

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : CASE NO. PERA-C-23-213-E
 :
COMMONWEALTH OF PENNSYLVANIA :

PROPOSED DECISION AND ORDER

On September 1, 2023, the Pennsylvania State Corrections Officers Association (Union or PSCOA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania (Commonwealth) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that the Commonwealth violated the Weingarten rights of Corrections Officer Jennifer Munoz (Munoz) by denying her the available Union representative of her choice during an investigatory interview that she reasonably believed could lead to discipline, where no extenuating circumstances prevented the Commonwealth from permitting her chosen representative to represent Munoz.

On October 26, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of January 24, 2024, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. Also during the hearing, the Union voluntarily withdrew its cause of action under Section 1201(a)(5) of PERA. At the close of the hearing, the parties agreed to present oral closing arguments on the record in support of their respective positions in lieu of filing written post-hearing briefs.

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. 6)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. Vittoria Jackson (Jackson) is the Administrative Lieutenant at SCI Phoenix (Phoenix). In that position, Jackson conducts investigatory interviews and fact-findings, issues pre-disciplinary conference notices, issues discipline determined by command staff, participates in Step-1 grievance meetings, addresses payroll and overtime discrepancies, and effectuates shift and bid-post assignments. She also interviews Correction Officer Trainees and Sergeants. (N.T. 48-49)
4. Munoz is a Corrections Officer 1 at Phoenix on the 2:00 p.m-10:00 p.m. shift. She works in the Restricted Housing Unit (RHU) on Bravo Block where mentally unstable inmates are incarcerated. (N.T. 9-10, 14-15)

5. Francis Murphy (Murphy) is a Corrections Officer 1 at Phoenix on the 2:00 p.m.-10:00 p.m. shift, and he works with Munoz on the Bravo Unit as a Control Officer. (N.T. 29-31)

6. On May 10, 2023, Munoz was checking in for her 2-10 shift when her shift commander, Lieutenant Branham, directed Munoz to go see Jackson. Munoz did not know prior to her shift that she would be meeting with Jackson, and Branham did not inform Munoz what the meeting was about. (N.T. 10-12)

7. When Munoz arrived at Jackson's office, Jackson informed Munoz that the meeting was a fact-finding or investigatory interview. At a prior fact-finding meeting, Munoz had the Union representative of her choice. (N.T. 12-13, 49)

8. Jackson conducts her fact-finding by first emailing the shift lieutenant overseeing the officer that she needs to interview informing them of the meeting and that the shift commander needs to inform the employee to obtain a Union representative, if they choose. Jackson conducted 2 fact-finding interviews on May 10, 2023, one with Munoz and another with Officer Sabre. (N.T. 50-55, 59)

9. Jackson works 10-12 hours per day. She conducted over 600, and possibly close to 700, fact-finding investigatory meetings last year. As of the January 24, 2024 hearing in this case, Jackson had already conducted approximately 100 fact-finding meetings, which puts her on the path towards approximately 1,200 meetings for 2024. (N.T. 56)

10. At the beginning of the meeting, Jackson informed Munoz that she needed a Union representative. Munoz requested Murphy. Murphy and Munoz regularly work together in Bravo on the same 2:00 p.m.-10:00 p.m. shift. (N.T. 13-15)

11. Munoz knows that Murphy is a Union representative because his position as representative is posted around the Jail, she works with him, and he has represented her in fact findings before. Munoz wanted Murphy during her May 10, 2023 fact-finding with Jackson because they know how to communicate well with each other. Murphy is Munoz's "go-to" person for representation. (N.T. 16-17)

12. Officers acting as Weingarten representatives must first complete the training provided by the Union and must receive annual training to maintain their designation as a Weingarten representative. Murphy is a trained Weingarten representative, and he was also working the 2:00 p.m.-10:00 p.m. shift on May 10, 2023. (N.T. 31-34; UX-2)

13. At the beginning of the May 10, 2023 meeting Munoz asked Jackson for Officer Murphy to be her representative. Jackson replied: "No-You can't." When Munoz asked why, Jackson replied: "You just can't." Munoz understood Jackson's answer to mean that Munoz had to find someone else, even though Jackson did not state that Murphy was unavailable. Murphy's name is listed as an approved Union Steward for the 2:00 p.m. to 10:00 p.m. shift on the updated PSCOA roster of Union representatives and Executive Officers, which is posted around the Jail, in control rooms, and in Jackson's office. Other managerial personnel are also provided with updated lists of Weingarten representatives. (N.T. 17-19, 25-26, 35; UX-1)

14. Asked whether Munoz requested Murphy explicitly to be her Union representative, Jackson credibly testified: "I do not recall." On cross examination, Jackson again testified that she could not recall whether Munoz first requested Murphy.¹ (N.T. 60-63, 73-74)

