

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PSCOA :
 :
 v. : Case No. PERA-C-21-148-E
 :
 COMMONWEALTH OF PA :

PROPOSED DECISION AND ORDER

On July 16, 2021, the Pennsylvania State Corrections Officers Association (PSCOA or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania (Commonwealth or Employer), alleging that the Commonwealth violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (PERA or Act) by refusing to provide information with regard to a number of requests in April, May and June 2021, which were necessary for the processing and evaluation of grievances.

On August 17, 2021, the Board Secretary issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on December 6, 2021, if necessary. The hearing ensued, as scheduled on December 6, 2021, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed post-hearing briefs in support of their respective positions on March 21, 2022.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. The Union is the exclusive bargaining representative for a unit of corrections employes at the Commonwealth. (PSCOA Exhibit 1)
4. The Union and the Commonwealth are parties to a collective bargaining agreement (CBA) effective July 1, 2020 to June 30, 2021. (PSCOA Exhibit 1)
5. Article 35 of the CBA, which governs the grievance arbitration process, provides in relevant part as follows:

Step 1: The employee, either alone, or accompanied by the [Union] Representative, or the [Union] Representative, where entitled, shall present the grievance in writing to the respective institutional/boot camp representative or official Agency designee within 15 working days of the date of the occurrence

giving rise to the dispute, or when the employee knew or by reasonable diligence should have known of the occurrence...

(N.T. 12-13; PSCOA Exhibit 1)

6. Zachary Hammers is the Union's Business Agent, who is responsible for overseeing the investigation and filing of grievances at several Commonwealth institutions, including the State Correctional Institution at Chester (SCI Chester). Jocelyn White is the Union's Local Vice President at SCI Chester, who is responsible for making requests for information to the Commonwealth. (N.T. 14, 17)

7. On March 19, 2021, White forwarded a request for information (RFI), identified as RFI 42, to Stanley Settle, who was a Commonwealth Human Resource Analyst, which stated: "[p]lease provide a copy of vacation book and all approved and/or disapproved STD-330 for the 1400-2200 hour shift on 02/04/21." (N.T. 17; PSCOA Exhibit 2)

8. The Union's March 19, 2021 request for information also included the following language:

The SI Chester local is requesting the following information for the filing of, or possible filing of, a grievance. Please provide the information in whole within 7 working days of receipt of this request.

(PSCOA Exhibit 2) (Emphasis in original)

9. Hammers testified that the bold language set forth above appears in every request for information that the Union sends out, which was corroborated by the actual requests entered as exhibits. (N.T. 18; PSCOA Exhibit 2)

10. On April 1, 2021, White forwarded a request for information, identified as RFI 43, to Dana Williams, who was the Commonwealth's Field Human Resources Officer, which provided in relevant part as follows:

Please provide a copy of all vacation selection documentation (Vacation selection sheets for COT, CO1 and CO2, any/all documentation for tracking date and time H-1 employees were offered to select vacation leave, seniority list utilized by Management to determine vacation selection order, copy of vacation book for 2021) for ALL SHIFTS.

(PSCOA Exhibit 2) (Emphasis in original)

11. On April 1, 2021, White forwarded a request for information, identified as RFI 44, to Williams, which stated: "[p]lease provide all overtime documentation (Call off Sheets, Overtime Tracking and Justification sheets, Shift Rosters, Shift Commander Reports, Voluntary Overtime sign up sheets, Voluntary and Mandatory overtime call sheets) for ALL SHIFTS from 03/21/21 to 03/27/21." (PSCOA Exhibit 2) (Emphasis in original)

12. On April 8, 2021, White forwarded a request for information, identified as RFI 51, to Williams, which stated: "[p]lease provide a copy of all shift rosters and overtime tracking and justification sheets for

11/01/2020 to 11/14/2020 for ALL SHIFTS." (PSCOA Exhibit 2) (Emphasis in original)

13. On May 18, 2021, White forwarded a request for information, identified as RFI 53, to Williams, which provided in relevant part as follows:

