this interview was the 3rd or 4th time that he was being asked about the alleged statements. Kauert categorically denied telling Yoder that Trout sucks inmates' dicks or that Trout and Evans suck management's ass to get good posts. He also denied telling Linhart that she had resting bitch face or that inmates would think she was a cunt. He further informed Waters that he had never worked with Linhart or talked to her. Kauert told Waters, similar to what Yoder told Waters, that Trout had made 3 or 4 attempts to make false allegations against him. (N.T. 154-155, 301-304; UX-54, CX-3)

32. On November 9, 2020, Kauert filed with Grimm an RFI to process the Garrison SPI grievance. Kauert requested: All documents related to the Garrison SPI; any video used as evidence; a list of interviewed staff,

interview timelines, witness statements; factual allegations leading to Garrison's SPI; and Loudermill summary and notice of allegations. (UXs-1, 55; JX-1)

33. On December 9, 2020, Kauert followed up with Grimm about the status of the November 9th RFI and requested documents and emails in the Commonwealth's possession at that time showing the reasons for the SPI, even though the investigation was still ongoing. Grimm responded that the reasons for the SPI are in the SPI letter which she provided and that she will provide other documents and information "as soon as I can release it." She also stated that the SPI letter had been previously provided to BA Fox. (JX-1, Ex. B)

34. Waters completed her investigatory summary for Trout on December 3, 2020, almost 7 months after Trout lodged her allegations against Kauert. The Trout summary includes narratives of interviews with Trout, Evans, Yoder, and Kauert, as well as an excerpt from her report on the Linhart-Mammy matter. Although Evans stated that the alleged comments were made in the presence of staff and inmates, no inmates or other staff were interviewed for the investigation. In addition to Trout and Evans, only Yoder and Kauert were interviewed. Yoder denied hearing the statements, and Kauert denied that he made the statements. Waters also reported that both Linhart and Mammy stated that Kauert made comments to Linhart. (N.T. 305; UXs-40, 54; CX-3, C-10)

35. Waters further concluded that Yoder lacked first-hand knowledge of the allegations and gave no weight to Yoder's denying that he did not hear Kauert's alleged statement. Waters also concluded that Kauert engaged in sexual harassment evidenced by the following: Evans and Mammy filed claims against Kauert: Trout and Evans claimed that Kauert made sexually denigrating remarks about them; Mammy indicated that Kauert made sexually denigrating comments about Linhart, which Waters asserts was corroborated by Linhart. Linhart never corroborated Mammy's accusation of Kauert, whose name Mammy obtained from Captain or Mrs. Boyce. Waters' conclusions are based on the fact that multiple claims were made against Kauert. (N.T. 305; UXs-40, 54; CX-3, C-10)

36. On December 4, 2020, based on the results of Waters' reports regarding her investigation of Mammy, Evans, and Trout, John Harris, Chief of Investigations for EEO wrote to Tiffany Epoca, Director of EEO, 3 separate memos all stating that he reviewed the investigations and concurred with the findings. In each memo, addressing each of the 3 separate claims, Harris stated that the evidence was sufficient to establish that Mammy, Trout, and Evans were discriminated against. (CX-10, 11, 12)

37. On December 15, 2020, FHRO Tina Walker issued a PDC notice to Kauert stating that Kauert allegedly sexually harassed multiple co-workers. She stated that "it is alleged that you made sexually inappropriate and offensive remarks that were corroborated by other co-workers." The PDC notice provides the date of incident as "May-July 2020." This time frame places Kauert on notice for the Trout incident, and not the Linhart incident, both of which he denied on October 29, 2020. The PDC and termination notices for Kauert do not provide the names of any accusers, dates, times, or the specific statements allegedly made. The PDC was held on December 21, 2020, at Fayette, and Kauert did not attend. Accused employees are not required to attend their PDCs. (N.T. 119-121, 291, 317-319, 322, 512-515, 534, 554; UX-30; CX-13)

38. Also on December 15, 2020, Linhart forwarded to Kauert the December 2, 2020 email that she had sent to Waters explaining that Garrison, not Kauert, made the statements during orientation. (N.T. 171-172; UX-58)

39. On January 22, 2021, Kauert applied for a business agent position with the statewide PSCOA. The letter is mistakenly dated 2020. On February 3, 2021, PSCOA Eastern Regional Vice President wrote Kauert accepting his application and moving his candidacy forward for interviews with the PSCOA Executive Board on February 22, 2021. ((N.T. 179; UX-67)

40. On January 28, 2021, a Step-2 grievance meeting was held on the Garrison SPI grievance, and the parties deadlocked. During that meeting, Hank McNair, Executive Vice President of the PSCOA, confronted Ms. Grimm about management's inaction in fulfilling the RFI for the Garrison SPI grievance pursuant to the SPI agreement. In response, Ms. Grimm stated: "I will not provide any requested information for this grievance or for the meeting prior to the suspension hearing until the investigation is over." On March 5, 2021, the Union filed an unfair practice charge alleging that the Commonwealth refused to provide the requested information which was relevant to processing the Garrison SPI grievance. (N.T. 377-378; UXs-1, 6, 64; JX-1, Exs. C, E, F)

41. Kauert was terminated on February 11, 2021. That same date, BA Fox filed with Grimm an RFI requesting Kauert's termination letter; all documents, statements, video, audio, and interview list regarding Kauert's termination; investigation timelines, investigator's names and positions; PDC summary minutes; witness lists, their statements, and their dates of interviews; and a training transcript for Kauert. On February 18, 2021, Grimm acknowledged receipt of the RFI and provided some of the information. On March 5, 2021, BA Fox again requested information regarding emails between Kauert and Grimm regarding the August 28, 2020 orientation; contact information for Trout; statements of Trout and Evans; and documentation showing when FHRO Tally was notified of the allegations. On March 12, 2021, Grimm responded with information, excluding contact information for Trout stating that she was no longer an employee. Grimm did not provide audio, video, or a PDC summary for Kauert. (N.T. 173-179, 317-319; UXs-66; CX-14)

42. Also, on February 18, 2021, PSCOA President John Eckenrode informed Kauert that, due to Kauert's termination, the PSCOA was unable to honor Kauert's request to interview for the vacant business agent position. (UX-67)

43. On February 19, 2021, Garrison wrote a statement for management stating that, "[o]n 8-28-20 I [Garrison] conducted the new hire training at SCI Somerset for COT Linhart." This statement was presented at the Kauert Step-1 termination grievance meeting. (UX-68)

44. On February 23, 2021, Kauert prepared a written statement explaining that the evidence did not support a finding that he sexually harassed Trout and Evans in May 2020 or Mammay on August 28, 2020. Kauert made several points in his statement including, but not limited to, the following: He was 3 counties away and not at the Jail on August 28, 2020; he did not orient Linhart; the PDC notice did not identify the Linhart-Mammay incident and lacked notice for Kauert to defend; the Trout-Evans complaints were based on false accusations; Yoder, the officer who trout claimed heard Kauert's alleged comments, refuted that he heard Kauert make any statements that Trout claimed he made to Yoder about Trout; Evans only reported what Trout told her, and it is hearsay; the Trout-Evans allegations were stacked

with the Linhart-Mammy incident to justify disciplining Kauert; due process timelines were not met; the last sexual harassment discipline at the Jail resulted in a 3-day suspension to someone with prior discipline and video evidence to support the claim for an incident more serious and invasive than the allegations made against Kauert. Kauert further stated that he was interviewed 5 months after the Trout-Evans incident and 2 months after the Linhart-Mammy incident. (UXs-34, 69)

