COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| TEAMSTERS LOCAL UNION NO. 764 | : | |
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| v. | : | Case No. PERA-C-21-263-E |
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| COLUMBIA COUNTY | : | |

**PROPOSED DECISION AND ORDER**

On November 23, 2021, Teamsters Local Union No. 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Columbia County (County or Employer), alleging that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally implementing a Covid-19 policy, which required unvaccinated employes to mask at all times, quarantine in cases of exposure or travel, and to utilize their own contractual paid leave for such absences. The Union also alleged that the County's policy only required fully vaccinated employes to mask periodically and permitted them to receive their regular pay without use of contractual paid leave when subject to quarantine. The Union further alleged that it first received notice of the County's policy on October 1, 2021.

On February 2, 2022, the Board Secretary issued a Complaint and Notice of Hearing, directing a hearing on March 7, 2022, if necessary. On February 23, 2022, the hearing was continued to May 19, 2022 at the County's request and without objection by the Union.

During a prehearing conference on May 13, 2022, the parties agreed to bifurcate the proceedings to first address a timeliness argument by the County prior to a hearing on the merits of the charge. As a result, the parties agreed to proceed by way of joint stipulations of fact in lieu of appearing before the Board for an evidentiary hearing on the limited issue of the timeliness of the charge. The Board received the duly executed joint stipulations of fact on June 21, 2022. The parties also each filed post-hearing briefs in support of their respective positions regarding the timeliness of the charge on June 21, 2022.

The Hearing Examiner, on the basis of all of the matters and documents of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (Joint Exhibit 1)[1]

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Joint Exhibit 1)

[1] The joint stipulation of facts has been designated as Joint Exhibit 1. The parties also submitted several additional attachments, which they identified as Exhibits A, B, C, D, E, F, G, and H, which have been designated as Joint Exhibits 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

3. The Union is the exclusive bargaining agent for a unit of court-appointed professional employes at the County. (Joint Exhibit 2; PERA-R-05-378-E)

4. The Union is also the exclusive bargaining agent for a unit of court-related nonprofessional employes at the County. (Joint Exhibit 3; PERA-R-11-342-E)

5. The Union and the County are parties to two separate collective bargaining agreements (CBA) covering each unit. The CBA for the court-appointed professional unit is effective January 1, 2020 to December 31, 2022, while the CBA for the court-related nonprofessional unit is effective January 1, 2020 to December 31, 2023. (Joint Exhibit 1, 2, 3)

6. By email dated April 19, 2021, the County, through its Human Resources Director, Marcie Strachko, notified all County employes, including the Union's bargaining unit members and stewards, that a Covid-19 policy would become effective on May 6, 2021. (Joint Exhibit 1, 4)

7. The stewards serve as day-to-day representatives of the Union enforcing the CBAs through the grievance process, providing representation when an employe invokes his or her Weingarten[2] rights, and performing other representational activities. (Joint Exhibit 1)

8. The Covid-19 policy addressed reopening the "Columbia County Courthouse and Annex buildings," as well as masking and quarantine requirements for both fully vaccinated and unvaccinated employes. Specifically, the policy stated that employes who were fully vaccinated did not need to wear masks in small groups of vaccinated people or quarantine when exposed to a positive case or for any travel, while employes who were not vaccinated still needed to mask at all times and quarantine when exposed to a positive case or for travel, using their own paid time. (Joint Exhibit 1, 4)

9. Ty Sees, President and Business Representative for the Union, did not receive a copy of the April 19, 2021 Covid-19 policy email until October 1, 2021. (Joint Exhibit 1, 5)

DISCUSSION

The Union has alleged that the County violated Section 1201(a)(1) and (5) of the Act[3] by unilaterally implementing a Covid-19 policy, which required unvaccinated employes to mask at all times and quarantine in cases of exposure or travel, and to utilize their own contractual paid leave for such absences, while only requiring fully vaccinated employes to mask periodically and permitting them to receive their regular pay without use of contractual paid leave when subject to quarantine. The Union also alleged that its charge is timely under the Act because it first received notice of the

[2] NLRB v. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975).

[3] Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) 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. 43 P.S. § 1101.1201.

County's policy on October 1, 2021. The County, meanwhile, contends that the charge should be dismissed because it was not timely filed pursuant to the Act. As set forth above, the charge has been bifurcated to initially address only the timeliness of the charge.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements that were made more than four months prior to the filing of the charge." 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER 24 (Final Order, 2004). As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes operational and serves to guide the conduct of employes, even though no employes may have been disciplined or corrected for failure to abide by the directive. *Id.* However, notice to employes is not considered notice to the union unless it is shown that the employes are the union's agents. Teamsters Local 77 v. Delaware County, 29 PPER ¶ 29087 (Final Order, 1998), aff'd sub nom., County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999), appeal denied, 561 Pa. 679, 749 A.2d 473 (2000); AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Military Affairs, 22 PPER ¶ 22205 (Final Order, 1991).

In this case, the record shows that the Union's charge was not timely filed and therefore must be dismissed as a matter of law. As stated above, the parties stipulated that, by email dated April 19, 2021, the County, through its Human Resources Director, Marcie Strachko, notified all County employes, including the Union's bargaining unit members and stewards, that a Covid-19 policy would become effective on May 6, 2021. The Covid-19 policy addressed reopening the "Columbia County Courthouse and Annex buildings," as well as masking and quarantine requirements for both fully vaccinated and unvaccinated employes. Specifically, the policy stated that employes who were fully vaccinated did not need to wear masks in small groups of vaccinated people or quarantine when exposed to a positive case or for any travel, while employes who were not vaccinated still needed to mask at all times and quarantine when exposed to a positive case or for travel, using their own paid time. The parties further stipulated that the stewards serve as day-to-day representatives of the Union enforcing the CBAs through the grievance process, providing representation when an employe invokes his or her Weingarten rights, and performing other representational activities.