Please provide a copy of all discipline and investigation documentation for CO Dawson, Herman (copy of letter of suspension, copy of any and all fact finding documents of alleged incident, copy of any and all statements of alleged incident, copy/viewing of any video of alleged incident, copy of notice of PDC, copy of any PDC minutes, copy of PDC synopsis)

(PSCOA Exhibit 2)

14. On May 18, 2021, White forwarded a request for information, identified as RFI 56, to Williams, which stated: "[p]lease provide a copy of change notification for CFSI for Ramadan and all overtime documentation for CFSI (Voluntary Overtime sign-up sheets, Voluntary and Mandatory overtime call sheet and Shift Rosters) 04/04/21 to 05/15/21 for ALL SHIFTS." (PSCOA Exhibit 2) (Emphasis in original)

15. On May 18, 2021, White forwarded a request for information, identified as RFI 57, to Williams, which stated: "[p]lease provide a copy of UPO and UPM Voluntary Overtime sign-up sheets, Voluntary and Mandatory overtime call sheet and Shift Rosters for ALL SHIFTS for the past sixty (60) days." (PSCOA Exhibit 2) (Emphasis in original)

16. On May 25, 2021, White forwarded a request for information, identified as RFI 58, to Williams, which stated: "[p]lease provide a copy and/or viewing of video of 125 Magnetic Door camera, IDVS station (Control Lobby) camera, Deputy's Row Metal Detector camera, and 102 Slider (Main St view) camera for the month of April 2021 for the following times: 0530 to 0615, 0730 to 0815, 1330 to 1415 and 2130 to 2215." (PSCOA Exhibit 2)

17. On May 26, 2021, White forwarded a request for information, identified as RFI 60, to Williams, which stated: "[p]lease provide a copy of the phone records from any extension utilized to make calls for overtime from 0000 hours to 2359 hours (12/08/2020 to 12/16/2020)." (PSCOA Exhibit 2)

18. On May 26, 2021, White forwarded a request for information, identified as RFI 61, to Williams, which stated: "[p]lease provide a copy of the phone records from any extension utilized to make calls for overtime from 0000 hours to 2359 hours (01/01/21 to 01/16/21)." (PSCOA Exhibit 2)

19. On May 26, 2021, White forwarded a request for information, identified as RFI 62, to Williams, which stated: "[p]lease provide a copy of the phone records from any extension utilized to make calls for overtime from 0000 hours to 2359 hours (02/07/21 to 02/20/21)." (PSCOA Exhibit 2)

20. On June 3, 2021, White forwarded a request for information, identified as RFI 63, to Williams, which stated: "[p]lease provide all overtime documentation (Call off Sheets, Overtime Tracking and Justification sheets, Shift Rosters, Shift Commander Reports, Voluntary Overtime sign-up sheets, Voluntary and Mandatory overtime call sheets) for ALL SHIFTS from 06/23/21 to 06/29/21." Hammers testified that this request contained a

typographical error and that a subsequent email corrected the request for 05/23/21 to 05/29/21. (N.T. 61; PSCOA Exhibit 2) (Emphasis in original)

21. On June 9, 2021, White forwarded a request for information, identified as RFI 64, to Williams, which stated: "[p]lease provide a copy of vehicle log book, vehicle check sheets, any/all OSP reports, all maintenance work done on OSP vehicles for the past sixty (60) days for all vehicles that have been utilized as OSP vehicles in the year 2021." (PSCOA Exhibit 2)

22. On June 9, 2021, White forwarded a request for information, identified as RFI 65, to Williams, which stated: "[p]lease provide a copy of IDVS for CO Hayes, Deron and CO Burgess, Nathaniel, time statements for CO Hayes, Deron and CO Burgess, Nathaniel, rosters and overtime justification tracking sheets for all shifts for the month of May 2021." (PSCOA Exhibit 2)

23. On June 9, 2021, White forwarded a request for information, identified as RFI 66, to Williams, which stated: "[p]lease provide a copy and/or viewing of video for EB housing unit, A, B, and C corridors and A, B, C, D and E Throats for the hours of 0830 to 1300 on 05/27/21." (PSCOA Exhibit 2)