45. During his 5-month termination, Kauert was not permitted at the Jail, and he was unable to represent members, attend grievance meetings, or attend Step-2 grievance hearings. Garrison had restricted access to labor-management meetings during his suspension, but he was banned from Somerset after his termination. The Union filed approximately 419 grievances in 2021, down from 735 the year before, many of which were handled by BA Fox because Kauert was not permitted at the Jail between February 11th and July 8th. The filing of grievances declined while Kauert was terminated and while Garrison was suspended and then terminated. (N.T. 60-65, 74; UXs-14, 32, 33)

46. Tiffany Thompson was a Corrections Food Service Instructor and Union E-Board member. In November 2020, Ms. Thompson applied, and passed her test, for a COT position at Somerset. She wanted to leave food service. On January 27, 2021, she received an email from Kevin Cocklin notifying her of her interview scheduled for February 1, 2021. Later in February 2021, after Kauert's termination, she began filing and processing grievances because Kauert and Garrison were not permitted on site. (N.T. 247-251; UX-103-114)

47. On March 3, 2021, the Kauert termination grievance (SMR-21-017) was discussed at a labor-management meeting. Management was aware at the time that Garrison did the Linhart training on August 28, 2020 and that Kauert was not with Linhart that day. Management denied the grievance. Kauert's February 23, 2021 witness statement was also presented at the meeting. After the labor-management meeting, on March 5, 2021, FHRO Tally emailed Waters relating that, during the labor-management meeting, there was discussion about the Kauert grievance, and the Union raised the fact that Linhart said it was not Kauert. Tally raised the point that Waters had previously contacted Tally during her investigation that she believed that Linhart was pressured into changing her statement and asked if he could contact Linhart. Waters reiterated her false accusation that Linhart changed her statement. (N.T. 184-188; UXs-69, 71 & 72)

48. After that grievance meeting, EEO Director Epoca asked BII to investigate whether Linhart was coerced into changing her identification of Kauert to Garrison, which she never did. (N.T. 413-421; UX-72)

49. On March 8, 2021, Linhart wrote the following statement on Union letterhead at the Union hall in the presence of Garrison and BA Michael Ohler: "On August 28, 2020 during the Union orientation, at no time was I offended by any remarks that were made towards me. Officer Kauert's name was given to me by Stacey Waters. During the interview with her I corrected her that it was not Officer Kauert who made these statements, and I also corrected her again in an email after she failed to correct the statement. Nobody pressured me or bribed me to give this statement, and I gave it on my own free will." Linhart's witness statement of March 8, 2021, was given to management in an update to the Kauert grievance packet. (N.T. 191, 601-603, 627-629, 670-676; UX-73)

50. On or about March 10, 2022, at the initiation of Tice, Karena Parks from the Bureau of Talent Management at the DOC wrote to the Governor's Office of Administration to remove Ms. Thompson's name from the eligibility list for the COT position. On March 22, 2021, the Commonwealth, Office of Administration notified Ms. Thompson that her name was removed from the eligibility list for COT at Somerset because of her "poor employment history," citing an incident for which she received a 1-day suspension, effective February 23, 2021, for allegedly referring to inmates as "free slave labor." That discipline was in the process of being grieved at the time and settled for a verbal reprimand in July 2021. Thompson consistently denied making the statement. The letter also cited Ms. Thompson's failure to disclose a traffic citation from 2018. She previously reported the traffic citation to her institution and was told that it was not the type of incident that should be reported. (N.T. 247-251; UX-103-114)

51. On March 16, 2021, BII agents Michael Glenn and Alexandria Constantine interviewed Linhart. In response to questioning, Linhart confirmed that, during the Union orientation in the training room in the administration building at Somerset, the officer present said that Linhart had a resting bitch face and that some inmates might call her a cunt. The exchange went as follows:

Q. In your initial statement, you said it was Officer Kauert?
A. I did not say it was Officer Kauert.
Q. Okay.
A. The lady [Waters] who submitted the statement said it was Officer Kauert. I did not submit the EEO report.
Q. Okay. So that's why you didn't sign it?
A. Yes, because Officer Kauert did not say those things.
Q. It was Officer Garrison that said them?
A. Yes.
Q. Okay. Are you sure about that?
A. yes.
Q. How do you know it was Officer Garrison that said it?
A. Because he introduced himself and I also know what both of them look like.
. . . .
Q. All right. So it was Officer Garrison that made the comments to you?
A. Yes.
. . . .
Q. Okay. So how did Ms. Wallace [sic-Waters] get the impression that Kauert was the one that made the comments to you?
A. I assumed that whoever submitted the statement just put either the union guy or said his name. I don't know.
Q. Okay. Did she ask you when she interviewed you over the phone?
A. Yes, and I corrected her that it was not Officer Kauert.

(UXs-74 & 75)

52. Also on March 16, 2021, Tice emailed Grimm and Talley stating as follows:

BII interviewed CO1 Lenhart [sic] today. She holds firm that it was not Kauert who made the statement, but it was CO1 Garrison. . .in addition, Ardith Mammay come [sic] forward today and reported that

after looking at photos of Kauert and Garrison, she is 100% sure it was Garrison and not Kauert who made the statement. Did the union get to both witnesses? I don't know. What I do know is that I do not have the case I had before.

. . . .

If we have to bring Max back, can we take into account the Evans/Trout allegations and reassign to another facility due to the other EEO related concerns??? Do we still move forward with the case???

(UX-50)

53. The same day, Talley responded to the Tice email as follows:

. . . . Not sure if our case is strong against Kauert with this.

Regarding going to another facility, I can't see the union agreeing to that and we can't force it unless we continue to take it to arbitration and get a settlement that way.

(UX-50)

54. On March 19, 2021, BII Agent Glenn completed his investigation of the Linhart matter and concluded as follows:

The investigation determined that the allegation that COT Erin Linhart recanted her initial statement to EEO is unsubstantiated. It was determined that COT Linhart reported that COL Andrew Garrison was the staff member that made the derogatory comments to her. The typed statement sent to her by EEO was incorrect. This was confirmed when RS Ardith Mammay subsequently reported to Superintendent Tice that she had confused COL Garrison with COL Maximilian Kauert in her complaint to EEO.

(UX-78)

55. On March 31, 2021, BII interviewed Mammay, which was audio recorded. At that time, Mammay stated that the wrong person was terminated for the statement and that Captain Boyce or his wife Becky Boyce provided Mammay with Kauert's name for the August 28, 2020 statement to Linhart. During her March 2020 interview, Mammay stated that she described the declarant as having tattoos and that he was in the Navy. Kauert was in the Army, not the Navy, and Kauert has no tattoos. Garrison does have tattoos and his sleeves were rolled up during the orientation. Garrison did serve in the Navy. (N.T. 149-151, 326; UX-79)

56. On April 7, 2021, BA Fox submitted an RFI to Grimm for the Thompson grievance requesting information regarding "All staff members who notified SCI Somerset of traffic infractions from January 1, 2018 to present." On May 13, 2021, Ms. Grimm responded that DOC policy does not require staff members to report traffic infractions and that there were no records of any staff reporting any traffic infractions. (UXs-109, 125)

57. On April 22, 2021, the Union's attorney requested subpoenas for the DOC's entire file relating to the Garrison SPI to prepare for the May 5,

2021 grievance arbitration. Also on that date, the Commonwealth's attorney emailed Arbitrator Miles stating: "the documents are clearly relevant to this ongoing circumstance and are therefore subject to a Union request for information." On April 30, 2021, Commonwealth Counsel provided documents, but no material after September 17, 2020. The Union's attorney complained that the DOC had obtained additional information during its 7-month investigation. (N.T. 377-378; UXs-1, 6, 64; JX-1, Exs. C, E, F)