The only logical inference to be drawn from the parties' stipulation regarding the duties of the Union stewards is that the stewards are cloaked in both actual and apparent authority to act on behalf of the Union.[4] Indeed,

[4] The Board has long recognized that an agreement made between agents of the employer and union are binding upon the agent's principal if the agent has apparent authority to negotiate on behalf of that principal. AFSCME Local 394 v. City of Philadelphia, 27 PPER ¶ 27185 (Final Order, 1996). The principle of apparent authority in labor relations is premised upon the need

it cannot be seriously contended that the stewards are not agents of the Union where they enforce the CBAs through the grievance process. Such a stipulation must yield an inference that the stewards are authorized to file grievances on behalf of the Union, to represent the Union and its positions to the County during the grievance process, and to bind the Union to any agreements reached with the County in the adjustment of those grievances. To conclude otherwise would require a complete negation of the parties' stipulation in this regard. What is more, the record shows that the stewards provide representation to the employes in various other capacities, including during employer-led investigatory interviews. These types of duties are the hallmark of agency status, as the stewards must continually serve as the face of the Union before the County and the bargaining unit employes.

In its post-hearing brief, the Union argues that the stewards should not be considered agents of the Union because the parties limited the scope of the stewards' authority to act on behalf of the Union pursuant to the CBA. However, Article V of the professional unit's CBA does not diminish the stewards' agency status in any way, especially when considered against the parties' stipulation regarding the stewards in this proceeding. (Joint Exhibit 2). And, even if Article V of the CBA does somehow limit the scope of the stewards' authority to act on behalf of the Union, it nevertheless recognizes the stewards' authority to act on the Union's behalf "for the purpose of processing grievances, attending meetings, and other representational activities." (Joint Exhibit 2). Furthermore, the Union concedes that there is no similar provision in the CBA for the nonprofessional unit, which could even arguably limit the scope of the stewards' agency status. (*See* Union brief at p. 9, fn 2; Joint Exhibit 3).

Instead, as the County points out, the record shows that the stewards are agents of the Union because they serve as the Union's representative on the jobsite and are involved in the grievance process, which the Federal courts have deemed sufficient to satisfy agency status requirements. *See* Kovach v. Service Personnel and Employees of the Dairy Industry, Local Union 205, 58 F.Supp. 3d 469 (W.D. Pa. 2014)(citing NLRB v. Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Ass'n, 1992 WL 372381 at 20-21 (3rd Cir. 1992)(union steward was an agent of the union where he was "the union's conduit for members to air their grievances to the employer" and "the union's representative for the members on the jobsite"). The record here certainly establishes that the stewards, at the very least, also serve as a conduit in the grievance process and represent employes at the jobsite. Additionally, at least one hearing examiner for this Board has reached a similar result on multiple occasions. AFSCME DC 47 Local 2186 v. City of Philadelphia, PERA-C-18-310-E (Proposed Decision and Order, 2019); AFSCME DC 88 v. Warminster Township, 50 PPER 23 (Proposed Decision and Order, 2018).

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of the parties to the bargaining process to be able to rely on the promises and commitments of their bargaining counterpart. *Id.* at 425-426. The Board has found that union presidents, chief negotiators, and the highest-ranking union official in a union chapter all possess apparent authority sufficient to bind their union. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, 24 PPER ¶ 24055 (Final Order, 1993)(union president); Lehighton Area Education Support Personnel Ass'n v. Lehighton School District, 23 PPER ¶ 23133 (Proposed Decision and Order, 1992)(chief negotiator); SEIU Local 585, 15 PPER ¶ 15101 (Proposed Decision and Order, 1984)(highest ranking union official in chapter).

As such, it must be concluded that the stewards are agents of the Union on these facts, and therefore, the Union received notice of the County's impending unilateral implementation of the Covid-19 policy on April 19, 2021, as the County unequivocally notified the Union stewards that the Covid-19 policy would become effective on May 6, 2021.[5] Likewise, the record shows that the County did, in fact, apply the policy to employes following the May 6, 2021 implementation, thereby proving that the policy was implemented. (Joint Exhibits 8, 9). Accordingly, the Union was required to file the instant charge within four months of May 6, 2021, but did not do so until November 23, 2021, well beyond the four-month limitations period. Consequently, the charge must be dismissed as untimely consistent with Section 1505 of PERA.[6]

## 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 charge is untimely under Section 1505 of PERA.

## ORDER

In view of the foregoing and in order to effectuate the policies of PERA the examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

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[5] Of course, the statute of limitations did not begin to run until May 6, 2021, as that was the date the policy became effective and began to govern the conduct of employes. It is well settled that mere statement of future intent to engage in activity, which arguably would constitute an unfair labor practice, does not constitute an unfair labor practice for engaging in that activity. Upper Gwynedd Township, at 264. To that end, the County could have potentially changed its mind between April 19 and May 6, 2021, and not implemented the policy. Thus, the Union could not have filed the instant charge during the time between April 19 and May 6, 2021 because the Board would have dismissed the charge as prematurely filed, as that time was prior to actual implementation. City of Allentown, 19 PPER § 19190 (Final Order, 1988).

[6] As a result of this conclusion, the Board will not schedule a hearing on the merits of the bifurcated charge, and the issue is now ripe for appeal.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 15th day September, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner