

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : CASE NO. PERA-C-21-218-E
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF CORRECTIONS, SOMERSET SCI :

PROPOSED DECISION AND ORDER

On September 9, 2021, the Pennsylvania State Corrections Officers Association (Union or PSCOA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Corrections, Somerset SCI (Commonwealth, Somerset or DOC) violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (Act or PERA). The Union specifically alleged, with supporting attachments, that the Commonwealth repeatedly failed to provide relevant information and documents, in response to multiple requests, which were necessary to investigate the discipline of bargaining unit members, pending grievances, potential grievances, as well as compliance with the parties' collective bargaining agreement (CBA) and negotiated due process requirements, just cause, seniority, bid posting, safety, and contractual standards for respect and dignity of bargaining unit members.

On October 4, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of January 22, 2022, in Harrisburg. I continued the hearing to May 4, 2022, because one of the attorneys was exposed to COVID and was required to quarantine. During the May 4, 2022 hearing both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On July 12, 2022, the Union filed its post-hearing brief. On August 12, 2022, the Commonwealth filed its post-hearing brief.

The examiner, based upon all matters 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. 7)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. Maximilian Kauert is a correctional officer who was transferred to SCI Somerset (Somerset) in July 2018. Officer Kauert became the Local PSCOA Treasurer at Somerset in January 2019, Vice President in March 2019, and President in July 2019, which position he held through December 2021. He became a PSCOA Business Agent in April 2022. (N.T. 21-22)¹

¹ I will refer herein to Local President, and then PSCOA Business Agent Kauert as "Officer Kauert" or "Kauert" for consistency.

4. Article 26 of the parties' CBA provides that "[t]he Employer shall not demote, suspend, discharge or take any disciplinary action against an employee without just cause." Article 35 of the parties' CBA contains a grievance and arbitration procedure to resolve contractual disputes and disciplinary matters. Either the Union or a bargaining unit member can file a grievance. The Union uses "requests for information" (RFIs) to obtain documents, video, photos, audio recordings, witness lists, and other information for its investigations regarding grievances, contract negotiations, contract compliance, grievance settlements, and arbitration hearings. It files RFIs both before and after grievances are filed, as part of its investigations. Information obtained from RFIs are used to resolve and withdraw grievances without litigation. (N.T. 23-24, 27-29; Joint Exhibit 1)

5. The Bureau of Intelligence Investigations (BII) conducts investigations of a serious nature within the Department of Corrections. BII is similar to internal affairs. (N.T. 26-27)

6. Officer Garrison was the Union Local Vice President from January 2020 through December 2020, after having been nominated unopposed in October 2019. Officer Garrison was accused of making inappropriate comments, on September 11, 2020, about an inmate suicide. On September 16, 2020, management suspended Officer Garrison pending investigation (SPI). Management terminated Officer Garrison on May 7, 2021. His termination grievance was settled on September 17, 2021. (N.T. 31-33, 123-125, 155-156)

7. There are 3 documents governing the due process procedures for SPIs. The parties' Class Action State-Wide SPI Grievance Settlement Agreement, dated June 26, 2020, provides, inter alia, that "All investigations DOC initiates in connection with a SPI upon an H-1 bargaining unit member will be undertaken and completed as expeditiously as possible, and without unnecessary or undue delay." (Joint Exhibit 3, P 5).

8. Another document is the "May 22, 2020 SPI Memorandum" of DOC Secretary Wetzels, which was incorporated into, and attached to, the June 6, 2020 Settlement Agreement. The Memo provides, inter alia, that SPIs should only be considered when the alleged offences warrant immediate removal from the workplace and that, if proven, there would be just cause to remove and terminate the employee. Prior to issuing the SPI, the employee must be afforded a brief and informal hearing with management. A formal fact-finding interview will be set up separately, and the employee may be compelled to provide information pursuant to the investigation at that time. Civil service and non-Civil Service employees who are suspended pending an internal investigation, where there is no final disposition by the 60th working day, shall be returned to an active pay status that is effective on the 61st working day. Where an outside Agency, as the state police, conducts the investigation, employees may remain suspended pending investigation for up to 30 working days after the external investigation is complete. (JX-3).

9. Another document is DOC "Policy 4.1.1 Section 5 - Suspension Without Pay" (J. Ex. 4). This Section provides in relevant part, that the DOC must be able to demonstrate that the nature and severity of the allegations are such that there is cause to immediately remove the employee from the institution pending investigation and not that the employee committed the offenses. As with the other documents, Section D.1(a) of the Policy provides that an employee must be afforded a brief and informal hearing prior to being suspended pending investigation. The employee is under no obligation to

present any information at this time. Section D.1 further provides that, once the meeting is completed, the Facility Manager/designee will consult with the Regional Deputy Secretary to make a determination on whether to suspend the employe pending investigation. The initial notification to the employe may be provided verbally, but a verbal notification must be followed up in writing no later than the following business day. The written notification must include a summary of the pre-suspension meeting, a review of the issues discussed, and a listing of the attendees. (Joint Exhibit 4)

10. BII did not investigate the allegations against Officer Garrison for over 2 months after his SPI. He remained suspended from September 2020, until his termination on May 7, 2021. (N.T. 32-33)

11. On February 11, 2021, Somerset terminated Officer Kauert for allegedly making certain comments to Corrections Officer Trainee Erin Linhart (COT Linhart). On July 6, 2021, Somerset and the Union settled Officer Kauert's termination grievance, reducing the termination to a 3-day suspension. He returned to Somerset on July 8, 2021. (N.T. 52-53, 76-77, 81-82, 123-125, 162-163)

12. Officer Garrison's SPI and termination (between September 16, 2020 and September 17, 2021) and Officer Kauert's termination (between February 11, 2021 and July 8, 2021) overlapped and affected the Union's ability to operate because both Union officers were not permitted at Somerset, which prevented them from performing Union duties. (N.T. 32-33)

13. On May 24, 2021, PSCOA Business Agent Joe Fox (BA Fox) filed RFI SR-055 (RFI-1) with Human Resources Officer Christine Grimm. The RFI requested all emails from Somerset Superintendent Tice to BII Agent Mike Glen, from October 1, 2020 to March 22, 2021; all emails from Superintendent Tice to any and all BII agents with the following key terms: Garrison, Kauert update, inmate suicide, harassment and/or final warning. The RFI also requested all emails from Superintendent Tice to Regional Field Human Resources Officer Donald Talley (FHRO Talley), Mike Glen, Regional Deputy Secretary of Corrections Tammy Ferguson, Tabb Bickel, and /or BII Director Barnacle, including the term timeliness or timely. (N.T. 26-27, 189-190; CX-1)²

14. The purpose of RFI-1 was to investigate alleged due process violations regarding member discipline to support pending grievances while the Union suspected a conflict of interest between Somerset and BII. The Union was seeking only the emails from the requested time period pertaining to the disciplinary cases against Officer Garrison and Officer Kauert containing the above-listed key terms. (N.T. 30, 125)

15. Somerset did not respond to RFI-1. On June 7, 2021, BA Fox resubmitted RFI-1, signed as received that date. All PSCOA RFIs explicitly request that management provide the information within 7 days. When management requests more time to respond, the Union agrees. On June 21, 2021, BA Fox again resubmitted RFI-1. On July 15, 2021, Officer Kauert, now reinstated, filed the 4th submission of RFI-1. There was no change in the requested information on all submissions of RFI-1. (N.T. 34-37; CXs-2-4)

² The Union exhibits are herein designated as "CX-," the Commonwealth exhibits are herein designated "RX-," and the Joint Exhibits are herein designated as "JX-."

16. On July 22, 2021, Ms. Grimm responded to RFI-1, almost 2 months after the original request. In her response, Ms. Grimm quoted the information requested in RFI-1 and added: "It is my understanding that [e]mails have been provided to the [U]nion through our advocates. If you still are asking for additional information, please provide further clarification of how this information is related to an actual grievance at SCI Somerset." (N.T. 37; CX-5)

17. Officer Kauert responded to Ms. Grimm on July 27, 2021, in relevant part, as follows: "This request is for [] potential grievances to be filed for specific violations of due process and discipline rendered. . . . [and] for [a] grievance filed for the termination of CO1 Garrison. The timeline for the [e]mails requested is specific to a timeliness violation of rendering discipline. . . ." Kauert further responded: "I have discussed this matter with our attorney and Executive Officers, and emails have not been provided other than 1 email from Tice to Talley about Kauert Discipline Timeliness from July 2020. Our scope under the request[] falls into discussion[s] had during Oct 1, 2020 through March 2, 2021." (N.T. 38; CX-6)

18. On May 26, 2021, BA Fox filed RFI SR-056 (RFI-2) with Ms. Grimm's office. RFI-2 requested the discipline for an incident involving Major Jeffrey Shaffer, Corrections Officer David Yoder (CO Yoder) and Lieutenant Killinger, asserting that Major Shaffer was found to violate Code of Ethics #14. On June 7, 2021, BA Fox resubmitted RFI-2 after receiving no response from management. On June 21, 2021, BA Fox resubmitted RFI-2 for the 3rd time. On July 1, 2021, Ms. Grimm responded as follows: "There is no way to respond to this negative RFI. We cannot and are not legally required to provide documentation that does not exist. This would include charges that were never brought forward." Ms. Grimm further stated: "since there is no nexus between the charges brought [against] Officer Garrison and the allegations against Major Shaffer, we see no relevance to an existing or potential grievance." (N.T. 45-51, 194, 196-199; CXs-7-10)

19. Request Nos. 2 & 4 in RFI-2 were questions that were subsequently withdrawn when Officer Kauert filed RFI-2 for the 4th time, on July 15, 2021. Officer Kauert was unable to file RFIs prior to his return to Somerset on July 8, 2021. Lieutenant Killinger allegedly told CO Yoder that he should kill himself. The Union wanted this information to determine whether management officers were given different treatment than bargaining unit officers for making statements about suicide, given that Officer Garrison received an SPI and termination for allegedly making a statement about inmate suicide. The information sought to establish disparate treatment of Garrison as mitigating evidence in his pending grievance arbitration. (N.T. 49-54, 155-157, 198; CX-11)

20. On June 9, 2021, Superintendent Tice emailed Ms. Grimm stating: "I want to object to any release of my emails. I am not on trial." (CX-31)

21. On July 22, 2021, Ms. Grimm responded to the 4th request for RFI-2 by reiterating her prior response on July 1, 2021, again stating that she cannot provide information that does not exist and that Officer Kauert had not yet explained the nexus between the requested information about Major Shaffer and the Garrison grievance. On July 27, 2021, Officer Kauert sent a letter to Ms. Grimm emphasizing that he withdrew the questions in RFI-2 and further explaining that Major Shaffer was found to violate the Code of Ethics and sought the information pertaining to what, if any, discipline he received in comparison to the discipline Garrison received, which was the subject of

the Garrison grievance and potentially other grievances. The Union intended to use information about Major Shaffer's level of discipline, if any, and Lieutenant Killinger's level of discipline for comparison and mitigation in the pending grievance litigation for Officer Garrison. (N.T. 71-72 155-156; CXs-7, 12 & 13)

22. Ms. Grimm testified that she normally does not provide non-Union DOC employees' discipline to the Union unless a nexus can be shown to a potential or existing grievance. When an incident involves both management and bargaining unit officers, she would provide the requested information and/or the discipline of the manager. In Ms. Grimm's opinion, Major Shaffer's failure to report that CO Yoder informed him that Lieutenant Killinger told CO Yoder that he should kill himself is different than Lieutenant Killinger making the statement to CO Yoder. (N.T. 224-226)

23. On July 15, 2021, Officer Kauert filed RFI SR-077 (RFI-3) requesting the following information: investigative materials related to allegations against Sergeant Alvin Miller for fraternizing and gambling with inmates, locked boxes in field house and commissary, any discipline rendered to Sergeant Miller, Captain Hayward or Captain Minor for the same alleged incident, any and all video, audio, or photos used in the investigation; and a list of all staff and inmates questioned for the alleged incident. The information request sought to identify the Captain who directed Miller in the commissary, to discover whether the Captain was issued any discipline, and to compare any existing discipline to any discipline issued to Miller. (N.T. 62, 158; CX-14)

24. On July 22, 2021, Ms. Grimm responded to RFI-3 stating: "Since no discipline was issued to your member, I am requesting additional information regarding how this is connected to a potential grievance or existing grievance." On July 27, 2021, Officer Kauert responded to Ms. Grimm as follows: "All members are to be treated with respect and dignity. There have been serious allegations made against [Sergeant] Miller that lead to a PDC [pre-disciplinary conference] and an unfair treatment of the [Sergeant] for false allegations that were spread around to his peers by members of management." Kauert further explained that the requested information was necessary to determine whether the treatment of Sergeant Miller, as compared to Captains Hayward and Minor, violated the CBA for a potential grievance. Management investigated Sergeant Miller, and there was no resulting discipline. Also, there was no document that stated that there was no discipline. (N.T. 63, 158, 200-201, 229, 235-236; CXs-15 & 16)

25. "Respect and dignity" of members is a contractual requirement. When bargaining unit members are allegedly mistreated, disrespected or discriminated against, the PSCOA may investigate whether the treatment of the bargaining unit member violates this clause of the CBA for a potential grievance. (N.T. 69-70)

26. Somerset accused Officer Kauert of making certain comments to COT Linhart, in August 2020. Officer Kauert was not present at the institution on the date management accused him of making the statements. He was 3 counties away at a labor-management, step-2 hearing and had proof of his attendance there. Based on those allegations, Officer Kauert was terminated in February 2021. (N.T. 76-78, 81-82, 162-163)

27. On July 15, 2021, Officer Kauert filed RFI SR-078 (RFI-4). In RFI-4, Officer Kauert requested BII audio recordings for a March 16, 2021

interrogation of COT Linhart, which are multiple recordings; BII audio recordings for a March 31, 2021 interrogation of Records Specialist Ardith Mammay; a list of the BII agents conducting the investigation; and any and all documents associated with the investigation. COT Linhart was interviewed 3 times on March 16, 2021, with a BII agent present for all 3. Under BII policy, all interviews must be recorded. The recordings could have exonerated officer Kauert and affected the settlement of his termination grievance on July 6, 2021. He could not file RFIs while he was terminated. COT Linhart told Officer Kauert that every interview she had with BII agents was recorded.³ (N.T. 74-78, 98, 101, 162-163, 173-174, 205-206; CX-17 & 39)

28. On July 22, 2021, Ms. Grimm responded to RFI-4 by requesting additional information regarding how the request was related to an existing or potential grievance, since the Kauert termination grievance had been resolved. In Officer Kauert's view, Ms. Grimm's July 22, 2021 response to RFI-4 was part of a pattern of delay. Officer Kauert testified that he believes that management is consistently seeking more information, clarification and explanation of relevance to make it difficult for the Union to get information by asserting that the Union did not have an active or potential grievance. (N.T. 79, 164-165, 205-206; CX-18)

29. On July 27, 2021, Officer Kauert wrote to Ms. Grimm explaining that RFI-4 was related to the demeaning and disrespectful treatment of Officer Kauert and that the information sought pertained to the ongoing investigation into the man-hours dedicated to the mischaracterization of a Union official, which he believed may constitute a CBA violation. (N.T. 80-81; CX-19)

30. Officer Kauert wanted the information to establish that management spent time and resources to prove a case against him, that management knew was not there, for the purposes of harassment. Officer Kauert sought to obtain evidence opposing Somerset's position against him. PCSOA leadership believed that the information could demonstrate a potential misuse of due process and discipline against Union officers and that there was potential for another grievance based on the requested information. (N.T. 80-82)

31. A March 16, 2021 email from Superintendent Tice to Ms. Grimm and FHRO Talley provides that Superintendent Tice knew that COT Linhart was 100% certain that Officer Kauert did not make any inappropriate statements to her. Records Specialist Ardith Mammay also reported that same day that, after looking at photos, Officer Kauert did not make the alleged statements. Superintendent Tice also stated in his email: "I know there are other allegations against Max in this report related to Becky Evans and Courtney Trout. Superintendent Tice initiated the Trout-Evans investigation. Neither Trout nor Evans came forth with any allegations against Officer Kauert. The alleged Trout and Evans incident caused a written reprimand against Officer Kauert which was withdrawn because of due process violations, but it served as progressive discipline for Officer Kauert's termination. Management maintained Officer Kauert's termination status through July 6, 2021, almost 4 additional months, and just days before a scheduled arbitration hearing. The

³ Officer Kauert's testimony regarding COT Linhart's statement, that all BII interviews with her were recorded, was unobjected-to hearsay, which was corroborated by BII policy, which is also part of the record. I, therefore, admitted the testimony under the Walker Rule.

Union did not receive a copy of Superintendent Tice's March 16, 2021 email until November-December 2021. The request for Superintendent Tice's emails involving Officer Kauert was initially submitted on May 24, 2021. (N.T. 83-84, 126-127, 185-186; CXs-1, 23 & 27)

32. On July 16, 2021, Officer Kauert filed RFI SR-082 (RFI-5) for information about the new DEMO Unit. In the RFI, Officer Kauert requested post orders for CO1s and CO2s on the DEMO Unit, DEMO Unit policies and procedures, the confidentiality agreement and the equipment list for the DEMO Unit. On July 22, 2021, Ms. Grimm requested that Officer Kauert explain how the requests related to an existing or potential grievance while acknowledging that she was aware of existing grievances regarding bid posting and operational changes. Ms. Grimm stated: "please explain the relevance of the requested information to these grievances." (N.T. 102-106; CXs-20 & 21)

33. There were 2 active grievances regarding RFI-5 and the DEMO Unit. The Union had concerns over preferred bid posts in the new DEMO Unit, as well as officer safety. The DEMO Unit is a level-5 restricted housing unit, i.e., a jail within a jail. The DEMO Unit inmates have limited recreational and out-of-cell time, as a form of discipline. The CBA outlines the manner of assigning bid posts. Officers experience increased assaults from inmates on restricted housing units. These assaults include inmates throwing feces and bodily fluids at officers. The RFI-5 request for post orders, policies and procedures, and an equipment list related to existing grievances and concerns over adequate staffing and safety. (N.T. 103-108)

34. Prior to officers actually being assigned to the new DEMO Unit, the Union had concerns over officer safety in the new work environment with new procedures regarding inmate movement, especially since the new Unit was closer to staff offices and bathrooms. (N.T. 112)

35. As with RFI-4, Officer Kauert testified that he believed that Ms. Grimm's July 22, 2021 response to RFI-5 was also a part of a pattern to delay or prevent providing information. Officer Kauert emphasized that Ms. Grimm requested an explanation as to how the requested information related to a grievance and simultaneously acknowledged the existence of grievances pertaining to the operations of the new DEMO Unit. On July 27, 2021, Officer Kauert responded to Ms. Grimm and stated: "You answered the relevance question in your own request. We have filed a grievance on this matter and identified specific articles and sections to argue. The information is critical to the grievances . . . filed." On September 20, 2021, Ms. Grimm responded that the information would be provided when it becomes available. (N.T. 106-108, 179-180; CXs-21 & 22; RX-6)

36. On September 9, 2021, the Union filed the instant unfair practice charge against the Commonwealth for failing to provide requested information.

37. On September 20, 2021, Ms. Grimm responded to RFI-4 regarding the BII recordings of COT Linhart and Records Specialist Mammay by stating that the information was being addressed through the response to a litigation subpoena served by Union Counsel. (N.T. 165, 205-206; RX-4)

38. On September 21, 2021, Ms. Grimm responded to RFI-1, filed May 24, 2021, by stating that emails involving FHRO Talley had been provided and the remaining information was "being addressed through the response to a

subpoena" for the unfair practice hearing, scheduled for September 28, 2021. That hearing date was continued.⁴ (N.T. 192; RX-1)

39. Also on September 21, 2021, Ms. Grimm responded to RFI-3 (SR-077) stating that Officer Kauert had not provided any connection to an actual or potential grievance, that Sergeant Miller was not disciplined as a result of the investigation, and that there was no contractual language limiting management's right to investigate. Ms. Grimm further indicated that Sergeant Miller was cleared of allegations against him, and there was no evidence that related to the Union's claim that management spread those allegations to Sergeant Miller's peers. (N.T. 159-161, 200-201; RX-3)

40. On November 10, 2021, Commonwealth Counsel informed Union Counsel that BII did not possess any further audio of interviews (RX-2)

41. On November 19, 2021, the Commonwealth's Counsel sent the emails requested in RFI-1 to Union Counsel in response to a subpoena. On approximately December 16, 2021, the Commonwealth's attorney sent an email to the Union's attorney summarizing the status of the requested information in response to subpoenas related to the unfair practice charge. These documents were not provided in response to RFI-1. (N.T. 39, 148; CX-23; RX-2)

42. Commonwealth Counsel's email addresses the 5 RFIs and indicates that, on November 19, 2021, he fulfilled RFI-1 by providing access to over 450 emails containing the search terms set by the PSCOA which were given to Union counsel. The Commonwealth did not fulfill RFI-2 or RFI-3. Counsel indicated that the BII audio for RFI-4 was filled on September 27, 2021, with recordings and written statements delivered to PSCOA headquarters and that additional investigative information was provided to Union counsel on November 12th and 29th 2021. Officer Kauert credibly testified that not all the recordings were provided because there were multiple interviews of COT Linhart on March 16, 2021, and only one audio recording of COT Linhart was produced. Counsel further indicated that the information regarding the DEMO Unit was incomplete and would be provided upon finalization. The information provided to the Union was delivered after unfair practice charges were filed and subpoenas issued. (N.T. 95-96, 168-169, 173-174, 184; CX-23; RX-5)

43. Officer Kauert testified that the audio recordings were delivered the day before a scheduled unfair practice hearing at 4:00 p.m., and that it was too late to review the materials in time for the hearing because one audio recording was about one hour long. The Union did not receive the results of the COT Linhart interviews until November 2021, in response to a subpoena request. (N.T. 170-171, 187)

44. Some, but not all requested BII audio recordings were provided to the Union. COT Linhart was also interviewed on March 25, 2021, at SCI Fayette. The Union never received the audio recording of that interview. Officer Kauert testified that the Commonwealth has represented that they provided everything on the C-NET servers, but that the DOC has not explained why recordings are missing, which is a deviation from DOC policy. He has not received assurances that the missing audio recordings do not exist. In a November 30, 2021 email, Commonwealth Counsel stated that "BII confirmed with

⁴ The hearing scheduled for September 28, 2021, did not involve this unfair practice charge. The first hearing date for this charge was scheduled for January 22, 2022.

me that there are no additional audio recordings of the interviews responsive to your subpoena." Officer Kauert challenges the assertion that no more recordings exist. (N.T. 100, 172, 179; CX-41 at 5; RX-5)

45. The new DEMO Unit was fully operational in December 2021. BII is monitoring inmate phone calls and emails in the DEMO Unit for drug activity and contraband. The inmates assigned to the DEMO Unit are "Drug Kingpins" from all over the Commonwealth. The superintendents from other institutions are not made aware of an inmate's transfer to the Somerset DEMO Unit until one hour before the transfer. The actual housing part of the DEMO unit is regular DOC. Inmates in the DEMO Unit are not mixed in with the general inmate population; they are visibly and physically separated from the general inmate population. The phone monitors were surveilling inmate communications and operating under the confidentiality agreement as early as September 20, 2021. Somerset planned to have the DEMO Unit operational by July 2021, but it was delayed. (N.T. 117-119, 184, 211, 214; RX-5)

46. On January 26, 2022, management provided the post orders, handbook and confidentiality agreement for the DEMO Unit, almost 2 months after the Unit became fully operational. (N.T. 216; CX-37)

47. On March 15, 2022, PSCOA Vice President Aaron King emailed Ms. Grimm requesting to finalize RFI-5 stating that, with the Unit being operational, the requested documents should be close to being finalized and provided to the Union. On April 11, 2022, Vice President King notified Union Counsel that Ms. Grimm had still not responded. (N.T. 113; CX-36)

48. On April 14, 2022, Ms. Grimm sent an email to the Union and attached the "finalized" handbook for the DEMO Unit. This copy was unsigned. She further stated that there is no special equipment to be used in the DEMO Unit and that the DEMO Unit policy manual would be available to view; a copy would not be provided due to confidentiality concerns. The original request was made on July 16, 2021. The delay interfered with the Union's ability to process active grievances. A signed copy of the handbook has not been provided. (N.T. 114, 119-121, 217-219; CX-37)

DISCUSSION

In PSCOA v. Commonwealth, Greene SCI, 34 PPER 52 (Final Order, 2003), the Board opined, in relevant part, as follows:

Pursuant to its statutory collective bargaining obligations, an employer is required to provide the union with information that is relevant to representing employees in negotiations for a future contract and policing the administration of the existing contract. PSSU, Local 668 v. Commonwealth of Pennsylvania, 17 PPER ¶ 17042, p. 108 (Final Order, 1986); NLRB v. Acme Industrial Company, 385 U.S. 432, 87 S.Ct. 565 (1967). The union is likewise entitled to information that it reasonably needs to properly process a grievance. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). There is no requirement that a grievance actually be pending at the time the information is requested. North Hills Education Association v. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998). However, where no grievance is pending, the information sought must at least relate to a matter which arguably on its face would be governed by the contract. Commonwealth v. PLRB, supra.

Greene, supra. The Union, however, is not entitled to witness statements obtained during an employer's investigation. Gas Works Employees Union Local 686, UWUA v. Philadelphia Gas Works, 45 PPER 68 (Final Order, 2013),

In PSCOA v. Commonwealth of Pennsylvania, 53 PPER 71 (PDO, 2022), Hearing Examiner Pozniak accurately surveyed the standard for the production of information as follows:

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 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. Cmwlt. 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. Cmwlt. 1988)).

Commonwealth of Pennsylvania, 53 PPER 71. Furthermore, "[a]n unreasonable or inexcusable delay in providing relevant information is a violation of an employer's statutory obligation to bargain in good faith." Ford City Borough, supra. A union is not required to demonstrate that the grievances will succeed, but merely that the information is factually relevant to a grievance or potential grievance. The fact that no grievance is pending does not eliminate a union's right to information relevant to monitoring the implementation of collectively bargained agreements. Commonwealth v. PLRB, 527 A.2d 1097 (Pa. Cmwlt. 1987).

RFI-1 (SR-055)

Management issued discipline to both Officers Garrison and Kauert. Management issued an SPI to Officer Garrison in September 2020, and terminated him on May 7, 2020. Management terminated Officer Kauert in February 2021. Having both Union officers barred from Somerset greatly and negatively affected the Union's ability to conduct Union business from February 2021 through July 2021, when Officer Kauert returned. As of May 24, 2021, the Union was seeking to investigate the due process procedures involved in the discipline of those two officers under the class action SPI grievance settlement, which incorporated the SPI memo from DOC Secretary Wetzels, and which is a negotiated settlement agreement. The Union was also investigating pending grievances on behalf of Officers Kauert and Garrison under the CBA and its just cause provisions. The information sought in RFI-1 pertained to the negotiated agreements governing the parties' terms and conditions of employment regarding the discipline issued to Officers Garrison and Kauert. In this regard, the information sought in RFI-1 was presumptively relevant to an active investigation of due process and the policing of the parties contractual agreements as well as the just cause and grievance procedure for the discipline of Garrison and Kauert.

On May 24, 2021, BA Fox filed RFI-1 and therein requested all emails from Somerset Superintendent Tice to BII Agent Mike Glen from October 1, 2020 to March 22, 2021; all emails from Superintendent Tice to any and all BII agents with the following key terms: Garrison, Kauert update, inmate suicide, harassment and/or final warning. The RFI also requested all emails from Superintendent Tice to FHRO Talley, Mike Glen, Regional Deputy Secretary of Corrections Tammy Ferguson, Tabb Bickel, and /or BII Director Barnacle, including the term timeliness or timely. On its face, the purpose of RFI-1 was to investigate alleged due process violations regarding the discipline of Kauert and Garrison, the determination of just cause for the discipline and to support active, pending grievances. At this time, the Union also suspected, and wanted to investigate, a conflict of interest between Somerset and BII. The Union was seeking the emails from the requested time period pertaining to the disciplinary case against Officer Garrison and Officer Kauert containing certain key terms. The relevance and entitlement to the information requested in RFI-1 was patently obvious.

However, management did not respond to RFI-1, and management did not request an extension from the Union. On June 7, 2021, BA Fox resubmitted RFI-1. On June 21, 2021, BA Fox again resubmitted RFI-1. On July 15, 2021, Officer Kauert, now reinstated, filed the 4th submission of RFI-1. There was no change in the requested information on all submissions of RFI-1.

On July 22, 2021, Ms. Grimm responded to RFI-1, almost 2 months after the original request. In her response, Ms. Grimm quoted the information requested in RFI-1 and added: "It is my understanding that [e]mails have been provided to the union through our advocates. If you still are asking for additional information, please provide further clarification of how this information is related to an actual grievance at SCI Somerset." Officer Kauert explained to Ms. Grimm, on July 27, 2021, that the RFI pertained to the investigation of specific due process violations for potential grievances and the discipline already imposed and the pending active grievance for Officer Garrison. Officer Kauert further responded that, after checking with Union counsel and officers, the requested emails had not been provided except for 1 email from Superintendent Tice to Talley. Clearly, Ms. Grimm did not investigate what, if any, emails may have been provided in response to the information request and what emails remained to be provided. By handing that responsibility over to legal counsel, management was not responding to the RFI; it was attempting to comply with subpoenas.

After almost 4 months and 4 submissions of RFI-1, the Union did not receive the information requested in RFI-1. The requested information was facially relevant to discipline and due process investigations under a negotiated SPI grievance settlement, DOC policy and the CBA's just cause provisions. The Union was then forced to file an unfair practice charge to get the information. Subsequent to the filing of the charge, on September 21, 2021, Ms. Grimm responded to RFI-1, by stating that emails involving FHRO Talley had been provided and the remaining information was "being addressed through the response to a subpoena" for the unfair practice hearing, scheduled for September 28, 2021. That hearing date was continued. It was not until November 19, 2021, that the Commonwealth's Counsel sent the emails requested in RFI-1 to Union Counsel in response to the subpoena. On approximately December 16, 2021, the Commonwealth's attorney sent an email to the Union's attorney summarizing the status of the requested information in response to subpoenas related to the unfair practice charge. The Union's counsel did not receive the information requested in RFI-1 until 6 months after the initial request. Not only is this an unreasonable time to respond

to the RFI, but also providing the information in response to litigation subpoenas does not fulfill the Employer's obligation to respond to the RFIs. Forcing the Union to litigate the request for information and subsequently responding to the litigation subpoenas does not satisfy management's bargaining obligation to provide requested, relevant information to the Union in a timely manner. Management's delay interfered with the Union's ability to effectively investigate discipline, potential grievances, negotiate grievance settlements, pursue arbitration and police the CBA and side agreements.