58. On May 6, 2021, Tice terminated Garrison after 7.5 months of suspension. May 6th was also the day after the May 5th arbitration hearing for the Garrison SPI grievance. (N.T. 86-88, 342; UXs-47, 59, 96; CXs-5, 8; JX-1)

59. On July 5, 2021, Kauert's termination grievance settled for a 3-day suspension with make-whole relief including backpay, overtime, vacation, and benefits. His termination was to be removed from his personnel file and the record of a 3-day suspension would remain until February 11, 2022. Kauert was reinstated effective July 8, 2021. Kauert has not been given backpay for holidays during the backpay period. His 3-day suspension remains on record in the SAP system. (N.T. 227-228, 239-241, 644-650)

60. On July 7, 2021, BII Agent Douglas Hockenberry issued an investigation report regarding Linhart, Garrison, Kauert, and Mammay. The report was based in large part, on interviews with Linhart and Mammay in March 2021. I do not credit the Hockenberry narrative of his interview with Linhart because it conflicts with other credible evidence and it was completed approximately 4 months after the interview without the benefit of audio recordings for Linhart's criminal investigation interview. I do credit his narrative of the Mammay interview on March 31, 2021, which was audio recorded, and I credit his hearing testimony. The transcription of the audio recording is in evidence. During that interview, Mammay told Hockenberry that it had to be Captain Boyce or Becky [Boyce] who gave her the name of Kauert, as the Union official who made the statements to Linhart. Becky Boyce is the wife of Captain Boyce. Mammay further stated that the description she provided to Boyce did not add up to Kauert. Mammay further stated that, 3 weeks prior to her interview, in early March 2021, she saw pictures of Garrison and Kauert and that same day went to Tice's office and told him that she identified the wrong person in her written statements. On March 16, 2021, Tice informed BII Agent Constantine that Mammay twice reported mistakenly accusing Kauert. As of March 19, 2021, Hockenberry was informed that Tice told BII Agents Glenn and/or Constantin that both Linhart and Mammay were confirming that Garrison made the comments to Linhart on August 28, 2020, and not Kauert. On April 27, 2021, Hockenberry interviewed Garrison who admitted that he conducted Linhart's orientation on August 28, 2020 and that Mammay was also present. Hockenberry did not record his March 25, 2021 interview of Linhart. Agent Hockenberry contacted the Somerset County District Attorney's Office, which refused to bring charges. Linhart was "irate" that, after multiple interviews, BII was pursuing a criminal investigation and by this time, Linhart did not want to be interviewed at Somerset. (N.T. 225-227, 403-407, 412-421; UXs-80, 94)

61. On July 15, 2021, soon after returning to work, Kauert restarted his Union activities and submitted to Grimm an RFI seeking BII audio recordings of the March 16, 2021 Linhart interview and the March 31, 2021 Mammay interview, list of BII agents conducting the investigation and any documents. On July 22, 2021, Grimm responded requesting additional information as to how the RFI was connected to a potential or existing grievance since the Kauert grievance had been resolved. (N.T. 225; UX-95)

62. Also soon after Kauert returned to work, the Major of the Guard yelled at him regarding Kauert's representation of a member. From September 8, 2021 to December 3, 2021, Kauert was again SPIed for the incident with the Major, even though he filed a workplace violence claim concerning the incident. In January 2022, 6 months later, and not long before his 3-day suspension was about to be expunged, Kauert was given a 20-day suspension based on the progressive discipline from his 3-day suspension. (N.T. 239-241, 648-650)

63. The 20-day suspension was resolved at Step 2 with reinstatement and make whole relief for all 20 days. After returning to work, he was suspended for 3 days, returned to work for 1 day when he was again suspended for another 20 days. The 3-day suspension was reduced to a written reprimand. The second 20-day suspension was also removed with full make whole relief. (N.T. 665)

64. On September 13, 2021, Arbitrator Miles issued an award on the Garrison SPI grievance. Arbitrator Miles made several conclusions including, but not limited to, the following: there was insufficient evidence that Garrison made the statements; Garrison denied making the statement; no other witnesses testified that Garrison did make the statement; CO Philipi's written statement, that an inmate told him that Garrison made the statement, is hearsay, and Philipi lacked first-hand knowledge of the statement; the Commonwealth failed to comply with the procedures set forth by the SPI policy and agreement; Tice did not consult with his Deputy Secretary/Executive Deputy Secretary as required by the SPI agreement incorporating Secretary Wetzel's Memo, and Tice alone decided to suspend Garrison; the Commonwealth failed to provide Garrison with the requisite notice for his Loudermill hearing; Garrison's statement, even if made, was not so severe to justify his immediate removal from the Jail under the SPI policy, and that Tice's arbitration testimony, that the alleged statement could spark inmate unrest, was not demonstrated in the 5 days between the alleged September 11, 2020 statement and the September 16, 2020 suspension of Garrison. (UX-96 at 20-23)

65. The arbitrator also stated that "there is no reasonable explanation for the Commonwealth to take seven and a half months to investigate this disciplinary action. Rather . . . the Commonwealth was using its power to maintain Garrison on this status to deprive him of his regular pay, overtime opportunities, and to disparage his reputation at the institution." (UX-96)

66. Tice sent an email to administrators on September 17, 2021, stating: "We lost the Arbitration on the Suspension Pending for Garrison-- Despicable decision I might add!!! But he is still terminated until that arbitration is decided." (N.T. 89-90; UX-97)

67. The Union and management settled Garrison's termination grievance in December 2021, prior to a scheduled arbitration. As a result of Garrison's SPI and then his termination, he was out of the Jail for 1 year and 3 months of his 2-year term as Vice President. During his absence, Garrison could not file, process, or investigate grievances. He could not disseminate information to members or uphold Weingarten rights. Also, he could not run for a new term of office because he was still in discharged status in November 2021, when elections were held. As part of the settlement agreement, Garrison was transferred to SCI Pine Grove, reinstated effective December 13,

2021, and given backpay with removal of discipline from his personnel file. (N.T. 88, 90-91, 351-352, 502-504; UXS-96, 97 & 98, CX-9)

68. On December 8, 2022, this examiner issued an order in Case No. PERA-C-21-218-E concluding that Ms. Grimm engaged in a pattern of intentionally delaying and/or not responding to RFIs to interfere with the ability of the Union to conduct Union business and represent its members. The RFIs at issue in that case included RFI Nos. SR-055 and SR-078, which requested information concerning Kauert's and Garrison's termination. In the order, I concluded that the Commonwealth engaged in unfair practices in violation of its duty to bargain by failing to timely provide the requested information which deprived the Union of necessary information and negatively affected the settlement and processing of Kauert's and Garrison's grievances. (UX-128)

DISCUSSION

PERA-C-21-45-E

The Union contends that the Commonwealth engaged in unfair practices independently in violation of Section 1201(a)(1) and (3) of the Act when it terminated local Union President Kauert, and when it suspended and subsequently terminated local Vice President Garrison, which actions were allegedly motivated by anti-union animus due to the officers' increased involvement in protected union activity in the course of performing the duties of their local Union offices. I relied on written statements, reports, and prior testimony admitted to show notice to the Commonwealth and the Commonwealth's knowledge of then existing facts. This evidence was also admitted and relied upon to establish the intent, pretext, disparate treatment, and shifting and unsubstantiated reasons of Commonwealth managers, contributing to unlawfully motivated actions and attempts to conceal the unlawful targeting of Kauert and Garrison. In its brief, the Union seeks relief for alleged discrimination against Tiffany Thompson, however, it did not specifically allege that the Commonwealth discriminated against Tiffany Thompson in its original or amended charge of discrimination under Case No. PERA-C-21-45-E. Notwithstanding, I have relied on evidence regarding the Commonwealth's actions against Ms. Thompson as pattern evidence in support of an inference of unlawful motive for adverse employment actions against Union representatives for their Union activities. Similarly, post-charge conduct was admitted and relied upon to demonstrate consistent patterns of managerial behavior in support of an inference of unlawful pre-charge intent.

Section 1201(a) prohibits public employers, their agents or representatives from: (3) discriminating in regard to hire or tenure of employment or any term or condition of employment. In a discrimination claim, the complainant has the burden of establishing that the employe(s) engaged in protected activity, that the employer knew of that activity and that the employer took adverse employment action that was motivated by the employe's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996); York City Employes Union v. City of York, 29 PPER ¶ 29235 (Final Order, 1998). An employer's lack of adequate reason for the adverse action taken may be part of the employe's prima facie

case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994).

Other factors include: any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to explain its action against the adversely affected employe(s), shifting reasons and/or pretext, and the effect of the employer's adverse action on other employes and their protected activities. PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing of an employer's adverse action alone is not enough to infer animus, when combined with other factors, close timing can give rise to the inference of anti-union animus. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984).

In Teamsters, Local 776 v. Perry County, 23 PPER 23201 (Final Order, 1992), the Board stated that "once a prima-facie showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity." Perry County, 23 PPER at 514. Upon the employer's offering of such evidence, "the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual." Teamsters Local #429 v. Lebanon County, 32 PPER ¶ 32006 at 23 (Final Order, 2000). "The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct." Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 at 64 (Final Order, 1992). The parties, however, may elicit and offer evidence in support of their primary burdens of proof or their rebuttal case at any time during the proceeding. Id.

In this case, it cannot be reasonably contested, and the Commonwealth does not contest, that it knew that Kauert and Garrison were the Union President and Vice President and that they engaged in extensive protected Union activities before and during the adverse employment actions taken against them by the Commonwealth. Moreover, the Union presented evidence yielding a strong inference that the Commonwealth was unlawfully motivated when it repeatedly disciplined Kauert and Garrison and refused to provide requested information necessary for the Union to investigate and process grievances regarding those disciplines.

The Commonwealth argues that each of the actions taken against Kauert and Garrison resulted from investigations conducted by independent entities that were not subject to the control of Tice. Consequently, the Commonwealth posits that "in order to determine that both termination actions were taken as a result of former SCI-Somerset Superintendent Tice's alleged anti-union animus, one would have to find that BII, OEEEO, Kauert's PDC panel at SCI-Fayette, and Labor Relations Chief at Central Office all participated in a grand plan conspiracy to remove both Kauert and Garrison from the workplace." (Brief at 22). The Commonwealth further contends that "such a narrative simply cannot be found outside of a John Le Carrè novel." Id.

However, contrary to the Commonwealth's position, that such a conspiracy would be impossible, the record indeed demonstrates that Tice influenced personnel across DOC offices and that several managerial employes and investigators in different offices within the DOC supported Tice's unlawfully motivated goal to target and remove Kauert and Garrison from

Somerset. The personnel in so-called "independent" DOC offices attempted to provide Somerset command staff members with cover for their true motivation and hostility toward Union representatives, which was manifest at labor-management meetings and by unsubstantiated investigations and reports. Also, although the Union filed a separate charge claiming that the Commonwealth violated its bargaining obligations by refusing to provide requested information, a discussion of those claims will overlap with the discrimination claim because the Commonwealth's intentional delays in providing information is part of the pattern of conduct designed to consistently conceal Tice's discrimination.

Here we go. Kauert became involved in Union activities as a Union representative in early 2019. At the time he became Union President on July 11, 2019, Kauert had no prior discipline of record and good performance reviews by management at both Somerset and Rockview. Within 1 month of becoming President, labor-management meetings became hostile, and Kauert began receiving discipline. Management's behavior toward Union representatives at large was so hostile that several Union E-Board members resigned. In December 2019, 4.5 months after becoming President, Kauert received a "Needs Improvement" as an overall rating on his performance review, after receiving commendable and satisfactory ratings in prior years.

After Kauert became a Union official, grievance filings at Somerset increased significantly from 52 grievances in 2018, to 241 in 2019, and, after he became President, 735 in 2020. The increase in grievance filings on behalf of the membership under Kauert's administration required an increase in RFI filings to process those grievances. The increase in Union activity under Kauert and Garrison raised the ire of management. Management intentionally disrupted the processing of grievances by delaying responses to RFIs and by repeatedly disciplining Kauert and Garrison with the goal of removing them from the Jail and preventing the Union from investigating and successfully challenging their discipline in a timely manner. The close timing of management's imposition of discipline on Kauert, who had a clean disciplinary record, and Garrison, as they became Union representatives, and increased grievance filings, undeniably contributes volumes towards an inference of unlawful motive.

Tice abused the SPI process as a tool of retaliation against Garrison. Under the SPI settlement agreement and the Department's own policies, the SPI is only supposed to be used when allegations, if proven, would result in termination or serious discipline. Under Policy 4.1.1, SPIs are limited to alleged offenses that are of such a severe nature that it warrants immediate removal from the work place. It is not to be used in an "arbitrary or capricious manner or for punitive purposes." Yet, that is how Tice used SPI against Garrison in order to eliminate him from the Jail and thereby prevent him from conducting Union business.

Garrison was given an SPI on September 16, 2020, for allegedly saying, in the presence of inmates, that more inmates should hang themselves or commit suicide. This was allegedly said the same day an inmate hung himself on another unit on the opposite side of the Jail. The arbitrator in the Garrison arbitration for his SPI concluded, as would any reasonable person, that the statement, even if substantiated, was not of such a severe nature that it warranted immediate removal from the Jail under the SPI agreement and incorporated DOC Memo from Secretary Wetzels; if made, the statement did not present a threat to the safety or security of staff, inmates, or the facility. As noted by Arbitrator Miles, if the statement had been made, there

was no reaction to it in the 5 days between the alleged statement and Garrison's suspension.

Furthermore, the SPI agreement requires all investigations in connection with an SPI to be completed "as expeditiously as possible, without unnecessary or undue delay." It took Somerset 7.5 months to complete the Garrison SPI investigation which involved only whether Garrison made a single statement concerning inmate suicide. The evidence shows that Tice understood management policy to require investigations to be completed within 30 days, yielding the inference that the 7.5-month delay in the Garrison investigation was deliberately orchestrated to keep Garrison from the Jail and from conducting Union business. Moreover, the day after the Garrison SPI arbitration hearing, Tice terminated Garrison to further extend his absence when the investigation into whether the statement was made was inconclusive at best. The punitive use of SPI on Garrison and the 7.5-month investigatory delay constituted a clear violation of the SPI agreement and strongly yields the inference of unlawful motive.

Also, the timing of the Garrison termination on May 6, 2021, yields the inference that the termination was unlawfully motivated to keep Garrison removed from the Jail after exercising his protected right to proceed to arbitration. His termination was 1 day after the SPI grievance arbitration hearing. On September 13, 2021, the arbitrator issued his award in the Garrison SPI grievance matter. On September 17, 2021, Tice emailed administrators characterizing the award sustaining the grievance as "despicable." Tice then added that Garrison was "still terminated until that arbitration is decided." After the arbitrator concluded that the allegations against Garrison were unsubstantiated and that Tice misused the SPI procedure against Garrison, Tice celebrated to his administrators that Garrison would remain terminated, which again exposed his animus toward Vice President Garrison.

