

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :
INDEPENDENT UNION :
 :
v. : CASE NO. PERA-C-22-120-W
 :
COUNTY OF ALLEGHENY :

PROPOSED DECISION AND ORDER

On May 10, 2022, Allegheny County Prison Employees Independent Union (ACPEIU or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Allegheny County (County or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) when on December 20, 2021, the County denied a request from the Union for information relating to a disciplinary grievance.

On June 3, 2022, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating August 26, 2022, via Microsoft Teams, as the time and manner of hearing.

The parties agreed to proceed by way of joint stipulations of fact in lieu of appearing before the Board for an evidentiary hearing. The Board received the duly executed joint stipulations of fact on August 26, 2022. The Union submitted a post-hearing brief on August 31, 2022. The County submitted a post-hearing brief on November 1, 2022.

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

FINDINGS OF FACT

1. The Union is a labor organization and the exclusive collective bargaining representative of Allegheny County Jail Corrections Officers within the meaning of the Act. (Stipulation ¶ 1).

2. The County is the public employer of the Union's members within the meaning of the Act. (Stipulation ¶ 2).

3. The Union and County are parties to a Collective Bargaining Agreement (hereinafter "CBA") setting forth wages, benefits and other terms and conditions of employment. The CBA contains a grievance and arbitration procedure for the resolution of contractual disputes. (Stipulation ¶ 3).

4. The Union processed to arbitration a grievance contesting the 10-day suspension of Officer Michelle Argotti. (Stipulation ¶ 4).

5. Prior to the imposition of a disciplinary suspension, the County may schedule and hold fact finding hearings in which Jail management staff questions a corrections officer who has allegedly

violated Jail work rules. The officer has the right to bring a Union representative to the fact-finding hearing. The County subsequently transcribes the questions posed by management and answers given by the officer into a fact-finding document. The Officer is provided a copy of the document to review and sign for his/her records. An example of a fact-finding document from an earlier case between the parties is set forth as Joint Exhibit 1. (Stipulation ¶ 5).

6. In addition to questioning at the fact-finding hearing, corrections officers often author and sign statements concerning the events giving rise to later investigative and disciplinary proceedings against the officer. An example of such a statement from an earlier case between the parties is set forth as Joint Exhibit 2. (Stipulation ¶ 6).

7. Other employees who are or may be witnesses to the events giving rise to the investigative and disciplinary proceedings often write and sign statements detailing their observations and actions. (Stipulation ¶ 7).

8. If, after completion of the fact-finding, the County determines that a violation of Jail rules has occurred, it may schedule and hold a pre-disciplinary conference (hereinafter "PDC") in which a panel of Jail management staff questions the corrections officer on charges that he violated Jail rules. The officer has the right to bring a Union representative to the PDC. The County subsequently transcribes the questions posed by management and the answers given by the officer into a PDC document. The Officer is provided a copy of the document to review and sign for his/her records. An example of a PDC document from an earlier case between the parties is set forth as Joint Exhibit 3. (Stipulation ¶ 8).

9. If the Warden imposes a disciplinary penalty, he presents it to the officer in the form of a written disciplinary letter. (Stipulation ¶ 9).

10. The Allegheny County Jail management staff held a fact-finding hearing in which Corrections Officer Michelle Argotti appeared and answered questions. Jail management staff then drafted a written fact-finding document setting forth a transcription of the questions asked and answers provided. (Stipulation ¶ 10).

11. The Allegheny County Jail management staff held a pre-disciplinary conference in which Michelle Argotti appeared and answered questions. Jail management staff then drafted a PDC document setting forth a transcription of the questions asked and answers provided. (Stipulation ¶ 11).

12. Warden Harper issued a 10-day suspension letter to Argotti for the alleged violation of Jail rules. (Stipulation ¶ 12).

13. The Union filed a grievance on Argotti's behalf challenging the 10-day suspension as having been issued without just cause. (Stipulation ¶ 13).

14. The Union presented the County with a February 15, 2022 written request for information concerning Argotti's suspension. A true and correct copy of that request is attached hereto and incorporated herein by reference as Joint Exhibit 4. (Stipulation ¶ 14).

15. The Union's request identifies the following information:

- a. The 10-day suspension letter to the grievant, Michelle Argotti.
- b. The grievance contesting the suspension and all subsequent appeals and responses to the grievance.
- c. The fact-finding document.
- d. The pre-disciplinary conference (PDC) document.
- e. Any and all statements written by the grievant (Argotti) and any other witnesses.
- f. The prior discipline letters issued to Argotti between January 1, 2013 and December 31, 2014.

(Stipulation ¶ 15).

16. The grievance has been processed to arbitration, an arbitrator has been selected and a hearing date has been set for October 3, 2022. (Stipulation ¶ 16).

17. The County has failed to produce:

- a. The fact-finding document.
- b. The pre-disciplinary conference (PDC) document.
- c. Any and all statements written by the Grievant (Argotti) and any other witnesses.

(Stipulation ¶ 17).

DISCUSSION

In its Charge, the Union asserts that the County violated Section 1201(a)(1) and (5) of the Act when the County refused to provide a fact-finding document; a pre-disciplinary conference document, and any and all statements written by Argotti when requested by the Union in connection with a grievance over discipline issued to Argotti. The County argues that the documents requested are witness statements and that therefore the County does not have to provide them to the Union.

The law is clear that an employer is obligated to provide relevant information requested by the union, which the union needs to

intelligently carry out its grievance handling and collective bargaining functions. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Corrections, 17 PPER ¶ 17072 (Proposed Decision and Order, 1986), 18 PPER ¶ 18057 (Final Order, 1987). The standard for relevance is a liberal discovery type standard that allows the union to obtain a broad range of potentially useful information. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). Under federal cases which the Board has found persuasive, information that pertains to employees in the bargaining unit is presumptively relevant. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998); NLRB v. U.S. Postal Service, 888 F.2d 1568 (11th Cir. 1989); NLRB v. Pfizer, Inc., 763 F.2d 887 (7th Cir. 1985). If the record contains substantial and legally credible evidence that the union requested relevant information and the employer improperly denied the request, the employer must be found in violation of its bargaining obligation. AFSCME Council 13, supra.

With respect to witness statements, the Board adopted the NLRB's holding in Anheuser-Busch, Inc., 237 NLRB 982 (1978), that witness statements are excluded from an employer's duty to provide information. Id.; Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Greene SCI, 34 PPER 52 (Final Order, 2003). Though the NLRB reversed its policy on witness statements, the Board reaffirmed its policy that witness statements are excluded from an employer's duty to provide information in Gas Works Employees Union Local 686 UWUA v. Philadelphia Gas Works, 45 PPER ¶ 68 (Final Order, 2013). In Philadelphia Gas Works, the Board held: "the rationale behind the Board's policy for excluding witness statements is to promote full and open disclosure by persons who may have knowledge of alleged employee misconduct and to prevent the risk that witnesses may be coerced or intimidated by either party."

Turning to this matter, I first address the Union's request for Argotti's written statements.¹ The County argues that it does not have to produce such a statement following Philadelphia Gas Works, supra. I agree with the Union that the bar on the production of "witness statements" does not apply to statements made by the grievant, in this case Argotti. A witness is an observer, onlooker or spectator. In contrast, the grievant to a discipline action by an employer is not a witness in that sense but closer - by analogy - to the defendant in a criminal proceeding. Therefore, I do not think it is proper in the context of this matter to call Argotti a witness, and her statements "witness statements" as she was the subject of the discipline that is being grieved. Furthermore, the stated policy reasons made by the Board in Philadelphia Gas Works, supra, which supported the exclusion of witness statement production do not apply when the "witness" in question is the grievant who was disciplined and is challenging the discipline through arbitration. I do not find persuasive the argument advanced by the County that a public employee who is the subject of a disciplinary investigation by an employer would be in danger of being

¹In its brief, the Union withdrew its request for statements made by employees that are not Argotti, and I will not order the County to provide them. The Union would not have a right to those statements under Philadelphia Gas Works, supra.

intimidated or coerced by the union if the union saw written statements by that employe produced by the employer during the employer's investigation. Indeed, I find it more compelling that the Union may need any and all information about statements made by such a public employe in conversation with the employer to advance a just cause argument to an arbitrator. See Commonwealth of Pennsylvania (Department of Public Welfare), 17 PPER ¶ 17042 (Final Order, 1986) (Holding that the Union must have access to pre-disciplinary investigation documents in order to investigate lack of just cause for discipline and to identify discrimination).

The bar against the production of witness statements is an exception to a strong rule that the employer must provide relevant information requested by the union which the union needs to intelligently carry out its grievance handling including making an intelligent evaluation of the underlying claim. Commonwealth of Pennsylvania (Department of Public Welfare), supra; NLRB v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967). I am not persuaded by the County's arguments in this matter that the exclusion must be broadened to encompass statements made by the grievant.

The Union also requested the fact-finding document and the pre-disciplinary conference (PDC) document. The County did not provide them and argues, on page 16 of its brief, that the documents are "witness statements" and therefore the County does not need to produce them to the Union pursuant to Philadelphia Gas Works, supra. As discussed above, the bar on "witness statements" does not apply to documents containing the statements of the grievant. Furthermore, the Union must have access to pre-disciplinary documents created by the employer to investigate issues of just cause and discrimination. Commonwealth of Pennsylvania (Department of Public Welfare), supra. To the extent these documents have statements from witnesses that are not Argotti, those witness statements may be redacted before production to the Union.

CONCLUSIONS

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

1. Allegheny County is a public employer within the meaning of Section 301(1) of PERA.
2. ACPEIU is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. Allegheny County has 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 PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the County of Allegheny 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 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.

3. Take the following affirmative action:

(a) Immediately provide the Union with the requested fact-finding document, the pre-disciplinary conference document, and any and all statements by Argotti;

(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 bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(d) 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 ninth day of November, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :
INDEPENDENT UNION :
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COUNTY OF ALLEGHENY :

AFFIDAVIT OF COMPLIANCE

The County of Allegheny hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has immediately provided the Union with the requested fact-finding document, the pre-disciplinary conference document, and any and all statements by Argotti; 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