In a June 9, 2021 email to Ms. Grimm, Superintendent Tice objected to providing his emails to the Union stating: "I am not on trial." Also, a March 16, 2021 email from Superintendent Tice to Ms. Grimm and FHRO Talley states that Superintendent Tice knew that COT Linhart was 100% certain that Officer Kauert did not make any inappropriate statements to her. Records Specialist Ardith Mammay also reported that same day that, after looking at photos, Officer Kauert did not make the alleged statements. Management's failure to release the email when requested in May 2021, resulted in a delay in settling Officer Kauert's grievance and getting him reinstated. The delay also compromised Officer Kauert's position in grievance settlement. The settlement converted Officer Kauert's termination into a 3-day suspension, which will serve as a basis for imposing progressive discipline in the future. The Union and/or Officer Kauert may not have agreed to accept the 3-day suspension, if they had timely received the email from Superintendent Tice in response to the May 24, 2021 RFI. The Union did not receive a copy of Superintendent Tice's March 16, 2021 email until late November, early December 2021.

Therefore, the Commonwealth engaged in unfair practices in violation of Section 1201(a)(1) and (5) and violated its duty to bargain collectively in good faith by failing to timely provide requested relevant information to the Union in RFI-1. This bargaining violation was not mooted by providing that information in response to subpoenas 6 months after the request.

RFI-2 (SR-056)

On May 26, 2021, BA Fox filed RFI-2 with Ms. Grimm's office. RFI-2 requested information regarding the discipline for an incident involving Major Jeffrey Shaffer, CO David Yoder, and Lieutenant Killinger. RFI-2 sought the discipline for Major Shaffer given that he was found to violate Code of Ethics #14. The RFI also questioned why Lieutenant Killinger was not charged with a B29 Code of Ethics violation; why Major Shaffer was not charged with a B29 or B10 Code of Ethics violation. On June 7, 2021, BA Fox resubmitted RFI-2 after receiving no response from management. On June 21, 2021, BA Fox resubmitted RFI-2 for the 3rd time. On July 1, 2021 Ms. Grimm responded as follows: "There is no way to respond to this negative RFI. We cannot and are not legally required to provide documentation that does not exist. This would include charges that were never brought forward." Ms. Grimm further stated: "since there is no nexus between the charges brought on Officer Garrison and the allegations against Major Shaffer, we see no relevance to an existing or potential grievance."

On its face, RFI-2, including the questions posed, sought the investigation of Major Shaffer and Lieutenant Killinger. The RFI also sought the investigatory conclusions that explained why Major Shaffer, a management employe, was or was not disciplined for his Code of Ethics violation and why he may or may not have been charged with another Code of Ethics violation. The facially relevant purpose of this information was to use as mitigating factors and comparable evidence to establish disparate treatment in the

pending Officer Garrison litigation and other H-1 bargaining unit members who were similarly situated. The same relevant purpose applied to treatment or discipline of Lieutenant Killinger.

Lieutenant Killinger allegedly told Officer Yoder that he should kill himself. The Union wanted the investigatory information regarding Lieutenant Killinger to determine whether Officer Garrison was given different treatment for making statements about suicide to use in the pending Garrison grievance arbitration. The information sought to establish disparate treatment of Garrison as mitigating evidence in his pending grievance arbitration. The makeup of the initial filing of RFI-2, filed on May 26, 2021, requesting investigatory materials and results regarding management employees who may or may not have been disciplined was facially relevant to the active, pending Garrison grievance litigation.

Ms. Grimm's response improperly stated that she cannot respond to a negative RFI or provide information that does not exist including charges that were never brought forward. The error in Ms. Grimm's response is that she was indeed required to provide the Union with the results of the investigation of management employees who were not charged and the investigatory conclusions explaining why those management employees were not charged or disciplined. RFI-2 did not seek negative information; it sought information explaining why employees were not charged or discipline which was relevant to the Garrison grievance. Despite Ms. Grimm's assertion that there was "no nexus" between the charges brought against Officer Garrison and allegations against Major Shaffer, the possible disparate treatment of Major Shaffer and/or Lieutenant Killinger was potentially relevant to the Garrison grievance, where Garrison was charged with making statements similar to the statement allegedly made by Lieutenant Killinger.

Ms. Grimm testified that she believed that Major Shaffer's Code of Ethics violation regarding his alleged failure to report what Killinger said to Yoder is different than what Garrison said to an inmate and what Killinger said to Yoder. She further testified that she normally does not provide management discipline to the Union unless an incident involves both management and H-1 employees. However, the Major Shaffer investigation may have included or substantiated the investigation and discipline of Lieutenant Killinger, which was related to the type of behavior for which Officer Garrison was disciplined. Major Shaffer may have been charged with a different Code of Ethics violation, but his behavior, or lack thereof, was in fact related to allegations against Lieutenant Killinger, which was potentially relevant to the Officer Garrison discipline and his pending grievance arbitration. Moreover, RFI-2 was filed 3 times before Ms. Grimm even responded, which is an unreasonable delay.

After Ms. Grimm's response, Officer Kauert filed RFI-2 for the 4th time on July 15, 2021. In the 4th filing, Officer Kauert withdrew request numbers 2 & 4, questioning why Lieutenant Killinger and Major Shaffer were not charged with violating B29 of the Code of Ethics. On July 22, 2021, Ms. Grimm responded to the 4th request for RFI-2 by reiterating her prior response on July 1, 2021, again stating that she cannot provide information that does not exist and that Kauert had not yet explained the nexus between the requested information about Major Shaffer and the Garrison grievance. On July 27, 2021, Kauert sent a letter to Grimm emphasizing that he withdrew the questions in RFI-2 and further explaining that Major Shaffer was found to violate the Code of Ethics and sought the information pertaining to what, if any, discipline he received in comparison to the discipline Garrison received, which was the

subject of the Garrison grievance and potentially other grievances. The Union intended to use information about Major Shaffer's level of discipline, if any, and Lieutenant Killinger's level of discipline for comparison and mitigation in grievance litigation.

Ms. Grimm failed to timely respond to RFI-2. She repeatedly and unreasonably denied the relevancy of the requested information. Management's failure to timely provide the requested information, even in response to a litigation subpoena, constitutes an unreasonable delay and an unfair labor practice.

RFI-3 (SR-077)

On July 15, 2021, Officer Kauert filed RFI-3 requesting investigative materials related to allegations against H-1 member Sergeant Alvin Miller for fraternizing and gambling with inmates. He sought information regarding locked boxes in the field house and commissary, any discipline rendered to Sergeant Miller, Captain Hayward or Captain Minor for the same alleged incident, any and all video, audio, or photos used in the investigation, as well as a list of all staff and inmates questioned for the alleged incident. The information requested sought to identify the Captain who directed Miller in the commissary, to discover whether the Captain was issued any discipline, and to compare any existing discipline to any discipline issued to Miller.

On July 22, 2021, Ms. Grimm responded to RFI-3 stating: "Since no discipline was issued to your member, I am requesting additional information regarding how this is connected to a potential grievance or existing grievance." On July 27, 2021, Officer Kauert responded to Ms. Grimm as follows: "All members are to be treated with respect and dignity. There have been serious allegations made against [Sergeant] Miller that lead to a PDC [pre-disciplinary conference] and [] unfair treatment of the [Sergeant] for false allegations that were spread around to his peers by members of management." Kauert further explained that the requested information was necessary to determine whether the treatment of Sergeant Miller, as compared to Captains Hayward and Minor, violated the CBA for a potential grievance. The Sergeant Miller investigation resulted in no discipline. At the time of the request, management did not have its own document that stated that there was no discipline. "Respect and dignity" of members is a contractual requirement. When bargaining unit members are allegedly mistreated, disrespected or discriminated against, the PSCOA believes that it may investigate whether the treatment of the bargaining unit member violates this clause of the CBA for a potential grievance.

Under Board law, a Union is not entitled to management's investigatory materials or the result of a PDC unless discipline results and there is a potential for a grievance. The PSCOA was therefore not entitled to the materials regarding Miller or the Majors since none of them were disciplined and they were all treated the same. With respect to allegations that management spread rumors about Miller in violation of the CBA's "respect and dignity" clause, Ms. Grimm informed the Union that there was no such documentation to provide. Therefore, the DOC did not violate its bargaining obligation regarding RFI-3; there was no obligation to provide the results of the PDC, and Ms. Grimm informed the Union that no documentation existed regarding discipline against or alleged rumors about Miller, spread by management. Also, the requested information and the allegations against Sergeant Miller did not have relevance to the pending Officer Garrison grievance arbitration.

RFI-4 (SR-078)

Management accused Officer Kauert of making certain comments to COT Linhart, in August 2020. Officer Kauert was not present at the institution on the date management accused him of making the statements. He was 3 counties away at a labor-management, step-2 hearing. He had proof of his attendance at that hearing. However, based on those allegations, Officer Kauert was terminated on February 21, 2021. On July 15, 2021, after he was reinstated pursuant to his grievance settlement, and he was again able to conduct Union business, Officer Kauert filed RFI-4. In RFI-4, Kauert requested BII audio recordings for 3 interviews with COT Linhart on March 16, 2021, pertaining to the allegations against Officer Kauert. According to COT Linhart, all of the March 16, 2021 interviews with COT Linhart were recorded, pursuant to BII policy. The RFI also requested BII audio recordings for a March 31, 2021 interview with Records Specialist Ardith Mammay; a list of the BII agents conducting the investigation; and any and all documents associated with the investigation.

On July 22, 2021, Ms. Grimm responded to RFI-4 by requesting additional information regarding how the request was related to an existing or potential grievance, since the Kauert termination grievance had been settled. In Officer Kauert's view, Ms. Grimm's July 22, 2021 response to RFI-4 was part of a pattern of delay. Officer Kauert testified that he believes that management is consistently seeking more information, clarification and explanation of relevance to make it difficult to get information by asserting that the Union did not have an active or potential grievance. On July 27, 2021, Officer Kauert wrote to Ms. Grimm explaining that RFI-4 was related to the demeaning and disrespectful treatment of Officer Kauert and that the information sought pertained to the ongoing investigation into the man-hours dedicated to the mischaracterization of a Union official, which may constitute a CBA violation.

Officer Kauert wanted the information to establish that management spent time and resources to prove a case against him, that he believed management knew was not there, for the purposes of harassment and in violation of the negotiated due process requirements. Officer Kauert sought to obtain evidence opposing management's position against him. PSCOA leadership believed that there was potential for another grievance based on the requested information. In fact, a later discovered email from Superintendent Tice shows that management believed that it did not have a case against Kauert, as early as March 2021. Yet management did not reinstate Officer Kauert until his grievance settlement on the eve of arbitration, in July 2021. Accordingly, Officer Kauert entered a settlement without the mitigating, if not exonerating, email, and he agreed to a 3-day suspension, which will serve as a progressive step for any future discipline. Ms. Grimm's response, that the Kauert grievance was no longer pending, seems to be that the information request was mooted by the grievance settlement. However, evidence of the alleged targeting of Union officials, such as Officers Garrison and Kauert, for discipline and termination and the withholding of information, in violation of negotiated due process protocols, is capable of repetition and evading review, which is an exception to the mootness doctrine. Such evidence may have resulted in another grievance or the possible reopening of the Officer Kauert grievance settlement. Officer Kauert's termination was a progressive disciplinary step based on prior discipline that was withdrawn, as a result of a due process violation, constituting a separate contractual and due process violation. Accordingly,

the information sought in the RFI was discoverable to police the negotiated CBA and due process procedures, compliance with progressive discipline and the treatment of Union officials, who are also H-1 bargaining unit members.

Some, but not all requested BII audio recordings were provided to the Union. COT Linhart was also interviewed on March 25, 2021, at SCI Fayette. The Union never received the audio recording of that interview. Officer Kauert testified that the Commonwealth has represented that they provided everything on the C-NET servers, but the DOC has not explained why recordings are missing, which is a deviation from DOC policy, and that he has not received assurances that the missing audio recordings do not exist. In a November 30, 2021 email, Commonwealth Counsel stated that "BII confirmed with me that there are no additional audio recordings of the interviews responsive to your subpoena." Officer Kauert challenges the assertion that no more recordings exist. I find that Commonwealth Counsel's representation, that no more audio recordings currently exist, to be credible, although those missing recordings were made in March 2021. Accordingly, the Commonwealth engaged in unfair practices in violation of Section 1201(a) (1) and (5) and violated its duty to bargain collectively in good faith by failing to timely provide requested relevant information to the Union in RFI-4.

RFI-5 (SR-082)

On July 16, 2021, Officer Kauert filed RFI SR-082 (RFI-5) for information about the new DEMO Unit. In the RFI, Officer Kauert requested post orders for CO1s and CO2s on the DEMO Unit, DEMO Unit policies and procedures, the confidentiality agreement for surveillance officers assigned to the Unit, and the equipment list for officers in the DEMO Unit. On July 22, 2021, Ms. Grimm requested that Officer Kauert explain how the requests related to an existing or potential grievance while also acknowledging that she was aware of existing grievances regarding bid posting and operational changes in the DEMO Unit. Ms. Grimm stated: "please explain the relevance of the requested information to these grievances."

At the time of the request, the Union had filed 2 active grievances regarding RFI-5 and the DEMO Unit. BII and the DOC planned to have the DEMO Unit operational at Somerset by July 2021, but it was delayed. The Union had concerns over preferred bid posts in the new DEMO Unit, as well as officer safety. The DEMO Unit is a level-5 restricted housing unit, i.e., a jail within a jail. The DEMO Unit inmates have limited recreational and out-of-cell time. The CBA outlines the manner of assigning bid posts. Officers experience increased assaults from inmates on restricted housing units. The RFI-5 request for post orders, policies and procedures, and an equipment list, on its face, related to existing grievances and concerns over adequate staffing and safety, as recognized by Ms. Grimm, while she simultaneously requested a relevancy explanation.

The new DEMO Unit was fully operational in December 2021. BII is monitoring inmate phone calls and emails in the DEMO Unit for drug activity and contraband. The inmates assigned to the DEMO Unit are "Drug Kingpins" from all over the Commonwealth. The superintendents from other institutions are not made aware of an inmate's transfer to the Somerset DEMO Unit until one hour before the transfer. The actual housing part of the DEMO unit is regular DOC. Inmates in the DEMO Unit are not mixed in with the general inmate population; they are visibly and physically separated from the general inmate population.

Officer Kauert testified that, as with RFI-4, he believed that Ms. Grimm's July 22, 2021 response to RFI-5 was also a part of a pattern to delay providing information and to prevent the Union from receiving information. Officer Kauert emphasized that Ms. Grimm requested an explanation as to how the requested information related to a grievance and simultaneously acknowledge the existence of grievances pertaining to the operations of the new DEMO Unit. As Officer Kauert explained in his July 27, 2021 response to Ms. Grimm: "You answered the relevance question in your own request. We have filed a grievance on this matter and identified specific articles and sections to argue. The information is critical to the grievances . . . filed." On September 20, 2021, Ms. Grimm responded that the information would be provided when it becomes available. However, the phone monitors were surveilling inmate communications and operating under the confidentiality agreement as early as September 20, 2021. By September, at least some of the requested information was available, such as the confidentiality agreement, which could have been immediately provided to the Union, even though other information was evolving or subject to change. Even if there were concerns over confidentiality and secrecy about the DEMO Unit, there is no reason to believe that the Union leadership would betray the confidentiality or secrecy of the program. Ms. Grimm acknowledged the existence of grievances regarding the DEMO Unit and yet requested an explanation of relevance to potential or existing grievances. Then, she changed the reasons for not providing the requested information from relevancy to unavailability, while clearly some of the information was available. Ms. Grimm's shifting reasons support an inference of intentional delay to frustrate Union business, and certainly by this time a pattern had emerged further supporting the inference of intentional delay.

On January 26, 2022, management provided the post orders, handbook and confidentiality agreement, almost 2 months after the DEMO Unit became fully operational. On March 15, 2022, Union Vice President Aaron King emailed Ms. Grimm requesting to finalize RFI-5 stating that, with the Unit being operational, the requested documents should be close to being finalized and provided to the Union. On April 11, 2022, Vice President King notified Union Counsel that Ms. Grimm had still not responded. On April 14, 2022, Ms. Grimm sent an email to the Union and attached the "finalized" handbook for the DEMO Unit. This copy was unsigned. She further stated that there is no special equipment to be used in the DEMO Unit and that the DEMO Unit policy manual would be available to view; a copy would not be provided due to confidentiality concerns. The original request was made on July 16, 2021. Ms. Grimm did not fulfill RFI-5 until January 2022, and she did not finalize the provision of requested information until April 2022, 4 months after the DEMO Unit became fully operational. The delay interfered with the Union's ability to process the active, pending grievances related to Unit operations and manpower. A signed copy of the handbook still has not been provided.

Accordingly, management violated its bargaining obligation to provide requested information to the Union necessary for the processing of pending grievances concerning the DEMO Unit in a timely manner and engaged in unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

CONCLUSIONS

The hearing 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 PSCOA is an employe 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 within the meaning of Section 1201(a)(1) and (5) of PERA by not timely providing the information requested in RFIs-1,2,4 & 5, which was relevant and discoverable to enforce the CBA, and the SPI settlement, and to investigate discipline, due process violations, and pending grievances.

5. The Commonwealth has not committed unfair practices within the meaning of Section 1201(a)(1) or (5) by refusing to provide the information requested in RFI-3.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Commonwealth 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, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately provide any outstanding information requested by RFIs-1, 2, 4 & 5;

(b) Immediately cease and desist from denying and delaying facially relevant, requested information;

(c) 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; and

(d) 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.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighth day of December 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : CASE NO. PERA-C-21-218-E
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF CORRECTIONS, SOMERSET SCI :

AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased and desisted from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, under Section 1201(a) (1) and (5) of the Act; that it has immediately provided any outstanding information requested by RFIs-1, 2, 4 & 5; that it has posted a copy of this decision and order in the manner directed 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