Additionally, Arbitrator Miles concluded that the Commonwealth did not establish that Garrison made the statement alleged by an inmate to Philipi. The record in this case corroborates the arbitrator's conclusion. There is no substantial, competent evidence on this record that Garrison made the statement. Lavan denied hearing the statement and said there was nothing unprofessional or disruptive on Garrison's unit on the day the statement was alleged to have been made. Philipi simply reported what an inmate allegedly told him, and Philipi never heard the statement. There is no video evidence showing that Garrison was anywhere near the inmate who reported to Philipi. There is no evidence that any other inmate heard the alleged statement or that any reports were made to Sgt. Lavan. Moreover, the Commonwealth withheld Lavan's September 21, 2020 written statement, that there were no inmate reports to him and there was no inappropriate behavior on Garrison's unit, until the May 5, 2021 arbitration hearing, 7.5 months later, even though the Union requested information related to the SPI grievance.

With one hearsay statement against Garrison and Garrison's denial of making the statement, Tice issued the SPI and terminated Garrison for an unsubstantiated statement. When there was no corroboration that Conn made sexual noises when he rubbed a staff member's jacket on his genitalia, management concluded that the allegation of the noises was unsubstantiated. Yet, in the Garrison matter, management substantiated the inmate's alleged statement, yielding an inference of disparate treatment and unlawful motive. Relying on uncorroborated hearsay to substantiate claims against Kauert and

Garrison will prove to be a common theme among management employees and DOC investigators who were agents of Tice.

Tice kept Garrison out of the Jail for a year and 3 months, during which time Garrison could not process grievances or run for Union office. Prior to the arbitration on Garrison's termination, the Commonwealth and the Union settled the grievance, in December 2021. The settlement required the Commonwealth to reinstate Garrison, provide make-whole relief, remove the discipline from his official personnel file, and transfer him to SCI Pine Grove.

The timing of the settlement is telling. On September 13, 2021, after the SPI arbitrator concluded that the Commonwealth did not substantiate the allegations against Garrison and had no justification to suspend him for 7.5 months, the Commonwealth was in the same position to settle the termination as it was in December 2021 when they settled. However, Tice waited until after the Union elections in November 2021 to enter into the settlement so Garrison could not run for Union office at Somerset.

Kauert was disciplined on multiple occasions during his term as Union President. Tice eventually terminated Kauert based on sexual harassment allegations. The conclusions in Waters' investigative reports substantiate the allegations of sexual harassment against Kauert. However, the actual evidence obtained during those investigations does not substantiate claims of sexual harassment against Kauert. Management clung to Waters' conclusions as pretextual justification to remove Kauert from employment, and thus his Union position, even though Tice knew facts that contradicted those conclusions during Kauert's termination. Tice maintained Kauert's termination after he learned more facts that could not support the multiple claims alleged.

Evans alleged that, on May 8, 2020, Trout told Evans that Trout overheard Kauert tell Yoder, in front of inmates and other staff, that Trout and Evans suck management asshole to get good posts and that Trout sucks inmate dick. Trout, however, differently alleged that, on May 12, 2020, Trout overheard Kauert tell Yoder that Trout sucks inmate dick but that Kauert told her that Evans and Trout suck management ass to get put on good posts. Evans' account is different than Trout's account. The alleged dates are different. Evans and Trout have different accounts of the manner in which Kauert allegedly stated that Evans and Trout suck management asshole to get good posts. Evans' account is also the hearsay allegation of Trout.

Waters interviewed Yoder on August 17, 2020, during which Yoder denied that Kauert made the statements. Waters would later dismiss Yoder's account that he did not hear Kauert make the remarks as lacking first-hand knowledge, but both Evans and Trout alleged that Kauert was specifically talking to Yoder when he allegedly made the statements. Waters' dismissal of Yoder is certainly suspect and yields the inference that her investigation was result-oriented to support the unlawful motivations of Tice.

On August 28, 2020, during a Union orientation for COT Linhart, Garrison said to Linhart, within earshot of Records Specialist Mammay, that she had resting bitch face and that the inmates would think she was a cunt. Mammay reported the incident to Mrs. Boyce in records who reported it to her husband Captain Boyce. Captain Boyce questioned Mammay about the incident at which time Mammay described Garrison to him. Mammay had never met Kauert and did not know what he looked like. Also, Linhart had never met Kauert. However, Boyce told Mammay that it was Kauert, even though the description

did not fit Kauert. The intent of management to remove Kauert, by accumulating discipline against him, became even more clear when management ignored the stockpiles of evidence proving that Kauert was in State College with management personnel at WeJAC on the day of the incident and that he stayed overnight until the next day and could not have made the statement.

On September 5, 2020, management issued a written reprimand to Kauert for allegedly refusing to distribute commissary to the inmates on May 8th and May 12th 2020. The discipline makes no mention of the allegations made by Trout of the alleged statements made by Kauert, 4 months earlier. The significance is that Trout's allegations remained unsubstantiated after 4 months, until those allegations magically reappeared in Waters' report.

Waters interviewed Linhart on October 23, 2020. As Linhart reiterated during her March 16, 2021 BII interview, Linhart told Waters from the beginning that it was Garrison who made the statements to her which she was sure of because Garrison introduced himself to her during the Union orientation. Linhart never once indicated to Waters that Kauert made the statements. However, Waters wrote in her report of Linhart's phone interview that Kauert made the statements, misrepresenting Linhart's statement. Waters emailed Linhart requesting that Linhart sign her witness statement. On December 2, 2020, Linhart refused to sign the witness statement as authored by Waters because Waters wrote in the witness statement that it was Kauert. Linhart explained: "It is Officer Garrison, not Officer Kauert that was the one talking to me during this exchange."

On October 29, 2020, Waters interviewed Kauert. During this interview, Waters questioned Kauert about the Trout allegations from 5 months earlier and questioned him about the Mammay allegations from August 28, 2020, involving Linhart. Management had not disciplined Kauert for the Trout allegations by this time. But management did discipline Kauert for allegedly refusing to distribute commissary on the same dates. Waters revived the Trout incident in October in an attempt to combine multiple claims against Kauert and to make him appear to have engaged in harassment. I draw the inference that management, within various DOC offices, was attempting to make it appear as though Kauert engaged in sexual harassment simply because of multiple allegations and not because any one of those claims was substantiated. Nothing changed factually between August 2020, after Yoder, Trout, and Evans were interviewed, and December 3, 2020, when Waters completed her report on the Trout investigation, 7 months after the alleged incident, instead of the requisite 30 days. On October 29, 2020, Kauert emphatically denied making any statements about Trout or Evans or to Linhart, which Waters already knew from Yoder and Linhart. Kauert also informed Waters that he never met Linhart and that Trout had previously made false allegations against him 3 or 4 times. Yet Waters disbelieved both Kauert and Yoder and credited Trout, when Trout allegedly had a history of reporting sexual harassment claims and there is no evidence that those prior claims were substantiated. I draw an inference that management's delays in closing these investigations were an attempt to combine unsubstantiated allegations with later unsubstantiated allegations to provide pretextual justification for Kauert's discipline and cover for Tice.

This record and the complete BII investigation are abundantly clear that Linhart never identified Kauert. Yet Waters in her December 2020 report concluded that Kauert engaged in sexual harassment simply because Trout and Evans filed claims against Kauert, alleging denigrating remarks, and simply because Mammay alleged that Kauert made denigrating remarks to Linhart, which Waters' claimed was corroborated by Linhart. Waters disregarded Yoder's

account and concluded that Yoder lacked first-hand knowledge. Waters relied on Evan's claims, which were based on hearsay. Waters also concluded that Mammay's claims against Kauert were corroborated by Linhart which is factually untrue and never was true. Even the BII investigation discredited Waters' charge that Linhart changed her story. In my opinion, Waters falsely wrote that Linhart identified Kauert instead of Garrison during her interview, and refused to change her answer after Linhart repeatedly told Waters that she never identified Kauert. Therefore, I cannot credit Waters' investigatory conclusions but rely on them to infer that management personnel across DOC offices were complicitly targeting Kauert by covering Tice's tracks. Another factor supporting the inference that a joint effort was under way to target Kauert is that Christine Grimm, who attended WeJAC on August 28, 2020 with Kauert, never came forward to corroborate Kauert's alibi that he was in State College when the Linhart statement was made.

Based on Waters' conclusions, FHRO Walker issued a PDC notice to Kauert on December 15, 2020 stating that "it is alleged that you made sexually inappropriate and offensive remarks that were corroborated by other co-workers." By this time, however, Trout's allegations were not corroborated and Mammay's allegations had been expressly refuted by Linhart. The PDC alleges that the incident took place between May and July of 2020, which would not include the Mammay allegations. The PDC notice does not provide any specific information, as required, to place Kauert on notice of the allegations against him so he could prepare a defense at the PDC. There were no specific names of accusers, no specific dates or times of alleged occurrences, and no specific statements alleged to have been said. Walker deprived Kauert of an opportunity to meaningfully defend himself at the PDC by excluding standard information that is required for PDC notices. Consequently, he was unable to meaningfully participate in his December 21, 2020 PDC, and he did not attend. This effort to hamstring Kauert's pre-termination defense is another factor supporting an inference of unlawful motive to terminate Kauert.

On January 22, 2021, Kauert applied for a Business Agent position with the PSCOA. Kauert was terminated on February 11, 2021. Thereafter, the PSCOA Statewide President, John Eckenrode, informed Kauert that he could no longer be considered for the Business Agent position, which was just one of many consequences resulting from Kauert's termination. Approximately a week after Kauert's termination, Garrison wrote a witness statement admitting that he gave the Union orientation to Linhart on August 28, 2020, which was presented at the Kauert Step-1 grievance meeting. And, on February 23, 2021, Kauert also prepared a written statement explaining that the evidence did not support a finding that he sexually harassed Trout in May 2020 and that he did not orient Linhart because he was 3 counties away and not at the Jail that day. On March 3, 2021, the Kauert termination grievance was discussed at a labor-management meeting including the evidence that Kauert could not have made the statement to Linhart and demonstrating how the Trout allegations were unfounded. Yet, the Commonwealth refused to settle the grievance and reconsider Kauert's termination status. And, as Tice's partner in effectuating Tice's and her own animus for Kauert's increased Union activities, Grimm still refused to corroborate Kauert's alibi after seeing Kauert at WeJac on August 28th.²

² BA Fox told BII Agent Hockenberry that Grimm and Kauert signed the sign-in sheet for the August 28th WeJAC meeting near State College. (UX-90).

There was no way Kauert could have said anything to Linhart. Even if the Commonwealth believed that the Trout allegation was substantiated, the record shows that Tice does not immediately terminate employees for a sustained sexual harassment claim when the employee is not a Union representative, even where that employee had prior discipline. On May 7, 2019, Tice issued a 3-day suspension to Ryan Conn who had previous verbal and written discipline. The 3-day suspension was based on video of Conn establishing that, while working the metal detector, he took the jacket of a female staff member and rubbed it on his genitalia. Conn was also removed from his bid post and required to complete sexual harassment training. Allegations that Conn made sexual noises while rubbing the coat on his private area were unsubstantiated. Tice disparately treated Kauert for his Union activities by terminating him for allegations of conduct that were far less severe than Conn's rubbing his genitalia on a female employee's jacket and far less substantiated. This disparate treatment is another factor supporting an inference of unlawful motive against Kauert.

After the March 3, 2021 grievance meeting, at the insistence of Tally and Waters, EEO Director Epoca turned the matter into a case of witness intimidation and sought to investigate whether Linhart was coerced into changing her identification of Kauert to identifying Garrison. This investigation resulted from Waters' falsely accusing Linhart of changing her story and, in my opinion, to conceal Waters' complicit intent to build a case against Kauert for Tice. EEO recruited BII to pursue a criminal investigation against Union officials for witness intimidation, and Agent Hockenberry contacted the Somerset County District Attorney's Office, which refused to bring charges. The multiple interviews of Linhart by EEO and BII and the long delay demonstrates a costly and time-consuming campaign to obtain evidence against Kauert that did not exist. If anyone was coercing Linhart, it was DOC management, including BII and EEO, which repeatedly tried to encourage Linhart to identify Kauert, thereby making Linhart "irate," as she consistently remained steadfast that Kauert did not make the statements.

In March 2021, Tice reported to Agent Constantine of BII that Mammay twice reported that she named the wrong person after she looked at photos of the two officers and that it was Garrison. In an email dated March 16, 2021, Tice demonstrates his strong determination to maintain Kauert's termination status in retaliation for his Union activities. In the email, Tice informs Tally and Grimm that Linhart "holds firm that it was not Kauert who made the statement, but it was CO1 Garrison," and that Mammay reported that, after looking at photos, she is 100% sure that it was Garrison and not Kauert. He recognized that he did not have the case that he thought he had, yet he added allegations of witness tampering with Linhart out of thin air. He then inquired whether management could still rely on the Trout allegations to reassign Kauert to another Jail, which speaks volumes of Tice's vigorous campaign to eliminate Kauert from Somerset.

Moreover, Talley's response to Tice shows the complicity of management in Tice's designs for Kauert. Talley wrote: "Not sure if our case is strong against Kauert with this." With the understanding between Tice and Talley that there was not a good case, Talley further revealed the understood goal of ridding themselves of Kauert by stating: "Regarding going to another facility, I can't see the union agreeing to that and we can't force it unless we continue to take it to arbitration and get a settlement that way." The intentional delay of reinstating Kauert and forcing his termination case to arbitration to negotiate a transfer for Kauert is another factor supporting

the unlawful intent by multiple managers to remove Kauert from Somerset for his Union activities.

On March 19, 2021, Agent Glenn properly determined that the allegation that Linhart recanted her initial statement to Waters was "unsubstantiated" and "incorrect," which was further confirmed when Mammay reported that she misidentified Kauert (emphasis added). Yet knowing this exonerating evidence, Tice maintained Kauert on termination status until July 5, 2021, when he settled Kauert's grievance for a 3-day suspension.

Moreover, even though this information had been requested by the Union to process the Kauert termination grievance, the Commonwealth refused to provide it. In PERA-C-21-218-E, I concluded that the Commonwealth engaged in unfair practices in violation of its duty to bargain by failing to timely provide the requested information which deprived the Union of necessary information and negatively affected the settlement and processing of Kauert's and Garrison's grievances. Furthermore, as this case reveals, the Commonwealth's refusal to comply with its bargaining obligation to provide requested information necessary to the processing and investigating of the Kauert and Garrison grievances supports the inference of unlawful intent to keep Kauert and Garrison separated from Somerset and conceal management's motives. By deliberately withholding the information, the Commonwealth intentionally compromised the Union's ability to negotiate a fair and proper settlement for Kauert and its ability to decide whether to pursue arbitration. The deliberate violation and disregard of protected rights by withholding valuable exculpatory information tainted the Kauert termination grievance negotiation. Therefore, the negotiated 3-day suspension constituted the proverbial "fruit of the poisonous tree," as is the post-settlement progressive discipline that was based on the unlawful settlement.³

The record contains even more evidence of Tice's hostility toward Union representatives for engaging in the processing of grievances. Corrections Food Service Instructor and local Union E-Board member Tiffany Thompson applied and qualified for a COT position at Somerset, in October-November 2020. On January 27, 2021, she received an email from Kevin Cocklin scheduling her for an interview on February 1, 2021. After Kauert's February 11th termination, Ms. Thompson began filing and processing grievances because Kauert and Garrison were not permitted on site. On March 10, 2023, the Commonwealth, at the direction of Tice, notified Ms. Thompson that her name was removed from the eligibility list for COT at Somerset, citing her "poor employment history," based on 1 incident for which she received a 1-day suspension. The single incident does not exactly qualify as a "poor employment history." That discipline was in the process of being grieved, and it eventually settled for a verbal reprimand in July 2021. The letter also cited Ms. Thompson's failure to disclose a traffic citation from 2018. She previously reported the traffic citation to her institution and was told that it was not the type of incident that should be reported.

