

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :
INDEPENDENT UNION :
 :
 v. : CASE NO. PERA-C-22-28-W
 :
COUNTY OF ALLEGHENY :

PROPOSED DECISION AND ORDER

On January 24, 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 in the form of a Prison Segregation Log.

On March 11, 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 May 18, 2022, via Microsoft Teams, as the time and manner of hearing.

The hearing was held on May 18, 2022, via Teams, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on August 12, 2022. The County submitted a post-hearing brief on September 13, 2022.

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).

2. ACPEIU is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).

3. The County Prison has multiple Segregation Units. Inmates in these units are segregated from the main general inmate population. There is a Housing Unit which is for juvenile inmates who need to be segregated from the general prison population. There is a Protective Custody Unit to which inmates can be asked to be assigned if they do not feel safe in the general population. There is a Restricted Housing (RHU) and Administrative Custody Unit. The Prison also has an Acute Mental Health Unit for inmates with serious mental health conditions. Juveniles are assigned to Segregation Units automatically based on their age. Inmates are assigned to Protective Custody Segregation Units based on their request. Inmates are assigned to the Mental Health Segregation Unit based on a diagnosis. Inmates in the RHU or

Administrative Custody units are assigned based on some rule infraction or for the safety of themselves and others in the Jail. (N.T. 20-23).

4. Bargaining-unit Corrections Officers work on all of the Prison's Segregation Units. (N.T. 26).

5. An email is prepared and sent by the shift commander at the end of each shift which contains information of all inmate infractions which happened on that shift. Included with the email is a Segregation Log. The Log contains a chart of inmates assigned to a Segregation Unit. The Log is in the form of a spreadsheet which contains the inmate's name, their Department of Corrections identification number, and which unit they are coming from and which unit they are going to. Attached to the log are the relevant Misconduct Reports of the inmate which is a form created by Corrections Officers describing the discipline infraction committed by the inmate. There may also be attached an Informal Resolution report. (An Informal Resolution is a way Corrections Officers resolve minor inmate infractions without escalating to the level of formal discipline.) Also attached to the Log will be a Segregation Unit Placement / Assessment form approved by a shift commander and a Medical and Mental Health Segregation Clearance Placement form approved by a Prison mental health professional. The form and content of these Logs differs slightly depending on the particular Segregation Unit the inmate has been assigned to. The email goes to Prison management and those bargaining unit Corrections Officers regularly assigned to the particular Segregation Unit. (N.T. 28-37, 84; Joint Exhibit 2).

6. Segregation Logs have been used by the Union as general information. In particular, the Union is interested in the information found in the misconduct reports and the informal resolution reports. The Union is not interested in the Segregation Unit Placement / Assessment form and the Medical and Mental Health Segregation Clearance form. The Union President used the information in Segregation Logs to prepare for previous contract negotiations as they can show how many assaults the Corrections Officers have been involved in as victims. Information on assault garnered from Segregation Logs was used by the Union in the 2019 interest arbitration proceedings. The current Union President wants to use the information in the Segregation Logs and attachments to show how Corrections Officers' job has grown more dangerous and that more drugs and weapons are being brought into the Jail. The Union would use this information in collective bargaining to show how the Corrections Officers' job is more dangerous and that they need more compensation. (N.T. 46-47, 89-90, 107-110, 129-132).

7. Corrections Officers generally have access to information on inmates through an electronic database. This database includes the inmates' criminal history information, as well as some medical information, personal information, family information, housing unit history, whether an inmate has been in Protective Custody before, whether they have been in the Acute Mental Health Unit before, and the inmates' home addresses. (N.T. 31, 42-44, 86).

8. The Jail has another list called the Inmate Transfer List. This list details which inmates are being transferred from one housing unit to another. All Corrections Officers receive this list. This list will detail if an inmate has been transferred to a Segregation Unit. (N.T. 77-80, 108).

