

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SEIU LOCAL 668, PSSU :
 :
 : CASE NO. PERA-C-19-26-E
 v. :
 :
 CHESTER COUNTY COURT OF COMMON PLEAS :
 :

PROPOSED DECISION AND ORDER

On February 4, 2019, Service Employees International Union Local 668, PSSU (SEIU or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Chester County (County) and the Chester County Court of Common Pleas (Court) violated Section 1201(a)(1) of the Public Employee Relations Act (PERA or Act).

On March 28, 2019, the Secretary of the Board issued a complaint and notice of hearing designating June 10, 2019, in Harrisburg, as the time and place of hearing.

After a teleconference among the parties on June 10, 2019, the Hearing Examiner dismissed Chester County from the complaint and the Union and the Court agreed to submit joint stipulations. The joint stipulations were filed on June 14, 2019. The Union filed its brief on September 9, 2019. The Court filed a Motion to Dismiss on April 14, 2019 and reply brief on September 16, 2019.

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

FINDINGS OF FACT

1. The County and the Court are public employers within the meaning of Section 301(1) of PERA. (Joint Stipulation ¶ 1).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Joint Stipulation ¶ 2).
3. The Union is the exclusive representative for a unit of employes hired, fired and directed by the Court and who are paid by the County. (PERA-R-00-88-E; Joint Stipulation ¶ 6).
4. Adult Probation Officer Guarino is a member of the bargaining unit. (Joint Stipulation ¶ 8).
5. On October 4, 2018, Guarino's direct supervisor, Bill Kelly, instructed Guarino to report to Kelly's office for a meeting. The meeting was investigatory in nature and Guarino reasonably believed the meeting would result in discipline. Guarino requested his "Weingarten Rights." Guarino explained to Kelly that Guarino is entitled to be accompanied by a Union representative during a meeting which may result in discipline. Kelly stopped the meeting to ask Section Director Christopher Pawlowski about Guarino's request. After

consulting with Pawlowski, Kelly informed Guarino that the position of the Court is that court-appointed employees are not entitled to representation at a meeting which may result in disciplinary action. The meeting continued in the absence of any Union representative. (Joint Stipulations ¶¶ 9-14).

DISCUSSION

The Union alleges the Court violated Section 1201(a)(1) of PERA when Kelly refused to allow Guarino to have a Union representative in an investigatory meeting pursuant to National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251 (1975). The Court filed a Motion to Dismiss challenging the Board's authority to hear this matter based on a theory of separation of powers.

It is well settled that the Weingarten right of an individual employe is the right to obtain a representative to accompany the employe during an investigatory interview when the employe reasonably fears that discipline may be imposed by the employer and includes the right to have the union representative of his or her choice, if the assisting union representative is reasonably available and absent extenuating circumstances. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 916 A.2d 541, 551 (Pa. 2007). The right only arises, however, when the employe requests representation. City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997); Plouffe v. SSHE, Kutztown University, F. Javier Cevallos et. al, 41 PPER 63 (Proposed Decision and Order, 2010), 41 PPER 82 (Final Order, 2010).

A violation of a public employe's Weingarten rights is a violation of Section 1201(a)(1) of PERA as an interference in the rights protected by Section 401 of PERA.

The facts in this matter are not contested and were stipulated.¹ Guarino, a member of the bargaining unit of court-appointed public employes requested his Weingarten rights for an investigatory meeting with his supervisor, Kelly. Kelly denied Guarino's request after consulting with Section Director Pawlowski and the meeting happened without Union representation. This is, on its face, a violation of Weingarten and PERA. However, the analysis of this matter must now move to the Court's argument that the Board does not have jurisdiction over the Court in this matter. The Court argues that pursuant to the Pennsylvania Constitution and 16 P.S. § 1620, the Judicial Branch is vested with the authority to hire, supervise, and discharge its employees without hindrance from another branch of Government. Court's

¹ The only small disagreement over the facts was the Court's caveat in agreeing that it was a public employer. The Court states with respect to the stipulation that it is a public employer: "So long as any limited concession on the Court's status as a "public employer" for purposes of PERA is not construed to undercut the Court's position on separation of powers, [the Court has] no problem with a limited stipulation." (Court's letter to the Hearing Examiner, January 6, 2020). In order to make the issue clear, I find specifically that the Court is a public employer as defined by Section 301 (1) of the Act ("Public Employer" means the Commonwealth of Pennsylvania . . .").

Memorandum of Law in Support of its Motion to Dismiss (Court's Memorandum) at 2. The Court argues:

The Court's inherent right to hire, fire, and supervise court employees without interference from the other government branches is "well-established" in Pennsylvania. See Ellenbogen v. County of Allegheny, 388 A.2d. 730 (1978); County of Butler v. O'Brien, 650 A.2d. 1146, 1148 (Pa. Commw. 1994). The Court's right to hire, fire, and supervise its employees has a solid foundation in the doctrine of separation of powers set forth in Article V, Section 1 of the Pennsylvania Constitution. See Beckert v. American Fed'n of State, Cnty. & Mun. Emps. ('AFSCME'), 425 A.2d 859, 862 (Pa. Commw. 1981); see also Jefferson Cnty. Court-Appointed Emps. Ass'n v. PLRB, 985 A.2d 697, 707 (Pa. 2009)(finding that Article V of the Pennsylvania Constitution "vests with the judiciary the power to administer justice" and that the judiciary's authority over court employees is "essential to the maintenance of an independent judiciary.") . . . Thus, neither the Executive Branch nor the General Assembly, acting through an administrative agency, may constitutionally infringe upon the powers or duties of the Judiciary. [L.J.S. v. State Ethics Commission, 744 A.2d. 798, 799 (Pa. Commw. 2000)]. . . .

Court's Memorandum at 2-3. In addition to its argument based on separation of powers, the Court cites the statutory rights of the Court located at 16 P.S. § 1620:

The salaries and compensation of county officers shall be as now or hereafter fixed by law. The salaries and compensation of all appointed officers and employes who are paid from the county treasury shall be fixed by the salary board created by this act for such purposes: Provided, however, That with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employes paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employes. **The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employes as may be vested in the judges or other county officers.**

16 P.S. § 1620 (emphasis added). The Court argues:

While judicial employes may engage in collective bargaining regarding the financial aspects of their employment, the Commonwealth Court clearly stated in Teamsters Local 115 [619 A.2d 382 (Pa. Commw., 1992)] that the separation of powers principles set forth in Beckert would be violated if the executive or legislative branches attempted to interfere with judicial supervision of employes after a collective bargaining agreement existed. 619 A.2d. at 387. . . Thus, while the Courts may not interfere in organizing since

organizing does not implicate the Judiciary's hire, fire and supervisory powers, this does not grant the Board broad powers to reach into the Judiciary's hire and fire rights after an agreement is reached. Id. at 389-390; see also 16 Pa. Stat. Ann. § 1620 (delineating the roles of the Courts and County in labor negotiations); L.J.S., 744 A.2d at 799.

Court's Memorandum at 5,6.

In its argument, the Court cites American Federation of State, County and Municipal Employees, District Council 87 v. Luzerne County, 35 PPER ¶ 126 (Final Order, 2004). In Luzerne County, the Board held that a Hearing Examiner's dismissal of charges against the Luzerne County Court of Common Pleas was proper because the separation of powers doctrine precluded the review of the court's action by the Board. The Board in Luzerne County held:

Although the Board may not intrude upon the judiciary's exclusive authority to perform its judicial role in the administration and dispensation of justice . . . the Board has the authority to evaluate, under the principles of PERA, a court's relationship with court-appointed employees who are covered by PERA. . . .

. . . .

[T]he powers of the unified judiciary in Pennsylvania are granted by Article V, Section 1 of the Pennsylvania Constitution. The separation of powers doctrine recognizes the wholly distinct and separate functions of the respective branches of government and prohibits the intrusion upon those functions by other branches. Pa. Const. Art. V § 1; Beckert v. AFSCME, 425 A.2d 859 (Pa. Cmwlth. 1981). The Pennsylvania Constitution empowers the courts of the Commonwealth "to do all such things as are reasonably necessary for the administration of justice." Beckert, 425 A.2d at 862 (citing Sweet v. PLRB, 457 Pa. 456, 322 A.2d 362 (1974)). In Beckert, the Commonwealth Court expressly held that "the discharge of a judicial employee is a judicial power vested by our Constitution in the courts. That power may not, consistent with the constitutional doctrine of separation of powers, be policed, encroached upon, or diminished by another branch of government." Beckert, 425 A.2d at 862. "PERA cannot constitutionally be interpreted as immunizing [judicial] employees from the inherent judicial power of discharge. Given that such a power is a judicial one under the Pennsylvania Constitution, it would cease to be a judicial power if its exercise was subject to the monitoring and review of another branch of government." Id. at 863. "For some non-judicial branch of government to be given the power to review such decisions would represent an encroachment on the judiciary's control of hiring and discharging court employees." Id.

The Pennsylvania Juvenile Act expressly grants care, custody and control of detained children to the Court exclusively for

both temporary and long-term detentions and for both pre-adjudication and post-adjudication detentions. 42 Pa.C.S.A. §§ 6325-6352. In this case, the record clearly established that the Detention Center had a long history of rodent and cockroach infestation, a leaky roof, inadequate handicap access, no facilities for schooling or physical activity, no rooms for physical examinations, inadequate heating, plumbing and ventilation and no air conditioning. The Detention Center was originally constructed as a women's prison, not a therapeutic detention facility for children. The statutorily mandated therapeutic purposes of juvenile detention could not be served by the Detention Center, and the rodent and insect infestation threatened to infect the detained children with disease. **The Court, in the exercise of its judicial function to effectuate its statutory and constitutional obligations to properly provide for the care and custody of detained children, removed them from the Detention Center. The Court's action was a lawful exercise of its judicial function within the meaning of Beckert. Accordingly, the separation of powers doctrine mandates that this Board is unauthorized to review or evaluate the Court's closure of the Detention Center or the furlough of the court appointed child care employes under PERA.**

Luzerne County, supra. (emphasis added).

The Court in this matter argues that Luzerne County stands for the proposition that "the Board has recognized that it cannot, consistent with the separation of powers doctrine, insert itself into court personnel decisions." Court's Memorandum at 6. While I agree with the Court that, generally, the Court does have freedom from Board oversight when it exercises its judicial function to effectuate its statutory and constitutional obligations, I disagree with the Court that the freedom applies to this case. Instead I find, as I did in Allegheny Court Association of Professional Employees v. County of Allegheny and Allegheny Court of Common Pleas, 49 PPER ¶ 21 (Proposed Decision and Order, 2017)², that Luzerne County is more nuanced than a general prohibition of Board involvement in Court matters. I find that Luzerne County stands for the following: a Court's actions will be shielded from Board review under PERA pursuant to the separation of powers doctrine when the Court exercises its judicial function to effectuate its constitutional or statutory obligations. Further, evidence that the Court has exercised its judicial function must come from the record, as was the case in Luzerne County. For example, in Luzerne County, the Board relied on the following facts:

On December 6, 2002, President Judge Conahan, Juvenile Judge Ciavarella and other Court officials held a meeting with Union officials regarding the planned closing of the Detention Center due to the unsanitary conditions that threatened the health safety and welfare of the juvenile detainees and increased the risk of liability. There was no representative from the Commissioner's Office at the meeting. **One week later,**

² No exceptions were filed to this Proposed Decision and Order and it became final.

President Judge Michael Conahan determined the Detention Center unfit, directed the cessation of Detention Center operations and informed court-appointed bargaining unit employees that the Detention Center would cease operation as of 11:59 p.m. on December 31, 2002 and that staff would be furloughed effective January 1, 2003.

Id. (emphasis added). Thus, in Luzerne County, there was (1) a clear and distinct act by the Court, in the form of a determination and communication of the President Judge, and (2) a clear reliance by the Court upon the its statutory obligations which supported the Board's decision that the Board was barred by the separation of power doctrine from reviewing the Court's actions.

Turning to this case, there is no evidence in the record that shows how Pawlowski's and Kelly's decision to abrogate Guarino's Weingarten rights were a clear and distinct act by the Court, in the form of a determination or communication by the President Judge akin to Luzerne County. The record only shows that Kelly informed Guarino that it was the position of the Court that court employees were not "entitled to" Weingarten rights. Neither Kelly nor Pawlowski are the members of the judiciary and the record does not show that the decision to deny Guarino's Weingarten rights came from a policy promulgated by a judge of the Court.

Further, and still following the analysis from Luzerne County, the record in this matter does not support a conclusion that the abrogation of Guarino's Weingarten rights was based on a clear reliance on the Court's statutory obligations or constitutional authority. While I certainly agree with the Court that, generally, investigations of employees are within the Court's exclusive power to supervise employees pursuant to Section 1620 (Court's Memorandum at 7), it is also clear that public employees in Pennsylvania have Weingarten rights. The Pennsylvania Supreme Court has held that "under PERA the Weingarten right of accompaniment is based upon the right of an individual to engage in mutual aid and protection" guaranteed by Section 401 of PERA. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 916 A.2d 541 (Pa. 2007). Thus, contrary to Pawlowski's and Kelly's decision that Guarino was not "entitled to" Weingarten rights, the Supreme Court has held that public employees in Pennsylvania are in fact entitled to Weingarten rights.³ Moreover, the Supreme Court held that it is in the public interest to allow public sector employees to have process guaranteed by Weingarten in investigatory interviews:

Moreover, the public interest in both the private and public sectors are served by the process that encourages "getting to the bottom of the incident," at an early stage to avoid unwarranted discipline . . . Public sector employers and employees profit from the making of a fully informed decision prior to disciplining an employee. . . .

³The Pennsylvania Supreme Court did not make any distinction in Office of Administration between public employees supervised by the Courts and other public employees.

Id. Thus, the Supreme Court held that that the observance of Weingarten rights by public employers in investigatory interviews benefits the public employe, the public employer and the public at large. While it is clear that the Board cannot infringe on the Court's authority to supervise its employes, it is, however, not clear from this specific record that the Court's investigatory power would have been infringed by adherence to Guarino's Weingarten rights. In this case, the only demonstrated exercise of the Court's supervisory power was the requirement that Guarino participate in an investigatory meeting. The record does not support a conclusion that the recognition of Guarino's Weingarten rights would have stopped the meeting from happening or interfered with the meeting in any way. In fact, following Office of Administration, supra, the investigatory meeting with Guarino would have been *positively impacted* by the observance of Guarino's Weingarten rights. I find therefore that in this case, and on these specific facts, the observance of Guarino's Weingarten rights would not have infringed upon or conflicted with the Court's exclusive supervisory power, and, following Luzerne County, the Board may review the Court's actions with respect to its public employes.

For the above reasons, the Court's Motion to Dismiss is denied and I find that it violated Section 1201(a)(1) of PERA when it denied Guarino's Weingarten rights.

CONCLUSIONS

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

1. The Court is a public employers 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 Court has committed an unfair practice in violation of Section 1201(a)(1) 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 the Court 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:
 - (a) 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 bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days;

(b) 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; and

(c) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 fifteenth day of January, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SEIU LOCAL 668, PSSU

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CASE NO. PERA-C-19-26-E

v.

CHESTER COUNTY COURT OF COMMON PLEAS

AFFIDAVIT OF COMPLIANCE

The Court hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed 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