15. Jackson knew that Murphy was an active Union Steward and E-Board member in May 2023. (N.T. 36, 57-58)

16. At the beginning of the meeting, Jackson's office door was open, and Munoz saw Sergeant Mike Lewis in the hallway. Lewis was already there to represent Sabre. Munoz stepped out into the hall and spoke with Lewis privately. She asked Lewis to be her Union representative and told Lewis that she requested Murphy and that she did not know what the fact-finding meeting was about. (N.T. 20, 26-27, 61-62)

17. Jackson, Munoz, and Lewis were then in the office, and Jackson asked questions about an alleged improper call-off on May 8, 2023. Munoz did not receive any discipline after the meeting, even though the investigation sustained the allegations of improper call-off. (N.T. 21-22, 41, 59-60, 72)

18. After the meeting, Munoz went to her post and talked to Murphy. Munoz told Murphy that she requested him for a fact-finding with Jackson and that Jackson told Munoz that she could not have Murphy as a Union representative and that she had to take Lewis. During that conversation, Murphy asked Munoz if Jackson provided any justification. Munoz responded in the negative and both Munoz and Murphy completed a PSCOA witness statement. (N.T. 22-23, 38-39)

19. Munoz's statement provides as follows:

On May 10, 2023 I was ordered to report to the office of Lt. V. Jackson to take part in a fact[-]finding investigation regarding a late call-off. I was advised to have a union steward present for this interaction and requested that CO1 F. Murphy be contacted to act as my union representative. I was specifically told by Lt. V. Jackson that CO1 Murphy was not allowed to represent me in this matter, despite the fact that Ofc. Murphy is an authorized PSCOA steward and was on duty and on the premises at the time of this meeting. I believe this to be a violation of my Weingarten rights. End of report.

(UX-3) (case name underline added)

20. Finding a replacement for Murphy in the Control Bubble is not difficult because most officers have done that work and the Unit has enough workers to cover for Murphy. During any given shift, Control Bubble officers are relieved by another officer or Unit Sergeant. These officers regularly relieve Murphy in the Control Bubble several times per shift for breaks. (N.T. 24-25)

¹ Jackson also testified that she did not deny Murphy as Munoz's Union representative or tell Munoz that Murphy was unavailable. However, through no fault of Lt. Jackson, I do not find this testimony to be reliable or credible given Jackson's overall inability to remember this specific incident after so many fact-finding interviews.

21. On May 10, 2023, at the start of the 2:00 p.m.-10:00 p.m. shift, there were no circumstances that would have interfered with relieving Murphy in the Bravo Control Bubble to serve as Munoz's Weingarten representative. In the past, Murphy has gotten relief without incident to serve as a Weingarten representative. (N.T. 41-42)

DISCUSSION

Public employees in the Commonwealth have the right to union representation, upon request, at an investigatory interview under NLRB v. Weingarten, 420 U.S. 251 (1975), as adopted by this Board in PLRB v. Conneaut School District, 12 PPER 12155 (F.O. 1981). Also, an individual's right to a union representative at an investigatory interview includes the right for the employe to have the union representative of his or her choice at the interview if the chosen representative is reasonably available and there are no extenuating circumstances. Commonwealth Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007). The parties do not contest that Jackson's May 10, 2023 fact-finding interview of Munoz constituted an investigatory interview that could reasonably result in discipline and during which Munoz was entitled to a Union Weingarten representative of her choosing.

The issue in this case is whether the Union met its burden of establishing with substantial evidence that Jackson denied Munoz her choice of Union representative, on May 10, 2023, where Murphy was reasonably available and there were no extenuating circumstances that would have interfered with his presence at the Munoz fact-finding.

The Commonwealth did not present evidence that Murphy was unavailable or that there were extenuating circumstances at the time Jackson interviewed Munoz. I credit Munoz's testimony that Jackson denied Munoz the use of Murphy as her Union representative of choice. I also credit Jackson's account that having done 100s of fact-finding interviews by May 10, 2023, she did not recall what happened. Also, Murphy corroborated Munoz's account of events to him immediately after the May 10, 2020 interview. Moreover, Murphy and Munoz worked on a contemporaneous witness report authored by Munoz stating that Jackson denied her request for Murphy to be her representative. Therefore, Munoz's account prevails. Accordingly, I conclude that the Commonwealth denied Munoz the Union representative of her choice for her May 10, 2023 fact-finding, investigatory interview with Jackson, in violation of Section 1201(a)(1) of the Act.

CONCLUSIONS

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

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has committed unfair practices in violation of Section 1201(a)(1) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Commonwealth of Pennsylvania shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

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

(a) Immediately cease failing to provide employes with the Weingarten representative of their choosing when reasonably available and absent extenuating circumstances;

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

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

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

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
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AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act, in violation of Section 1201(a) (1) of PERA; that it has ceased and desisted from failing to provide employes with the requested Weingarten representative of their choosing when reasonably available and absent extenuating circumstances; that it has posted a copy of this decision and order in the manner directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public