At this point, it is no surprise that Tice reached out to other Commonwealth managers to have Ms. Thompson, who became an increasingly active

³ The grievance settlement affected by the Commonwealth's unfair practice of withholding information occurred post charge, and the Union did not amend its charge to include the rescission of the negotiated suspension and the progressive discipline that stemmed from it. Accordingly, I am unable to remedy the 3-day suspension and the progressive discipline that built on it.

Union representative, declared ineligible for an entry level position for the pretextual reason that she received a 1-day suspension for a statement that she disputed making and which eventually settled for a verbal reprimand. Tice's efforts to contact various Commonwealth managers and investigators to effectuate his campaign of disciplining Local Union representatives and depriving them of positions again is another factor supporting an inference of unlawful motive to take adverse employment action against Union representatives.

Management continued to unlawfully harass Kauert with discipline soon after his July 2021 reinstatement when Kauert again performed Union activities. On July 15, 2021, Kauert submitted to Grimm an RFI seeking BII audio recordings of the March 16, 2021 Linhart interview and the March 31, 2021 Mammay interview, a list of BII agents conducting the investigation, and related documents. On July 22, 2021, consistent with her pattern of delaying and refusing the provision of information, Grimm responded requesting additional information as to how the RFI was connected to a potential or existing grievance since the Kauert grievance had been resolved. During this same time, the Major of the Guard yelled at Kauert regarding his representation of a member. From September 8, 2021 to December 3, 2021, Kauert was again SPIed for the incident, even though he filed a workplace violence claim concerning the incident. Then, in January 2022, not long before his 3-day suspension was about to be expunged, Kauert was given a 20-day suspension based on the progressive discipline from his 3-day suspension. The 20-day suspension was resolved at Step 2 with reinstatement and make whole relief for all 20 days, supporting the inference that it was unwarranted, like the other discipline. After returning to work, he was suspended for 3 days, returned to work for 1 day when he was again suspended for another 20 days. The latter 3-day suspension was reduced to a written reprimand. The second 20-day suspension was also removed with full make whole relief, again supporting the inference that the discipline was unwarranted and that Kauert was again unlawfully and overly disciplined.

Since he became Union President, the evidence shows that Kauert was repeatedly targeted for disparate disciplinary action by multiple management personnel working in partnership in support of Tice's and their own unlawfully motivated agenda to remove Kauert and Garrison from Somerset. These actions, in combination with the systemic hostility of Somerset management towards Union representatives, interfered with Union operations, caused Union representatives to resign and refrain from Union activities, and collectively crippled the wholesale operation of the Union at Somerset.

The Commonwealth has not presented legitimate, non-pretextual reasons for the disparate treatment of and extensive disciplines against Kauert, Garrison, and Thompson. The Commonwealth also has not established that it would have taken the multiple and severe disciplinary actions against these employees sans their protected activities. As discussed above, the Commonwealth managers under Tice's influence participated in effectuating Tice's repeated disciplinary actions against Kauert and Garrison, when the investigations were unsubstantiated after many months, to pretextually justify removing Kauert and Garrison from the Jail, thereby preventing them from conducting Union business. The numerous pretextual justifications in this case further supports an inference of unlawful intent and retaliation, as does the intentional concealment of exculpatory information.

The Union also argues that the Commonwealth's actions against Kauert and Garrison constitutes an independent violation of Section 1201(a)(1). In

its charge, the Union properly preserved a claim for an independent violation of Section 1201(a) (1) in Paragraph 12 of its original charge and in Paragraph 13 of its amended charge. An independent violation of Section 1201(a) (1) occurs, "where in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001); Northwest Area Educ. Ass' n v. Northwest Area Sch. Dist., 38 PPER 147 (Final Order, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employes have in fact been coerced. Pennsylvania State Corrections Officers Ass' n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004). However, an employer does not violate Section 1201(a) (1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Ringgold Educ. Ass' n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995).

Under the totality of circumstances on this record, a reasonable employe would be intimidated, coerced and indeed scared to exercise the rights protected under Article IV of PERA and to engage in normal Union business after learning that any and all Union representatives filing grievances were suspended, terminated, and removed from position eligibility lists and bid posts. Indeed, Local Union E-Board members experiencing the wrath of Somerset management resigned. With Kauert and Garrison removed, Union business had to be done by BA Fox, who is not a Jail employe, and Ms. Thompson who suffered her own adverse employment action as a result. Although unlawful motive need not be shown, the consistent retaliatory intent demonstrated on this record is overwhelming. Also, although the Union does not have the burden of showing that any employe was in fact coerced, this record shows that many employes were in fact coerced and even prevented from engaging in Union activities by unlawfully removing them or causing Union E-Board members to resign. The Commonwealth here again has offered no legitimate, non-pretexual reasons to outweigh the destructive effect its efforts had on the exercise of employe and Union rights.

PERA-C-21-29-E

The Union also contends that the Commonwealth violated Section 1201(a) (1) and (5) of PERA by not timely fulfilling Kauert's November 9, 2020 RFI seeking information about the Garrison SPI. The Board has held that an employer has an obligation to provide a union with information relevant to contract negotiations, policing and enforcing negotiated agreements and to process grievances, even if no grievance is actually pending at the time of the information request. PSCOA v. Commonwealth, Greene SCI, 34 PPER 52 (Final Order, 2003). The standard for relevance is a liberal discovery type standard permitting the Union to obtain a broad range of potentially useful information. PSCOA v. Commonwealth of Pennsylvania, 53 PPER 71 (PDO, 2022). Furthermore, "[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).

Garrison's SPI letter provided that, at his pre-disciplinary conference, Garrison "will be given the opportunity to present any information or facts [he] may have regarding this matter and, based upon the information brought out at this conference, it will be decided whether or not

disciplinary action is warranted and, if warranted, the degree of disciplinary action to be imposed." (emphasis added).

The Union filed a grievance on Garrison's behalf on September 25, 2020, expressly challenging the use of SPI against Garrison in violation of the parties' CBA, the Civil Service Act, and the SPI settlement agreement. The grievance specifically challenged whether Garrison was suspended without just cause under the CBA, by citing Article 26, Section 1, and whether the DOC properly used and applied the negotiated SPI agreement. The law requires that the Commonwealth provide requested information relevant to the processing of a grievance and/or the enforcement and policing of a negotiated agreement. The requested information in the Union's November 9, 2020 RFI (i.e., all documents related to the Garrison SPI; any video used as evidence; list of interviewed staff, interview timelines, and witness statements; factual allegations leading to Garrison's SPI; and Loudermill summary and notice of allegations) was all relevant to the processing of the SPI grievance, the policing of the negotiated SPI agreement and necessary to prepare for the forthcoming PDC, during which Garrison would have the right and opportunity to present evidence supporting his defense. The requested information necessary for the grievance and the PDC was, at the time, within the possession of the DOC.

The Union did not have the information to present its case at grievance meetings, even after the Union followed up on December 9, 2020, again requesting the information. The grievances were denied at both steps. The Commonwealth argues that Kauert never followed up on the Garrison grievance RFI after December 9, 2020. However, this argument is not supported by the record, and the Union does not have the burden to continuously follow up on information requests. At the January 28, 2021 Step-2 meeting for the Garrison SPI grievance, Ms. Grimm stated that she would not provide any requested information for the grievance related to the meeting prior to the suspension hearing until the investigation was over. PSCOA Executive Vice President McNair signed a written statement verifying that Grimm made the statement.

Under the SPI agreement, the Union was entitled to the information and the allegations that formed the basis for Garrison's SPI because the agreement limits the use of SPIs to allegations which, if proven, would justify severe discipline. The SPI agreement requires the determination to be supported by "requisite cause" and assures that SPIs will not be used in an arbitrary, capricious, or punitive manner. The Union, in pursuing the SPI grievance, was therefore entitled to information to determine whether the DOC had such "requisite cause" or acted in an arbitrary, capricious, or punitive manner in issuing the Garrison SPI. Furthermore, the employe is entitled to an informal Loudermill hearing during which management will provide notice of the allegations and an explanation of the evidence then known, with the employe having an opportunity to respond. The SPI notice must include a summary of the Loudermill proceeding, the issues discussed, and a list of attendees. Any subsequent investigation must be undertaken without undue delay. In this context, the Union was also entitled to DOC's information to determine whether the allegations against Garrison warranted immediate removal from the Jail under Policy 4.1.1 and whether management properly followed the procedures and notice requirements.

The only information timely provided in response to the RFI was the SPI notice which did not contain any information identifying the individual(s) who alleged that Garrison made statements about inmate suicide. The SPI is signed by Tice for Secretary Wetzels. However, Arbitrator Miles relied on

Tice's arbitration hearing testimony that Tice did not consult with his Deputy Secretary or Executive Deputy Secretary as required by Secretary Wetzel's Memorandum, which is incorporated into the SPI agreement. Arbitrator Miles concluded, as Tice admitted, that Tice alone decided to suspend Garrison. This breach in protocols and procedures, designed to protect employees from arbitrary SPIs and abuse of the SPI discipline, is the type of pre-SPI information that the Union is entitled to for the evaluation of grievance claims and settlements regarding SPIs. The extensive pattern of delaying the provision of information yields the inference that Somerset management and Grimm were deliberately hiding management's known violations of procedures and that it was abusively imposing SPIs on Union officials, to prevent the Union from settling the Garrison SPI grievance, and to avoid returning Garrison to work and his Union activities.

In terms of processing a grievance for an SPI, the Union was also entitled to information about why the investigation of whether Garrison made 1 statement was taking 7 months when the SPI agreement requires investigations to be completed "as expeditiously as possible without unnecessary or undue delay. The purpose and nature of the Garrison SPI grievance was to determine whether Somerset management was abusing SPIs for allegations of minor infractions and deliberately delaying the process to keep Union representatives out of the Jail. The Union was therefore entitled to information concerning all allegations, witness identities, and procedures to evaluate compliance with the SPI agreement and the CBA. The DOC's refusal to provide information for Garrison's SPI, while his suspension dragged on, unnecessarily delayed Garrison's return to work and prevented settlement, especially in light of information learned during the arbitration procedure that management violated the SPI agreement and its procedures.

The DOC did not provide any information until it was forced to respond to an arbitration subpoena on April 30, 2021, at which time it left out investigation materials generated after September 2020 as not relevant to the reasons for Garrison's SPI. The DOC withheld documents and the witness identity of Sgt. Lavan who stated that he did not witness anything on Garrison's unit on September 11, 2020. The DOC obtained Lavan's statement after Garrison's SPI, but it was indeed relevant to his Grievance challenging whether an SPI was used inappropriately, whether he should remain SPIed, and for Garrison's PDC defense. Even DOC counsel admitted to Arbitrator Miles that the requested documents "are clearly relevant to this ongoing circumstance and are therefore subject to a Union request for information from its counsel." The undue 7.5-month delay in providing information in response to the RFI filed in November 2020, constituted an unfair practice in violation of the DOC's bargaining obligations under Section 1201(a)(5) of the Act. Also, under the totality of the circumstances, the extreme delay interfered with the Union's efforts to engage in the protected activity of pursuing grievances and protecting employe rights, under negotiated agreements and the Act, and independently violated Section 1201(a)(1) of PERA. The Commonwealth has not presented sufficient reasons that could outweigh the negative effect of denials and extensive delays in providing information for the Union's pursuit of protected grievance and enforcement activities.

Additionally, this bargaining violation was not mooted by providing incomplete information in response to subpoenas 5-6 months after the RFI submission and just days before the grievance arbitration hearing. 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). Also, the systematic, intentional, and ongoing pattern of consistently refusing to provide information during the past several years has been shown on this record to be capable of repetition and evading review while hindering the Union's representative bargaining capabilities and its duty to enforce agreements, process grievances, and protect members. APSCUF V. PLRB, 607 Pa. 461, 8 A.3d 300, 302 (2010).

Accordingly, the Commonwealth discriminated against Kauert and Garrison when it unlawfully terminated Kauert and unlawfully suspended and terminated Garrison for their protected Union activities. The Commonwealth also violated its duty to bargain in good faith by deliberately withholding relevant requested information from the Union that it needed to process the Garrison SPI grievance, the purpose of which was to challenge the Commonwealth's compliance with the negotiated CBA and the SPI settlement agreement.

CONCLUSIONS

The hearing 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 committed unfair practices independently in violation of Section 1201(a)(1) and (3) of the Act in PERA-C-21-45-E.
5. The Commonwealth committed unfair practices independently in violation of Section 1201(a)(1) and (5) of the Act in PERA-C-21-29-E.

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 Commonwealth 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 discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization;

3. Cease and desist from refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative;

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

(a) Immediately cease and desist from taking any action against CO1 Kauert, CO1 Garrison, Union representatives, and other H-1 Bargaining Unit members that is motivated by anti-union animus, or otherwise discriminating against said employees for having engaged in protected Union activity;

(b) Immediately cease and desist from refusing to provide requested relevant information to the Union to process grievances and enforce compliance with negotiated agreements;

(c) Immediately comply with the terms of the negotiated SPI agreement, the CBA, and Commonwealth policies regarding the limited use of SPI and the due process required by those policies and agreements.

(d) Immediately make Kauert whole for any and all outstanding make whole relief from his termination such as out of pocket medical expenses, holiday and vacation pay, lost overtime, unpaid backpay, loss of seniority, and loss of benefits with 6% interest per annum for such outstanding amounts from the date of his termination on February 11, 2021, until paid.

(e) Immediately provide the outstanding requested documents listed in the November 9, 2020 RFI;

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

(g) 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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixth day of March 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION : PERA-C-21-29-E
 :
 v. :
 : PERA-C-21-45-E
COMMONWEALTH OF PENNSYLVANIA :

AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its independent violations of Section 1201(a)(1), (3), and (5) of PERA; that it has ceased interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization; 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, including but not limited to the discussing of grievances with the exclusive representative; that it has ceased taking any adverse action against Officers Kauert and Garrison, as well as other Union representatives and H-1 Bargaining Unit members that is motivated by anti-union animus for engaging in protected activity; that it has ceased refusing to provide requested relevant information to the Union to process grievances to enforce compliance with negotiated agreements; that it has complied with the terms of the negotiated SPI agreement, the CBA, and Commonwealth policies regarding the limited use of SPIs and the due process required by SPI policies and agreements; that it has made Kauert whole for any and all out-of-pocket medical expenses, holiday and vacation pay, lost overtime, unpaid backpay, loss of seniority, loss of benefits, including 6% interest on any outstanding amounts from February 11, 2021 until paid; that it has provided the outstanding requested documents listed in the November 9, 2020 RFI; that it has posted a copy of the 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