COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DELAWARE COUNTY PRISON EMPLOYEES INDEPENDENT UNION	:	
v.	:	Case No. PERA-C-22-170-E
DELAWARE COUNTY	:	

FINAL ORDER

The Delaware County Prison Employees Independent Union (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 26, 2023, challenging a Proposed Decision and Order (PDO) issued on October 12, 2023. The Union excepts to the Hearing Examiner's conclusion that Delaware County (County) did not violate Section 1201(a)(1), (3) or (5) of the Public Employe Relations Act (PERA) by failing to hire Frank Kwaning, and Ashley Gwaku, the Union President and Vice-President, respectively. By letter dated and filed October 26, 2023, the Union requested an extension of time to file a brief in support of its exceptions. By letter dated November 2, 2023, the Secretary of the Board granted the Union's request directing that a brief in support of the exceptions be filed by December 1, 2023.

On November 13, 2023, the County filed a Motion to Dismiss the Union's exceptions, arguing that the October 26, 2023 exceptions lacked sufficient specificity under Section 95.98(a)(1) of the Board's Rules and Regulations. 34 Pa. Code §95.98(a)(1). On November 14, 2023, the Union filed a response to the County's Motion to Dismiss.

On November 16, 2023, pursuant to the Secretary's extension of time, the Union filed a brief in support of its exceptions. The County filed a timely Answer and a Memorandum of Law in opposition to the exceptions on December 6, 2023. Oral arguments were heard by the Board on November 19, 2024.

The facts as found credible by the Hearing Examiner, and which are relevant to the disposition of the exceptions, are summarized as follows. In 1996 the County outsourced the operation of the jail to GEO Group. (FF 3). During that time the County maintained an employe at the jail to oversee the GEO Group's contract compliance. (FF 4). On January 31, 2022, Laura Williams began serving as the County Warden of the Facility to oversee the transition from GEO's operation of the Jail to full County operational control set to start April 6, 2022. (FF 5).

In February and March 2022, Warden Williams and her management team, Interim County Warden Donna Mellon, Rangemaster Damen Schneider, Investigator George Rhoades, and Deputy Warden Lisa Mastroddi, conducted interviews of applicants for employment with the County. Warden Williams and her management team established a standard list of questions for interviewers to ask every applicant seeking positions at the Facility, and the interviewers were instructed to write down the answer exactly as given by the candidate during the interview. (FF 11). By April 6, 2022, the date of the County's takeover of the Facility, every position at the Facility needed to be filled, and

every GEO employe who wanted County employment had to be interviewed for consideration. (FF 8).

Warden Williams developed her own criteria for hiring qualified corrections officers, which were unknown to the interviewers on her management team. These criteria required candidates to be fit for duty, to be free of criminal history, to be able to pass a criminal background check, to be free of pending criminal adjudications, relationships with incarcerated individuals, any unresolved investigative matters or excessive discipline of a suspension of 10 days or more during the candidate's GEO employment. (FF 13). Warden Williams also felt that any dishonesty during the interview process was disqualifying for employment, and based her assessment of dishonesty by the answers to the interview questions about prior discipline. (FF 14). Warden Williams had the ultimate hiring authority, and she alone made all hiring decisions. (FF 12).

Ashley Gwaku was hired by GEO in 2006, and he worked at the Facility as a corrections officer. He was elected Vice President of the Union in 2017 and engaged in protected activities representing bargaining unit members. (FF 16). Rangemaster Schneider interviewed Ashley Gwaku on March 9, 2022. Schneider testified that Gwaku's prior disciplinary suspension was common knowledge, but that he did not discuss it with Gwaku during his interview. Per the interview question sheet, Rangemaster Schneider asked: "Have you ever been terminated from previous employment? If yes, what were the circumstances?" and "Have you ever been awarded discipline? If yes, what were the circumstances and what discipline was served?" (FF 18). Rangemaster Schneider wrote down a simple "NO" for the answers to both questions on Gwaku's interview sheet. (FF 19).