24. On June 9, 2021, White forwarded a request for information, identified as RFI 67, to Williams, which stated: "[p]lease provide a copy of all overtime documentation (Call off Sheets, Overtime Tracking and Justification sheets, Shift Rosters, Shift Commander Reports, Voluntary Overtime sign up sheets, Voluntary and Mandatory overtime call sheets) for ALL SHIFTS from 05/30/21 to 06/05/21." (PSCOA Exhibit 2) (Emphasis in original)

25. On June 9, 2021, White forwarded a request for information, identified as RFI 68, to Williams, which stated: "[p]lease provide a copy of a list of all H-1 employees that have been coded as ADMIN leave between 05/01/2021 to present and dates of absence and reason for ADMIN leave." (PSCOA Exhibit 2)

26. On June 9, 2021, White forwarded a request for information, identified as RFI 69, to Williams, which stated: "[p]lease provide a copy of EOR packet (DC121 Part 1, DC121 Part 3, DC457, Medical Photos, Video Review, Investigation Reports, Witness Statements and Misconduct #D290969) for staff assaults 05/13/21 involving inmate NY4265." (PSCOA Exhibit 2)

27. Hammers testified that a lack of response or lack of fulfillment triggers a second request for information. The Union submitted a second request for information to the Commonwealth for RFI 42 on April 1, 2021. The Union submitted a second request for information to the Commonwealth for RFI 43 on May 26, 2021. The Union submitted a second request for information to the Commonwealth for RFIs 53, 56, 57, 58, 60, 61, and 62 on June 9, 2021. The Union submitted a second request for information to the Commonwealth for RFIs 63, 64, 65, 66, 67, 68, and 69 on June 16, 2021. (N.T. 18; Union Exhibit 2)

28. The Union submitted a third request for information for RFIs 53, 56, 57, 58, 60, 61, and 62 on June 16, 2021. (Union Exhibit 2)

29. Hammers testified that RFI 42 has not been completely fulfilled. Hammers indicated that the Union had still not received copies of the STD-330 for the 2:00 to 10:00 shift on March 4. Hammers explained that the STD-330

is a written document submitted in connection with employe leave requests. Hammers stated that the Union no longer has an outstanding grievance, but the Union still needs the information to verify that there is no additional alleged contractual violation. On cross-examination, Hammers acknowledged meeting with the Commonwealth through counsel on November 19, 2021 and conceding that RFI 42 was either fulfilled or moot at that point. Hammers also admitted that, by email dated May 12, 2021, Lisa Neiter, who is a Human Resources Analyst with the Commonwealth, provided him with at least some information in response to RFI 42. (N.T. 21-22, 49-51; Exhibit C-1)

30. Hammers testified that RFI 43 has not been completely fulfilled. Hammers claimed that, while the Union received some of the overtime documentation, the Commonwealth did not provide any documents for the correctional officer trainee classification. He described how he arrived at the conclusion that some of the documents simply might not exist, but the Commonwealth has not advised him of that. He stated that if the Commonwealth had simply told him the documents do not exist, then that would fulfill his request for information. On cross-examination, Hammers again acknowledged that he conceded during the November 19, 2021 meeting that RFI 43 was either fulfilled or moot at that point. He also admitted that the Union's own tracking sheet shows that the RFI was fulfilled as of May 4, 2021. (N.T. 22-23, 51-52; PSCOA Exhibit 5)

31. Hammers testified that RFI 44 has not been completely fulfilled. He testified that the Union still has an active grievance for that date range. He described how the Commonwealth has objected to the Union's grievance on the grounds that it is untimely. On cross-examination, Hammers acknowledged that Michelle Musser, who is a Human Resources Analyst for the Commonwealth, provided information to him regarding RFI 44 by email dated August 24, 2021. He also acknowledged that Jason Hadley, who is a Human Resources Analyst for the Commonwealth, provided additional information regarding RFI 44 by email dated November 29, 2021. Hadley also indicated to Hammers by email dated December 5, 2021 that "MOT sheets for 3/26 do not exist." (N.T. 23-24, 53-54; Exhibit C-3, C-4)