9. In late December 2021, the current Union President made a written request to be added to the Segregation Log distribution list. He did not work on any Segregation Unit at that time. The County denied the request. (N.T. 90-91).

10. The Parties are subject to a Collective Bargaining Agreement (CBA) which consists of the 1994-1997 consolidated agreement and numerous subsequent interest arbitration awards. Article V of the CBA states "Upon request, the County and the Union will furnish to each other non-confidential information relating to collective bargaining and the processing of grievances in accordance with the law." (Joint Exhibit 1).

DISCUSSION

In its Charge, the Union asserts that the County violated Section 1201(a)(1) and (5) of the Act when the County did not agree to include the Union President on Segregation Log emails. In its Brief, the Union argues that the County owes a duty to the Union to provide relevant information that the Union needs to perform as the exclusive representative of the bargaining unit members.

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 the 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, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Corrections, supra.

The record here shows that the Employer has an obligation to provide part of the information contained in the Segregation Log emails, but not all of the information. The Segregation Log emails that the Union President is requesting to be copied on contain a variety of discreet documents. Included with the email is a Segregation Log. The Log contains a chart of inmates assigned to Segregation Units. Attached to the log are the relevant Misconduct

Report of the inmate which is a form created by Corrections Officers describing the discipline infraction committed by the inmate. There may also be attached an Informal Resolution report. Also attached to the Log will be a Segregation Unit Placement / Assessment form and a Medical and Mental Health Segregation Clearance Placement form. The form and content of these Logs differs slightly depending on the particular Segregation Unit the inmate has been assigned to.

The record shows that the Union is entitled to the information contained in the Log and the various Misconduct and Informal Resolution Reports as the information in those documents is relevant to the Union. This information, following North Hills School District, supra, is presumptively relevant to the Union as the documents, on their face, pertain to Corrections Officers as they are involved in the misconduct incidents that lead to many of the segregation actions of inmates at the jail. Additionally, at the hearing, the Union persuasively showed that it has an interest in the information in the Segregation Logs and Misconduct and Informal Resolution attachments because that information could potentially allow the Union to show how Corrections Officers' job has grown more dangerous; that more drugs and weapons are being brought into the Jail; and that bargaining unit members need more compensation due to their jobs being more dangerous.

The record does not however support a conclusion that the Union is entitled to the information contained in the Segregation Unit Placement / Assessment form and the Medical and Mental Health Segregation Clearance Placement form because the information in these documents is not relevant to the Union. The Union President, on cross examination, testified that the Union did not need these forms in order to carry out its duties. (N.T. 108-109, 116-117). This testimony, elicited by the County, is sufficient to counter the presumption that the information in these forms is relevant to the Union. North Hills School District, supra.

Therefore, based on the above, the County has committed an unfair practice in violation of Section 1201(a)(5) by not providing the Segregation Logs and related Misconduct Reports and Informal Resolution reports to the Union President when he demanded them. The County did not commit an unfair practice when it refused to provide the Segregation Unit Placement / Assessment forms and the Medical and Mental Health Segregation Clearance Placement forms to the Union President when he demanded them.

As I have disposed of this matter based on the AFSCME Council 13, AFL-CIO, supra, line of cases, I will not further address the Union's argument that the County repudiated the contract between the parties, which would also be a violation of Section 1201(a)(5). Were I to decide this matter on the theory of repudiation of contract, however, the result would be the same. I would find that the County repudiated the contract when it did not provide the Segregation Logs and related Misconduct Reports and Informal Resolution reports, but had a sound arguable basis for not providing the Segregation Unit Placement / Assessment forms and the Medical and Mental Health Segregation Clearance Placement forms.

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 Segregation Logs and related Misconduct Reports and Informal Resolution Reports;
 - (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 thirtieth day of September, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner

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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 complied with the Proposed Decision and Order as directed therein; that it immediately provided the Union with the requested Segregation Logs and related Misconduct Reports and Informal Resolution reports; 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