Frank Kwaning worked for GEO as a corrections officer since 2009, and was elected Union President in 2017. (FF 16). Rangemaster Schneider conducted the interview of President Kwaning on March 15, 2022. Schneider recorded Kwaning's answer to Question 6 ("Have you ever been terminated from previous employment? If yes, what were the circumstances?") as "Yes, here, but reinstated by arbitrator." Schneider recorded Kwaning's answer to Question 7 ("Have you ever been awarded discipline? If yes, what were the circumstances and what discipline was served?") as "Yes, one for [in]subordination, which was overturned later by an arbitrator." (FF 26).

GEO Investigator Keith Heyward provided Warden Williams with arbitration awards pertaining to Frank Kwaning and Ashley Gwaku. (FF 17). After receiving Gwaku's arbitration award from GEO, Warden Williams concluded that Gwaku's 8-month suspension constituted excessive discipline, and that Gwaku had misrepresented his prior discipline during the interview, as recorded by Rangemaster Schneider. (FF 21). Warden Williams testified that Gwaku's 8-month suspension reflected in the arbitration award established conduct unbecoming of the candidate, and that Gwaku was dishonest by misrepresenting his prior discipline during the interview. Warden Williams noted on Gwaku's interview sheet that she would "[n]ot recommended for hire." (FF 19).

In the Kwaning award, the arbitrator denied Kwaning's grievance regarding the verbal and written warnings, and sustained in part and denied in part, the grievance concerning Kwaning's termination from employment. The arbitrator directed GEO "to reduce Grievant's [Kwaning's] discharge to a 10-

day unpaid suspension and to reinstate Grievant to his former position with no loss of seniority as soon as practicable after issuance of this Award." (FF 24). Warden Williams relied on Kwaning's arbitration award, and the 10-day suspension, in deciding not to hire him for employment with the County. (FF 28).

Because of the nature of the Jail operations, Warden Williams did not notify any of the candidates of the results of the interview process until Iris Wiley, Human Resources Manager, issued the no-hire letters to all employes, including Kwaning and Gwaku, on March 29, 2022. (FF 32).

Prior to Warden Williams notifying Kwaning and Gwaku of her decision not to hire them at the County run facility, she, and other County representatives met with Kwaning and Gwaku, and other Union representatives, on March 25, 2022, to discuss the transition from GEO to County operation of the Facility. (FF 29). At the March 25, 2022 meeting, Warden Williams presented a document entitled: "Statement of Terms and Conditions of Employment-Correctional Officers at GWH [the Facility]." (FF 30). The March 25, 2022 statement of terms and conditions of employment contained terms that were different from the GEO contract, including vacation, progressive discipline, and increased starting wages from $15/hour, under GEO, to $21/hour for new County employes. The terms and conditions of employment were effective and implemented upon the County takeover of the Facility on April 6, 2022. (FF 31).

On April 21, 2022, Warden Williams signed a "RECOGNITION AGREEMENT" with Union President Kwaning agreeing to enter and submit a joint petition for certification for the prison guard bargaining unit. (FF 50). On May 18, 2022, the Union and the County filed a Joint Request for Certification, docketed by the Board at case number PERA-R-22-115-E. (FF 53).

On June 7, 2022, Warden Williams directed shift commanders to announce to the officers during roll call the new Facility specific changes that she had made to existing County policies. These policy changes included that County employes at the Jail were now required to stay on the premises during meal and rest breaks; prohibited from food delivery services; limited meal breaks to 30 minutes; required employes to clock out for meal breaks; and prohibited officers from going to their vehicles during breaks or leaving the property for any reasons, without approval. (FF 54). Other policy changes included the number of officers permitted to take leave during a shift, the elimination of a "split-shift option" for correctional officers, and grace periods for clocking in and out. (FF 56-61).

On June 8, 2022, the Board Representative issued a Certification of Representative at Case No. PERA-R-22-115-E, certifying the Union as the exclusive representative for the bargaining unit of "all full-time and regular part-time prison guards, including but not limited to correctional officers employed by Delaware County at the George W. Hill Correctional Facility; and excluding sergeants, lieutenants, captains, majors, administrative personnel, professional employes, management level employes, supervisors, first level supervisors, confidential employes and security guards as defined in [PERA]." On September 20, 2023, the County and the Union entered into a Collective Bargaining Agreement, which was effective from September 6, 2023 until December 31, 2023. (FF 62).

Based on the facts as found by the Hearing Examiner in the PDO, the Hearing Examiner concluded that the County did not harbor union animus, and had nondiscriminatory reasons for not hiring Kwaning and Gwaku at the County run Jail, and therefore did not violate Section 1201(a)(1) or (3) of PERA. Further the Hearing Examiner determined that the County did not have a statutory bargaining obligation until June 8, 2022, when the Union became the Certified Representative by the Board. Accordingly, the Hearing Examiner concluded that the County did not violate Section 1201(a)(1) or (5) of PERA by unilaterally implementing changes in wages, hours and working conditions before the Union was certified by the Board. Thus, in the October 12, 2023 PDO, the Hearing Examiner rescinded the Complaint and directed that the Charge of Unfair Practices be dismissed.

Initially, the County has requested the dismissal of the Union's exceptions for failure to comply with Section 95.98(a)(1)(i)-(iv) of the Board's Rules and Regulations, and for failure to file a brief simultaneously with the exceptions. First, Section 95.98(a)(1) does not require the filing of a brief in support of the exceptions. Fraternal Order of Police, Washington Lodge No. 17 v. City of Easton, 20 PPER ¶20048 (Order Directing Remand to the Hearing Examiner for Further Proceedings, 1989). Thus, the Board routinely will grant an extension of time for an exceptant to file a supporting brief so long as the request is filed with the exceptions, and no new exceptions are raised in the brief after the twenty-day period for filing of exceptions under Section 95.98(b).[1] Further, the Board does not require literal compliance with Section 95.98(a)(1)(i)-(iv) in the statement of exceptions. The specificity, citation to the record, and grounds for the exception, are adequate for due process, if stated with sufficient specificity to permit meaningful review by the Board. City of Easton, *supra.*; Gloria J. Halfhill v. Private Industry Council of Westmoreland/Fayette, Inc., 29 PPER ¶29004 (Final Order, 1997); Judith Ainsworth v. Temple University, 53 PPER 57 (Final Order 2021). In its timely filed exceptions, the Union raises 16 separately enumerated exceptions each with a citation to the PDO referencing the finding, statement, or conclusion to which the Union excepts. Upon review of the Union's exceptions, timely filed on October 26, 2022, the Board finds that the exceptions are adequate to permit the Board's review of the PDO. Accordingly, the County's Motion to Dismiss the exceptions is denied.

On exceptions to the PDO, the Union challenges the Hearing Examiner's conclusion that it did not establish a *prima facie* case of discrimination with respect to the County's refusal to hire Kwaning and Gwaku. More specifically, the Union excepts to the Hearing Examiner's determination that Warden Williams lacked knowledge of the protected union activities of Kwaning and Gwaku, and the conclusion that the Union failed to establish union animus.

To establish a violation of Section 1201(a)(3) of PERA, the Union is required to prove by substantial credible evidence that (1) the employe was

[1] The party opposed to the exceptions is not prejudiced by an extension of time for the exceptant to file a brief in support of the exceptions. The responding party has twenty days from the receipt of the exceptant's brief in support of the exceptions to respond to the exceptions and brief. 34 Pa. Code §95.98(c).

engaged in protected activity; (2) that the employer was aware of this activity; and (3) that the adverse action complained of was taken because of the protected activity or union animus. St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977); Westmont-Hilltop Education Association v. Westmont-Hilltop School District, 24 PPER ¶ 24066 (Final Order, 1993). In reviewing the Hearing Examiner's findings and conclusions, it is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and weigh the probative value of the evidence presented at the hearing. William C. Plouffe, Jr. v. State System of Higher Education (Kutztown University), 41 PPER 82 (Final Order, 2010). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). Based on substantial evidence as found credible by the Hearing Examiner, the hearing examiner is permitted to draw reasonable inferences, make findings of fact, and render conclusions based on those facts. The Board will not disturb the hearing examiner's credibility determinations absent the most compelling of circumstances. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). It is the employer's motive that creates the offense under Section 1201(a)(3) of PERA. PLRB v. Ficon, 254 A.2d 3 (Pa. 1969). The Hearing Examiner's finding of an unlawful motive must be based on substantial credible and competent evidence, not mere speculation or conjecture or hearsay. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974). Upon review of the record, the Union has failed to establish by substantial evidence that the County acted on a discriminatory motive or union animus in deciding not to hire Kwaning or Gwaku for County employment necessary to prove a violation of Section 1201(a)(3) of PERA.

In this regard, the Hearing Examiner found that the County had established a non-pretextual, non-discriminatory, legitimate business reason for refusing to hire Kwaning and Gwaku. The legal import of this finding is that even if complainant were to establish a *prima facie* showing that protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the same action would have occurred even in the absence of that protected activity. Wright Line, Inc., 251 NLRB 1083 (1980). If the complainant is unable to prove that the employer's asserted business reason is nothing more than a pretext for an unlawful motive, then there are two competing credible motives, one lawful and one unlawful. Where the employer has credibly established by substantial evidence that despite any union animus it would have taken the same action in the absence of the protected activity, the charge of unfair practices alleging that the employer's action was due to unlawful discrimination or retaliation in violation of Section 1201(a)(3), must be dismissed as a matter of law, since there is an alternative lawful motive for the employer's actions. PSSU Local 668 v. Pennsylvania Department of Public Welfare (White Haven Center), 24 PPER ¶ 24101 (Final Order, 1993).

As an initial matter we recognize that the Hearing Examiner, having heard the testimony first-hand and witnessed the demeanor of those testifying before him, is in the best position to assess the credibility of the witnesses and evidence. Mt. Lebanon School District, *supra.;* William C. Plouffe, Jr., *supra.* While the Board ultimately has the final determination on findings of fact, the Board will not disturb the Hearing Examiner's credibility determinations, or findings based thereon, in the absence of

exceptional compelling circumstances of record. Joan F. Smith, Gabriel H. Petorak, John F. Larkin, and Ellen E. Kozlosky v. Lakeland School District, 39 PPER 148 (Final Order, 2008); *see* Interboro School District v. PLRB, 32 PPER ¶ 32029 (Court of Common Pleas, 2000). Upon a thorough review of the record, the testimony and documentary evidence presented is devoid of any direct contradictory testimony by a witness, or any similar compelling circumstances that would definitively call into question the credibility and truthfulness of the witnesses. *See* Shive, *supra.* While there is testimony and evidence which could lead a reasonable person to disbelieve the testimony and evidence presented by the County, there is also substantial testimony and evidence supporting the findings and credibility determinations of the Hearing Examiner. *See* PLRB v. Kaufman Department Stores, 29 A.2d 90 (Pa. 1942); Page's Department Store v. Velardi, 346 A.2d 556 (Pa. 1975). Accordingly, on this record, we are constrained to adopt the credibility determinations and related findings of the Hearing Examiner with regard to the County's motives and reasons for its refusal to hire Kwaning and Gwaku.

Here, there is substantial evidence of record in the testimony of Warden Williams as found credible by the Hearing Examiner, that Warden Williams did not offer County employment to any GEO employe where prior to April 6, 2022, she became aware of disciplinary records that showed a suspension of ten days or more during their GEO employment, or where she became aware of a disciplinary record not reflected on the interview sheet. Indeed, in response to questions concerning her criteria for hire, Warden Williams testified as follows:

> [T]here were some standard criteria … background check and … a drug screen. They needed to obviously apply, be interviewed, and be qualified for employment and we were seeking candidates who were demonstrative of the mission and values of the institution. … [T]hey had to be fit for duty, and any discipline that was ten days or more was not eligible for employment.
>
> * * *
>
> [W]ithin the interview process, we did ask about discipline. We also asked employees if they had any known relationships with any incarcerated individuals, and then we also asked about criminal history as well, So dishonesty for those three questions could have been an automatic disqualifier should they be found to be inconsistent with the facts.

(N.T. July 18, 2023, pg 27-29).

Accordingly, there is substantial evidence that Warden Williams utilized her non-discriminatory criteria when deciding not to hire Kwaning and Gwaku for County employment. During his interview, Kwaning acknowledged prior discipline by GEO, which was discovered by Warden Williams to be a ten-day suspension. Gwaku's interview sheet did not reference that he received any prior discipline, which was found by Warden William to be incorrect as Gwaku had received an eight-month suspension from employment with GEO. Under Warden William's non-discriminatory criteria neither Kwaning nor Gwaku would have been eligible to receive an offer of employment as correctional officers with the County. As such, regardless of any protected activities, the County sustained its burden of establishing that Warden Williams would have taken

the same action toward Kwaning and Gwaku even in the absence of their involvement with the Union.

Although the Union presented the testimony of correctional officers who had disciplinary records with GEO but yet were hired by the County, the Union failed to substantiate that those other employes were or would have been treated differently than Kwaning or Gwaku. Indeed, unlike Kwaning or Gwaku, there was not substantial evidence that Warden Williams was ever made aware of their discipline prior to April 6, 2022, or that the GEO records available to the County at the time of hiring contained a record of the discipline. As such, the Union failed to present substantial evidence which would establish that Warden William's asserted criteria was mere pretext for an unlawful discriminatory motive.[2] Thus, as a matter of law, the Union's Charge of Unfair Practices under Section 1201(a)(3) of PERA was properly dismissed.

Regarding the Union's unfair practice claims under Section 1201(a)(5) of PERA, the Union excepts to the Hearing Examiner's conclusion that the County was not a successor to GEO or otherwise legally obligated to maintain the status quo. Since the inception of PERA, the Board has steadfastly recognized that the employer's statutory obligation to bargain under Section 1201(a)(5) of PERA arises only upon the certification of an exclusive employe representative by the Board. Butler County, 2 PPER 221 (Decision and Order, 1972).

In Teamsters Local 764 v. Milton Borough and Milton Regional Sewer Authority, 34 PPER 159 (Final Order, 2003), the Board recognized a successor employer relationship under PERA. The Board held that a successor employer relationship may be found where (1) the business of both employers is essentially the same; (2) the employes of the new employer are doing the same jobs in the same working conditions under the same supervisors; and (3) the new employer utilizes the same processes, produces the same products or services, and basically has the same body of customers. *Id.* The Board noted in Milton Regional Sewer Authority, *supra.*, that in the private sector generally a successor employer has the right to set the initial terms of hire and must maintain those terms while the successor employer and union negotiate an initial contract. The Board adopted a very limited exception to the rule allowing an employer to set initial terms of hire in the situation where 1) there was a certified unit of the employes of the borough's Milton Waste Water Treatment Plant under PERA, 2) the borough created a pubic authority for its sewage operations under the Municipal Authorities Act, 53 P.S. § 5601 et seq., and 3) in transferring the borough's operation to the newly created authority there were no significant changes to equipment, personnel, or operations. Under those circumstances the Board found an obligation to maintain the *status quo* with regard to the wages, hours and working conditions for those employes where the Borough had negotiated the

[2] Upon a thorough review of the exceptions, although the Union challenged the Hearing Examiner's decision to accept the testimony of Warden Williams regarding her application of non-discriminatory criteria in the hiring decision, the Union has not with sufficient specificity raised or argued that it had met its burden of rebuttal to show by substantial evidence that her asserted non-discriminatory criteria were mere pretext for an unlawful motive. *See* 34 Pa. Code 95.98(a)(3) ("an exception not specifically raised shall be waived").

collective bargaining agreement with the union to which it remained bound as a part of the successor authority.[3] Such is not the case here.

GEO is a private sector employer under the National Labor Relations Act, and secondly, the County already existed and was not a newly created public employer. Where the transfer of the operation of a public service is from a private contractor to a public employer we find that the public employer should not be hamstrung to a contract it did not negotiate, but instead, a policy similar to that under the NLRA should apply to allow the public employer as the successor employer to apply its existing policies, practices and benefits, and to set the initial terms of hire. Indeed, here, because the County was an existing public employer it already had in place certain policies, practices, benefits, and work rules applicable to all County employes, which of necessity would also apply to employes of the Facility upon the County's takeover of prison operations.

While Section 602(a) places no affirmative duty or obligation on the employer to bargain with the uncertified union, and it is only after the Board has certified the union as the exclusive employe representative that Section 1201(a)(5) then prohibits the employer from refusing to bargain with the union in good faith before making any changes to then existing wages, hours or working conditions, this is not to say that a public sector successor employer, after setting the initial terms of hire, is free to unilaterally change wages, hours or working conditions with impunity until the Board has issued a certification of the union as the exclusive representative. Once a representation proceeding has been initiated, either by a joint request for certification, or a petition for representation, an employer who makes subsequent changes to the wages, hours or working conditions for the petitioned for employes does so at its peril, as such changes could be seen as an effort to encourage or discourage union membership, or as interfering or coercing the employes' right to union representation under either Section 1201(a)(1) or (3) of PERA. *See* Jessup Borough Police Department Employees v. Jessup Borough, 33 PPER ¶ 33176 (Final Order, 2002).

On the facts presented here, Warden Williams agreed to recognize the Union on April 21, 2022. On May 18, 2022, the County and the Union filed a Joint Request for Certification under Section 602(a) of PERA. On June 7, 2022, Warden Williams unilaterally issued changes to existing County Policy Numbers 300.04 and 300.16, applicable to Facility employes, that limited break periods to thirty minutes, required employes to stay on the premises

[3] To be sure, the facts in Milton Regional Sewer Authority were that Milton Borough had operated a sewage treatment plant within the municipality. To service surrounding municipalities from its sewage treatment plant, Milton Borough created the Milton Regional Sewer Authority of which the Borough was a controlling entity and partner. Other than the creation of the Authority to service surrounding municipalities, no other substantive changes were made to the operation of the sewer treatment plant. But for the Municipality Authorities Act, Act of June 19, 2001, P.L. 287, No. 22, as amended, 53 Pa. C.S.A. §5610, the shift of operation of the sewage treatment plant from the Borough to the Authority would have been an alter ego, under which the status quo must be maintained.

during break, prohibited employes from going to their vehicles without prior authorization, and prohibited food delivery services to the Facility. On June 8, 2022, the Board Representative issued a Certification of Representative. On July 7, 2022, Warden Williams presented the employes with a limited version of the County Handbook covering the existing County employe work rules.

Here, because the County Handbook was for all intents and purposes in existence upon the takeover of the Prison on April 6, 2022 and the alleged modifications to Policies 300.04 and 300.16, were implemented by Warden Williams prior to the June 8, 2022 Certification of Representative, the County had not violated a statutory obligation to bargain under Section 1201(a)(5) of PERA, with respect to the limited Employe Handbook, or the changes to Policies 300.04 and 300.16. *See* Jessup Borough, *supra.* Further, upon review of the Charge and the exceptions, the Union has not alleged that the June 7, 2022 modifications to Policies 300.04 and 300.16 were done by the County to interfere or coerce employes' in their right to organize or be represented, and thus no unfair practice may be found under Section 1201(a)(1) or (3) of PERA. Moreover, upon review of the record, the Union failed to establish by substantial evidence that any of the provisions in the limited Employe Handbook disseminated on July 7, 2022, had altered any wages, hours, or working conditions that were then in effect on June 8, 2022. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 31 PPER ¶ 31023 (Final Order, 1999) (mere codification of existing rules is not evidence of a change in wages, hours or working conditions). Accordingly, the Union has failed to establish a violation of Section 1201(a)(5) of PERA.

Lastly, the Union argues that the Hearing Examiner erred in determining that its alleged unilateral changes to wages, hours and working conditions, and the County's delay in providing requested information relevant to collective bargaining were rendered moot by the execution of an interim collective bargaining agreement. Given the disposition above finding no violation of Section 1201(a)(5) regarding the Union's allegations of unilateral changes to wages, hours and working conditions, the question of mootness as to those unfair practice claims is unnecessary. Additionally, it was within the discretion of the Hearing Examiner to find that under the circumstances, a three-month delay between the Union's certification as the bargaining representative and the County's response to the information request on September 8, 2022, was not an unreasonable delay lacking in good faith, or an unfair practice under PERA.

Nevertheless, the Union's request for information is now moot. As alleged in the Charge, the Union had requested the following information from the County: a list of employees hired by the County; a list of GEO employees not hired by the County; a list of new hires; the criteria used to make hiring decisions; whether the County had access to GEO's personnel records; the County's agreement to a Joint Request for Certification; arrangements for the Union to continue servicing its members until a collective bargaining agreement is negotiated; and the County's representative for contract negotiations. The Union timely reiterated that request on June 10, 2022, after it became the certified exclusive employe representative.

In the Specification of Charges, the Union concedes that it had, as of July 12, 2022, received responsive information from the County, including lists of employes hired by the County, and information concerning the Joint

Request for Certification. Indeed, as of the April 21, 2022 Recognition Agreement, the Union also had its responses regarding the joint request for certification and the County's intent to negotiate a collective bargaining agreement, and thus the Union had the answer to the arrangements for its ability to service its membership. The criteria used to make hiring decisions and whether the County had access to GEO's personnel records, were the crux of this unfair practice proceeding, and such documents were subpoenaed and testimony taken responsive to those inquiries. The only remaining bit of information requested was the identity of the County's representative for collective bargaining negotiations, which was obviously answered as reflective in the negotiation and execution of the interim agreement.

Further litigation over the Union's request for the information set forth in the Charge of Unfair Practices at this point is futile and will not serve the purposes and policies of PERA. Association of Pennsylvania State College and University Faculties v. Pennsylvania State System of Higher Education, 49 PPER 58 (Final Order, 2018). Accordingly, the Hearing Examiner did not err in finding that the Union's Charge of Unfair Practices alleging a failure to provide information under Section 1201(a)(5) was moot.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the County did not violate Section 1201(a)(1), (3) or (5) of PERA. Accordingly, the Board shall dismiss the exceptions, and make the Proposed Decision and Order final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Delaware County Prison Employees Independent Union are hereby dismissed, and the Proposed Decision and Order issued on October 12, 2023, shall be, and the same is, hereby made absolute and final.

CHAIRMAN JAMES M. DARBY DISSENTS IN PART

I write separately to dissent to the finding and conclusion that the Union did not sufficiently establish on exceptions the issue of pretext. I would find based on the evidence of record taken as a whole, that the Union satisfied its burden to show that Warden William's asserted criteria of disqualifying applicants (where there was discipline of ten days or more or a failure to disclose discipline) substantiates a claim of pretext under PERA when applied to the facts of this case. Indeed, Warden Williams testified that personnel records and reports of discipline from GEO were only sporadically provided by GEO employes. The only arbitration awards she received were for the two Union officials and there is no evidence she made any effort to determine if arbitration awards for other employees were available. Warden Williams therefore knew during the interview process that she was attempting to apply criteria for hiring decisions based on length of discipline while not privy to the disciplinary records. To utilize this incomplete method to disqualify employees, while other employees with

discipline records were offered positions is flawed in the absence of an ulterior motive. Moreover, by keeping her criteria secret from the County interviewers who allegedly had personal knowledge of employe discipline at GEO, Warden Williams undercut the asserted importance of the criteria, as information of discipline gleaned from County supervisors with personal knowledge would, as found credible by the Hearing Examiner, be equally reliable for her determination as the personnel files themselves. Similarly, Warden Williams' withholding her criteria from the Union for three months, and only providing that information at the hearing under the compulsion of a Board subpoena, further supports a finding that her utilization of that criteria was pretextual. Accordingly, I would find that the Union sustained its burden of establishing pretext, and conclude that the County violated Section 1201(a)(1) and (3) of PERA by failing to hire Kwanning and Gwaku as corrections officers for the County.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this seventeenth day of December, 2024. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.