32. Hammers testified that RFI 51 has not been completely fulfilled. He explained that a minimal amount of information was provided and that the Union has an active grievance for that case. On cross-examination, Hammers testified that he acknowledged that RFI 51 was either fulfilled or moot during the November 19, 2021 meeting. He also admitted that Musser provided him with information regarding RFI 51 by two separate emails both dated September 14, 2021. (N.T. 25, 55-56; Exhibit C-5)

33. Hammers testified that RFI 53 was not fulfilled by the Commonwealth as a response to the Union's request for information. He explained that the Union filed a grievance and received most of the information it requested from management during step 1 of the grievance process, as part of a packet that management provided in support of its argument. The grievance has since been resolved. (N.T. 25-26)

34. Hammers testified that RFI 56 was fulfilled in part. He claimed that he received a lot of the information right before the hearing and that there were still numerous documents missing. He indicated that there is still an active grievance which has made it past step 2 of the process and is currently awaiting arbitration. On cross-examination, Hammers acknowledged that Hadley provided information regarding RFI 56 by emails dated November 30, 2021 and December 3, 2021. Hammers also conceded that Hadley's December

3, 2021 email stated "[b]etween this email and my previous email contains [sic] all existing documents related." (N.T. 26, 57-58; Exhibit C-6)

35. Hammers testified that RFI 57 was fulfilled in part during the week prior to the hearing. On cross-examination, Hammers acknowledged that Hadley provided information regarding RFI 57 by emails dated November 30, 2021 and December 3, 2021. Hadley's December 3, 2021 email stated "...[t]hese are all documents existing relating to this RFI." (N.T. 26-27, 57-59; Exhibit C-6)

36. Hammers testified that RFI 58 was fulfilled in part. He stated that the Union filed two grievances over this matter and that one of them had been resolved. He indicated that the other grievance remains outstanding and that the Union needs the information to prove its case at arbitration in the event the parties cannot resolve the second grievance. On cross-examination, Hammers acknowledged stating during the November 19, 2021 meeting that he thought the parties would settle the case. However, he has not heard anything back for some time, and his position has since changed. (N.T. 27, 59-60)

37. Hammers testified that RFI 60, 61, and 62 have not been fulfilled. He explained that the Union was seeking phone records in these requests because they had various members complaining that they were not being called for overtime events. He described how the Commonwealth had documentation showing that the manager or lieutenant made the calls, but the Union members provided their own phone records to show that no call was made. Hammers believed that the Commonwealth's documentation was inaccurate, so he was looking for the physical phone records to substantiate the Commonwealth's claim that the calls were made. (N.T. 27-28)

38. Hammers testified that he has made requests of the same nature as RFI 60, 61, and 62 at other institutions and that it generally goes through the institution's security office. He described how the Commonwealth has a tracking system to monitor and audit all of the phone calls. He stated that he received no official or written response from the Commonwealth at the local level. He eventually talked to Lisa Neiter, who is a Human Resources Analyst for the Commonwealth, in July or August 2021. Neiter told Hammers the Commonwealth was unsure how to fulfill the request and that the Commonwealth was sending the request to their maintenance manager. Hammers explained to Neiter that the maintenance manager would not have access to the records and that the requests typically go through the security office. (N.T. 28-30)

39. Hammers testified that RFI 63 was "mostly fulfilled." He testified that there are still a couple of outstanding pieces of information, which the Union has not received. He described receiving pieces of the request over time with months between each part. He indicated that information was still trickling in for the last few weeks before the hearing. On cross-examination, Hammers acknowledged that Musser provided some information regarding this RFI by email dated September 14, 2021. (N.T. 30-31, 63; Exhibit C-8)

40. Hammers testified that RFI 64 was fulfilled in part. He testified that the Union had an underlying grievance related to this matter, which has since been resolved. He indicated that the Union does not need this information anymore. On cross-examination, Hammers agreed that Neiter provided information regarding this RFI by email dated September 7, 2021.

Hammers also acknowledged that this RFI was moot at this point. (N.T. 31, 63-64; Exhibit C-9)

41. Hammers testified that RFI 65 was mostly fulfilled. He explained that there is still a portion that remains outstanding, which is necessary before the Union can even begin to process its related grievance. On cross-examination, Hammers acknowledged that Hadley provided information in response to this RFI by emails dated November 30, December 3, and December 5, 2021. (N.T. 32, 65-66; Exhibit C-10)

42. Hammers testified that RFI 66 has been fulfilled. (N.T. 32, 66)

43. Hammers testified that RFI 67 was fulfilled in part. He indicated that the Union has received information piece by piece with the most recent receipt being on November 29, 2021. He stated that the Union has several outstanding grievances related to this request. On cross-examination, Hammers acknowledged that Musser and Hadley provided information in response to this RFI by emails dated August 24, November 29 and December 5, 2021. (N.T. 32, 66-68; Exhibit C-4, C-11)

44. Hammers testified that RFI 68 was not fulfilled even partially. The request, which seeks employees who were on leave designated as administrative in nature from May 1, 2021 ongoing, is accessible to managers and human resource employees through the SAP system. Hammers testified that the Union is investigating potential grievances for employees who were out of work for reasons related to Covid-19. (N.T. 33-34)

45. Hammers testified that RFI 69 was fulfilled on December 1, 2021. (N.T. 34, 68; Exhibit C-12)

46. The Commonwealth stipulated that each RFI was seeking relevant information for the purpose of investigating a grievance. (N.T. 34)

DISCUSSION

The Union has alleged that the Commonwealth violated Section 1201(a)(1) and (5) of the Act¹ by refusing to provide information in response to a number of requests in April, May and June 2021, which were necessary for the processing and evaluation of grievances. The Commonwealth contends that the charge should be dismissed because the Commonwealth faced unprecedented staffing issues at SCI Chester and acted in good faith in attempting to provide the requested information. The Commonwealth also argues that the charge should be dismissed because the issue is now moot, as the Commonwealth eventually provided all of the requested information.

It is well settled that an employer has a duty to provide requested information to the union, which is relevant to the union's policing of the collective bargaining agreement, even where no grievance is pending. Bristol

¹ Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act...(5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

Township, 27 PPER ¶ 27046 (Proposed Decision and Order, 1996). 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 standard of relevancy, it is sufficient that the union's request for information be supported by a showing of probable or potential relevance. United Steelworkers of America v. Ford City Borough, 37 PPER 11 (Final Order, 2006) (citing Commonwealth of Pennsylvania, Dept. of Corrections (SCI Muncy) v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988)).

In Ford City Borough, the Board opined as follows:

The duty to provide information emanates from the statutory duty to bargain in good faith. A public employer's duty to provide requested information to a Union is based on the premise that a Union would be unable to fulfill its statutory obligation as exclusive employee representative in bargaining and other matters without that information. Consequently, no meaningful bargaining would occur. An unreasonable or inexcusable delay in providing relevant information is a violation of an employer's statutory obligation to bargain in good faith.

(Citations omitted).

In this case, the Union has sustained its burden of proving that the Commonwealth violated the Act. First of all, the Commonwealth stipulated that each RFI was seeking relevant information for the purposes of investigating multiple grievances. Likewise, the record shows that the Commonwealth has not fulfilled a number of the Union's requests for information either in whole or in part. Indeed, the record shows that the Commonwealth has not provided any information whatsoever in response to RFIs 60, 61, 62, and 68.² What is more, the Union has demonstrated that the Commonwealth has only fulfilled a number of the RFIs in part, including RFIs 58, 63, 65, and 67.³ Further, the record shows that the Commonwealth did not fulfill several of the RFIs until after an unreasonable delay, including RFIs 44, 56, 57, and 69. Again, the Commonwealth did not fulfill these RFIs until the week prior to the hearing in November and December 2021, despite the requests coming in April, May, and June 2021.⁴ This represents a clear

² The Commonwealth asserts in its post-hearing brief that all the information sought in RFIs 60, 61, and 62 has now been provided to the Union following the hearing. (See Commonwealth Brief at p. 4, fn. 2 & 15, fn. 3). However, the Board cannot accept such a bald averment by counsel in a post-hearing submission as evidence of record to support a finding. And, the Commonwealth has not requested that the Board reopen the record pursuant to 34 Pa. Code § 95.98(f)(2). In the same vein, the Commonwealth has conveniently omitted any substantive discussion of RFI 68 in making its claim that it has fulfilled each of the RFIs. Instead, the Commonwealth maintains in a conclusory footnote on page 16 that Hammers admitted RFI 68 was either fulfilled or moot. Once again, however, this assertion is simply inaccurate, as summarized in Finding of Fact 44 set forth above.

³ In addition, the Commonwealth did not provide many of its partial responses until the week prior to the hearing in November or December 2021, which is simply inexcusable and unreasonable given that the requests were from April, May, and June 2021.

⁴ Although Hammers' testimony has been accepted in large part as credible, RFIs 44, 56, and 57 have been deemed completely fulfilled, albeit untimely,

violation of the Commonwealth's good faith bargaining obligation under the Act, and the Commonwealth must be found to have committed unfair practices as a result.

The Commonwealth defends the charge on the grounds that it faced unprecedented staffing issues at SCI Chester and acted in good faith in attempting to provide the requested information. However, this argument is without merit. As previously set forth above, the Commonwealth has still not provided any information whatsoever in response to several of the RFIs. In fact, the Commonwealth entered as Exhibit C-7 the December 1, 2021 email from its contractor who oversees its telephone operations, confirming that the Commonwealth had requested the appropriate phone records from SCI Chester for RFIs 60, 61, and 62. (N.T. 115-116; Exhibit C-7). The only logical inference to be drawn from this evidence is that the Commonwealth waited until December 1, 2021 or shortly before that date to actually make the request. Neiter's testimony confirmed this. (N.T. 104). Why the Commonwealth waited for so long to attempt to fulfill the information request is unclear. While the Commonwealth may not have initially known exactly how to fulfill the request, good faith bargaining certainly requires something more than sitting on the request for several months. Indeed, Hammers explained to Neiter in July or August 2021 how such requests are usually fulfilled at different institutions. Nevertheless, there is no evidence that Neiter or any other Commonwealth representatives discussed the issue any further with the Union after that time, and instead the Commonwealth waited until the very end of November 2021 to even make the request to the contractor.

Furthermore, the Commonwealth's alleged unprecedented staffing issues at SCI Chester do not excuse the inordinate delay in response time here. Although the Commonwealth did have two individuals retire who were ordinarily responsible for responding to RFIs, the record shows that those retirements were by Stanley Settle in March 2021 and Dana Williams in September 2021. (N.T. 46, 77-78, 112-113).⁵ However, the record also shows that Lisa Neiter and Michelle Musser were temporarily reassigned to SCI Chester in April 2021 to assist with the work. On top of that, Neiter was then transferred to SCI Chester for four days per week from July 5, 2021 to September 30, 2021. (N.T. 74-76). While some level of delay might be expected, the Commonwealth has offered no credible reason or justification for why it could not timely respond to 18 requests for information in a roughly six to eight month period, especially given the reassignments of two individuals. On this point, Neiter's testimony was less than compelling, even on direct examination:

Q. What's your understanding of the impact the staffing issues had on how you respond to RFIs?

A. Well, definitely I know that just the amount of work caused a delay in responding. And, you know, it was just being jumbled around about the responsibility of who was supposed to respond. And the individual who was to be responding to the RFI, for whatever reason may not have responded and I don't know if that's

based on the Commonwealth's eventual unrefuted indications in November and December 2021 that certain documents either do not exist or that the response constitutes all existing documents in relation thereto.

⁵ Apparently, Williams went out on leave in June 2021 before eventually retiring. (N.T. 77-78, 112-113)

just her not responding or her not getting the information from management or what caused that. I can't say.

(N.T. 92).

This testimony suggests that the delay was caused by the Commonwealth representatives simply not knowing which individual was responsible for providing the information and calls into serious question the reasons proffered by the Commonwealth in this proceeding. Regardless of the actual explanation, however, the timeline set forth above was simply unreasonable, and the Commonwealth must be found to have committed unfair practices in violation of the Act.

Finally, the Commonwealth's argument that the charge is moot must also be rejected. Although courts generally will not decide a moot case because the law requires the existence of an actual controversy, the Pennsylvania Supreme Court has recognized two "well-organized exceptions to the mootness doctrine." APSCUF v. PLRB, 8 A.3d 300, 305 (Pa. 2010). The Pennsylvania Supreme Court has reviewed moot matters, in its discretion, when the issue is one of great public importance or is one that is capable of repetition yet evading review. *Id.* at 305.

The Commonwealth maintains that the charge should be dismissed as moot because the Commonwealth has now provided the Union with all of the information requested. This assertion, however, is clearly belied by the record, as specifically noted above. Indeed, the charge cannot possibly be moot because the record shows that there are still several outstanding RFIs, to which the Commonwealth has not responded at all. Moreover, as previously set forth above, the Commonwealth's unreasonable and inexcusable delay in providing relevant information, in and of itself, is a violation of the Commonwealth's statutory obligation to bargain in good faith, regardless of whether the information was ultimately provided. To conclude otherwise would only encourage employers to delay providing information and negatively impact a union's ability to process timely grievances and police the contract.

In North Hills Education Ass'n, PSEA/NEA v. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998), the Board addressed the very same argument the Commonwealth makes here and opined as follows:

...even if the record supported the [employer's] claim that it made a belated disclosure of all the information sought by the [union], the Board has held that unreasonable delay in providing the employe bargaining representative with relevant information, in and of itself, violates the employer's statutory collective bargaining obligation. City of Williamsport, 2 PPER 163 (1972). Thus, if the [union] was entitled to the information at issue as the hearing examiner found, the [employer's] unreasonable six month delay in providing some of that information would itself constitute an unfair practice. *Id.*...

The requested information is relevant to the [union's] attempt to determine whether the [employer] is complying with the contractual provisions regarding implementation of improvement plans. Without being aware of the identity of employes who are on such plans, the [union] has no way of determining whether the plans are being implemented consistent with the contract.

We do not accept the [employer's] argument that its belated partial disclosure of the requested information demonstrates lack of impact on the [union's] ability to police the collective bargaining agreement. First, the information that was not provided may demonstrate a contractual violation. Second, by delaying provision of the requested information until several months after completion of the school year in which employees are placed on improvement plans, as occurred here, the [employer] may prevent the [union] from filing a timely grievance. In order to facilitate effective policing of the collective bargaining agreement by the employee bargaining representative, the employer must **promptly** respond to its requests for relevant information.

(Emphasis added).

In this case, the Commonwealth also had an obligation to promptly respond to the Union's requests for information and its eventual belated disclosure of some of the requested information has frustrated the Union's ability to police the CBA and prosecute alleged contractual violations. In fact, the record shows that the Commonwealth has objected to at least some of the Union's grievances on the basis of timeliness. The requested information is relevant to determining whether the Commonwealth is complying with the various CBA provisions on discipline, overtime and leave. However, the Union has not been able to timely discern violations of the CBA and process a number of outstanding grievances here as a direct result of the Commonwealth's inordinate delay. As such, the Commonwealth will be directed to immediately comply with the outstanding RFIs and to cease and desist such dilatory conduct in the future.

CONCLUSIONS

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

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth 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 the Act, the Examiner

HEREBY ORDERS AND DIRECTS

That the Commonwealth shall:

1. Cease and desist from interfering, restraining or coercing employees 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 the employe organization which is the exclusive representative of employes in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Immediately provide the Union with all outstanding information requested in the RFIs set forth herein;

(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 its 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 from Harrisburg, Pennsylvania this 5th day of May, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PSCOA :
 :
 v. : Case No. PERA-C-21-148-E
 :
 COMMONWEALTH OF PA :

AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its violations 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 by immediately providing the Union with all outstanding information requested in the RFIs; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a 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