

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 87 :  
 :  
 : CASE NO. PERA-C-18-300-E  
 v. :  
 :  
 LACKAWANNA COUNTY :  
 :

**PROPOSED DECISION AND ORDER**

On November 13, 2018, American Federation of State, County & Municipal Employes, AFL-CIO (AFSCME) District Council 87 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Lackawanna County (County or Employer) violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA or Act).

On February 26, 2019, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 5, 2019, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was held on June 5, 2019, in Harrisburg, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union did not file a post-hearing brief. The County filed its post-hearing brief on July 31, 2019.

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

**FINDINGS OF FACT**

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7).
3. The Union is the exclusive bargaining agent for a bargaining unit of correction officers, juvenile detention officers, work release counselors, and clerical and maintenance workers at the County's Prison, Juvenile Detention Center, and Community Corrections Office. (N.T. 10-11; Joint Exhibit 1).
4. The parties are subject to a collective bargaining agreement (CBA) with the effective dates of January 1, 2018, through December 31, 2022. (N.T. 12; Joint Exhibit 1).
5. The County had a Juvenile Detention Center which is a subdivision of the Prison. The County used the Juvenile Detention Center to house and transport juveniles in the County. (N.T. 13).

6. Before August 2018, there were approximately eight juvenile detention officers employed at the Juvenile Detention Center. All of the juvenile detention officers were in the bargaining unit. (N.T. 13-14).

7. On August 10, 2018, Justin MacGregor, Deputy Director for Human Resources for the County, wrote an email to Eric Schubert, President of the Union, which states in relevant part:

Mr. Schubert,

As you are aware, the [Lackawanna Court of Common Pleas] has taken control of the Juvenile Detention Center's operations and ordered all juveniles to no longer be housed in the center. The Court has changed the mission of the center to that of a processing center. All juveniles detained by law enforcement will be brought to the center and then transferred to another facility for housing.

Consequently, this correspondence serves as 30 days' notice that the center will be closing, per Article 26 of the CBA. There is a possibility the center will remain a processing center for a duration longer than 30 days.

(N.T. 15-16; Union Exhibit 7).

8. The Center up until this time had been administered by the County Commissioners. (N.T. 15-16).

9. On August 18, 2018, MacGregor met with Schubert and the juvenile detention officers. MacGregor offered that Center employees could apply to fill a full-time class of correctional officers at the County's Prison. One juvenile detention officer, Mike Richards, expressed interest in that opportunity. (N.T. 18, 39-40).

10. At the August 18, 2018 meeting, MacGregor requested that the juvenile detention officers let him know of which available County positions they had interest in. MacGregor also said that though the County did not have the power to direct row officers to hire any juvenile detention officers, the County would recommend the juvenile detention officers employees to such row officers and the Courts. (N.T. 38-40).

11. On August 15, 2018, Brian Bauer, a juvenile detention officer, emailed MacGregor and requested full-time employment with the Sheriff's Department. Ultimately, in February or March, 2019, Bauer obtained employment as a full-time municipal police officer. (N.T. 39; County Exhibit 1).

12. On August 16, 2018, Brian Hughes, a juvenile detention officer, emailed MacGregor a list of various departments in the County in which Hughes wished to work. The County offered Hughes several positions within the County and, eventually, Hughes decided to accept

employment with the Federal government. (N.T. 41, 51; County Exhibits 2, 6, 7).

13. On September 4, 2018, Matt Jones, a juvenile detention officer, emailed MacGregor with a list of various jobs in the County that Jones was interested in. Ultimately, Jones was hired as a corrections counselor at the County Prison. (N.T. 43; County Exhibit 3).

14. On October 10, 2018, MacGregor again met the employees of the Center regarding the imminent closing of the Center and available jobs in the County for the juvenile detention officers. (N.T. 45).

15. On October 11, 2018, Frank Galli, a juvenile detention officer, emailed MacGregor requesting information about positions at the County's 911 center. Galli served as Steward for the Center employees. MacGregor told Galli that the juvenile detention officers could test for the 911 dispatcher positions and could also apply for the next part-time correctional officer class at the County prison. MacGregor also told Galli that the juvenile detention officers could test for civil service positions at the Office of Youth and Family Services and the Area Agency on Aging. MacGregor also told Galli that he, MacGregor, would be happy to speak to any County row officer or directors of departments of civil service positions if any juvenile detention center officer had interest in those areas. None of the remaining juvenile detention officers pursued these various opportunities. (N.T. 45-46; County Exhibits 4, 5).

16. The Union filed the instant charge on November 13, 2018.

17. On February 6, 2019, the County provided Galli with a list of various positions available in the County. None of the remaining juvenile detention officers pursued these available job opportunities. (N.T. 52-53; County Exhibit 8).

18. On February 7, 2019, the County emailed Galli and the Union a proposed Memorandum of Understanding (MOU) which would ensure the remaining juvenile detention officers would continue to receive the health care benefits they received as juvenile detention officers if they worked as part-time correctional officers at the County prison. Part-time correctional officers do not normally receive healthcare benefits. MacGregor also told Galli that the part-time status as a correctional officer would be temporary as part-time correctional officers eventually attain full-time status within one to six months. Galli told MacGregor that the he and the remaining juvenile detention officers rejected the County's proposed MOU. (N.T. 53-56; County Exhibit 9).

19. On March 11, 2019, MacGregor received an email from Geoff Enkulenko, a juvenile detention officer, in which Enkulenko expressed interest in a part-time deputy sheriff position with the Sheriff's Department. Enkulenko did thereafter accept a position as a part-time deputy sheriff and received healthcare benefits pursuant to an memorandum of agreement with the Sheriff's Department, as part-time deputy sheriffs do not normally receive healthcare benefits. In addition to Enkulenko, MacGregor contacted the Sheriff's Department on behalf of two other juvenile detention officers Mike Souryavong and

Jennifer Polemitis. Sourvavong did not accept a position as a part-time deputy sheriff with healthcare benefits. Polemitis accepted a position in the County's Office of Youth and Family Services as a caseworker. In addition, in March, 2019, Jesse Morano, was hired by the County as a compliance manager in the Office of Economic and Community Development. The County also offered Galli a position which Galli rejected. (N.T. 61-66; County Exhibits 11, 12, 13).

20. The Juvenile Detention Center was closed in March, 2019. Any processing which was done in the Center was transferred to the Sheriff's office. Two juvenile detention officers were laid off. (N.T. 28-29).

21. Article 26 of the CBA states:

Article 26 - Sale or Lease of Jail

In the event the employer sells, leases, transfer, or assigns its facilities at the Lackawanna County Jail, Community Corrections, or Juvenile Detention Center to other political subdivisions, corporation, or persons and such sale, lease, transfer or assignment would result in the layoff, furlough or termination of employees covered by this bargaining unit, the employer shall attempt in good faith to arrange for placement of such employees with the new employer. The employer shall notify [the Union] in writing at least thirty (30) days in advance of any such sale, lease transfer or assignment.

(Joint Exhibit 1).

**DISCUSSION**

The Union claims that the District violated Section 1201(a) (1) and (5) of the Act because the County did not bargain in good faith for the placement of seven bargaining unit member juvenile detention officers pursuant to the parties' CBA.

No citation to the section of the CBA containing the County's alleged obligation was included in the Charge. At the hearing, the Union asserted that the County did not follow Article 26 of the CBA.

It is well settled that the Board exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000). Where a breach of contract is alleged, interpretation of collective bargaining agreements typically is for the arbitrator under the grievance procedure set forth in the parties' collective bargaining agreement. Id. However, the Board will review an agreement to determine whether the employer has clearly repudiated its provisions because such a repudiation may constitute both an unfair labor practice and a grievance. Id.

In this case, the record is clear that the County did **not** clearly repudiate Article 26 of the CBA. The record shows that the Juvenile Detention Center was closed on authority of the Court of Common Pleas.

The County notified the Union at least thirty days in advance of that closure. The County then, through the efforts of MacGregor, attempted to place the concerned juvenile detention officers in positions throughout the County. MacGregor met with the juvenile detention officers multiple times and was in contact with them through email. I find that his efforts were sufficient to not be a repudiation of Article 26 of the CBA which requires the County to "attempt in good faith to arrange for placement" of the juvenile detention officers. Notably, Article 26 does not contain a **guarantee** of placement in an equal or similar position.

For the above reasons, the Union's charge will be dismissed as the County did not repudiate the CBA.

#### **CONCLUSIONS**

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The County 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 County has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

#### **HEREBY ORDERS AND DIRECTS**

that charge is dismissed and the complaint rescinded.

#### **IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

**SIGNED, DATED AND MAILED** at Harrisburg, Pennsylvania, this third day of February, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner