

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL :
UNION, LOCAL 668, :
 :
v. : CASE NO. PERA-C-22-131-W
 :
COUNTY OF ALLEGHENY :

PROPOSED DECISION AND ORDER

On May 16, 2022, Service Employees International Union, Local 668 (SEIU or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Allegheny County (County or Employer) violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA or Act) by failing to provide requested information in connection with the terminations of bargaining-unit members pursuant to the County's COVID-19 vaccine policy.

On June 22, 2022, the Secretary of the Board issued a letter declining to issue a complaint in the matter. On July 8, 2022, the Union filed exceptions to the Secretary's decision declining to issue a complaint. On August 16, 2022, the Board issued an Order remanding the matter to the Secretary with direction to issue a complaint.

On August 26, 2022, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating October 20, 2022, via Microsoft Teams, as the date and manner of hearing.

The hearing was necessary. The hearing date was continued by the Hearing Examiner and ultimately held on January 23, 2023, via Microsoft Teams, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on March 13, 2023. The County submitted a post-hearing brief on May 15, 2023.

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

FINDINGS OF FACT

1. The Union is an employe organization within the meaning of PERA. (N.T. 15-17).
2. The County is a public employer within the meaning of PERA. (N.T. 25; Union Exhibit 1, page 1).
3. The Union represents the following bargaining units with the employer:
 - Unit 202 includes the County's clerical and technical employes certified at PERA-R-75-76-77-78-W.

- Unit 701 includes the County's clerical and technical employees certified at PERA-R-1544-W.
- Unit 905 includes non-professional employees necessary to the functioning of the Courts, including those employees under Row Officers certified at PERA-R-94-183-W.
- Unit 1701 includes the County's clerical and technical employees certified at PERA-R-1544-W.
- Unit 1301 includes the County's first-level supervisors and is a "meet and discuss" unit pursuant to Section 301(17) of PERA and is certified at PERA-R-2160-W.

The four collective bargaining agreements (CBAs) for the non-supervisory units all includes language where the parties agreed that if a bargaining unit employe is terminated, the County must give notice to the Union and the Union has the right to file a grievance challenging the termination. The County has the burden of showing that it had just cause to terminate. The Memorandum of Understanding (MOA) between the parties with respect to the 1301 unit also includes a grievance process. The MOA states that if a grievance between the parties includes termination or a suspension in excess of 30 days, the Union may refer such unresolved grievance to arbitration. The County must show under the MOA that it had just cause to terminate. (N.T. 25-30; Union Exhibits 1-5).

4. In December, 2021, and January, 2022, the Union became aware that the County was scheduling Loudermill and termination hearings in connection with the County's COVID-19 vaccine policy. The Union at that time did not know which of its bargaining-unit members were part of the terminations over the COVID-19 vaccine policy. (N.T. 39-41).

5. On December 20, 2021, the Union filed a class action grievance on behalf of members of the 202 unit, the 701 unit, the 905 unit, the 1301 unit, and the 1701 unit over employment terminations relating to the County's COVID-19 vaccine mandate. The Union believes between 12 to 24 bargaining unit members were terminated pursuant to the County's COVID-19 vaccine policy. (N.T. 41, 63; Union Exhibit 6,7).

6. As part of the class action grievance notice to the County dated December 20, 2021, Rick Grejda, Business Agent for the Union, requested the following information from the County:

- Copies of any policies, procedures, regulations, and work rules the grievant is alleged to have violated,
- List of any other employees who were alleged to have committed the same infraction and what, if any, discipline was issued,
- Copy of the grievant's personnel file, including copies of any previous disciplinary actions against the grievant, and performance evaluations,

- Employer memos related to work rule, policy, or procedure the grievant is alleged to have violated,
- Health and safety studies, inspection reports or memos,
- Names of any witnesses or potential witnesses, and witness statements,
- Training manuals related to the issue.

The Union requests the above, as well as all other documents the County considered, relied upon, or believes supports their decision to terminate the grievant(s).

(N.T. 41-47; Union Exhibit 7).

7. The Union did not receive an immediate response from the County to its December 20, 2021, letter containing the class action grievance and the related request for information. (N.T. 47).

8. On February 1, 2022, Grejda sent Deputy County Manager Steve Pilarski a letter stating that the Union had not received the information requested in the December 20, 2021, class action grievance letter and again requested that the County provide the requested information to the Union. (N.T. 49; Union Exhibit 8).

9. The County did not immediately respond to Grejda's February 1, 2022, letter. (N.T. 50).

10. On March 28, 2022, Grejda sent Pilarski a final request for information. This request asks for the same information requested in the December 20, 2021, class action grievance letter. (N.T. 51; Union Exhibit 9).

11. On April 4, 2022, Attorney Diego Correa, Assistant County Solicitor, responded to Grejda with a letter that states in relevant part:

Dear Mr. Grejda,

This correspondence is in response to your letter dated March 28, 2022, regarding a request for information relating to Allegheny County's COVID Vaccination Policy. The SEIU contends Allegheny County has yet to provide information in response to SEIU's requests relating to the disqualification of employees from further employment due to their having failed to obtain a COVID vaccine.

As a preliminary matter, it is well accepted law that with certain exceptions Allegheny County is required to provide information to the SEIU regarding matters which are subject to a duty to bargain. Allegheny County has taken the position and the PLRB is currently considering arguments

regarding the County's duty to bargain the COVID policy. As such, Allegheny County would submit that any and all information provided has and will continue to be provided in an effort to maintain a good faith working relationship with the SEIU. However, these efforts are not and will not be considered an admission of bargainability nor evidence of Allegheny County's duty to bargain these matters

With that understanding, Allegheny County will continue with its longstanding policy of meeting and discussing matters with unions in an effort to minimize disputes. Notwithstanding your suggestions otherwise, this has been evidenced by Allegheny County's continuously meeting and discussing the COVID vaccine policy issues with you and other SEIU representatives in numerous forums. During those discussions the majority of the discoverable documentation currently requested has been provided to the SEIU. However, continuing with its ongoing effort to work with the SEIU, Allegheny County shall provide this update:

1. Copies of policies, procedures, regulations, and work rules alleged to have been violated.

As has been clearly set forth throughout these proceedings, the employees in question have failed to abide by Allegheny County's COVID Vaccine Policy. Allegheny County provided notice of the COVID vaccine policy to all Unions via direct contacts from the administration. In addition, Allegheny County announced the policy publicly and provided each employee with copies of the policy announcement. I'm sure you recall the discussions regarding the COVID policy which were conducted during the past several months. The attached documents constitute copies of the generally distributed notifications but do not constitute every notification provided during the many exchanges between SEIU and Allegheny County which have occurred over the past six months. [Letter Exhibit 1].

2. Listing of other employees alleged to have committed the same infraction and what discipline was issued.

As indicated in the policy, those employees who elected not to receive the vaccinations and did not qualify for a legal accommodation were disqualified from further employment. Allegheny County has applied this standard consistently to those employees who elected not to receive the

vaccine. This was evidenced in copies of disqualification notices issued to each employee which were copied to the SEIU. As such, the Union has received this information in the ordinary course of business. Notwithstanding the previously provided notifications, bargaining unit members who have failed to obtain a vaccine and were disqualified from further employment are provided in the following exhibits:

[Letter Exhibits 2-4]

There is no record of disqualifications from the SEIU 1701 unit. (With respect to the 1301 unit, a meet and discuss unit, there is not a matter subject to bargaining. As such there is no duty to provide information regarding the 1301 unit.)

3. Copies of personnel files.

Allegheny County objects in that this request is not limited in scope and not reasonably tailored to this case. Additionally, employee personnel files contain significant information which is both irrelevant to this case and highly confidential/personal. In accordance with Pennsylvania law, Allegheny County cannot provide the access to employee personnel files in the manner requested.

4. Employer memos related to work rules, policies, or procedures the Grievants are alleged to have violated.

Since the COVID pandemic reached the shores of the United States more than two years ago Allegheny County has sought to gather information and address the ramifications of the world-wide plague which has caused thousands of deaths in Allegheny County alone - including a number of Allegheny County employees. Allegheny county objects in that this request is not limited in scope and not reasonably tailored to this case. The SEIU's broad request constitutes nothing more than a fishing expedition of monumental proportions. Absent the Union's clarification of the scope of the request Allegheny County will not be providing a response to this request.

5. Health and Safety studies, inspection reports or memos.

Throughout the pandemic Allegheny County has relied upon input from the experts in this matter - the Centers for Disease Control ("CDC") and applicable advisory boards, the Pennsylvania

Department of Health and the Allegheny County Department of Health. Included in those considerations are various statements and publications from these agencies. Accordingly, Allegheny County objects as noted at Paragraph 4.

6. Names of any witnesses or potential witnesses, and witness statements.

Allegheny County has not identified those witnesses to be called for any hearings arising from these grievances. The identities of witnesses shall be provided when said information becomes available. With respect to witness statements, the SEIU is aware of PLRB decisions establishing that witness statements are not discoverable. Allegheny County shall not provide such statements.

7. Training manuals related to the issue.

Allegheny County has no COVID training manual/protocol addressing the rights and duties of the parties under Pennsylvania labor law - a statute enacted some fifty years after the last epidemic approaching this scale in the United States.

(Union Exhibit 10).

12. Attorney Correa's April 4, 2022, letter to Grejda contained four exhibits. The first exhibit was copies of the County's September 29, 2021, announcement of the COVID-19 vaccine policy and form emails to County employees which announced the COVID-19 vaccine policy. Letter Exhibits 2-4 are lists of 19 bargaining-unit members who had been terminated pursuant to the County's COVID-19 vaccine policy for all units except the meet and discuss unit. (Union Exhibit 10).

13. The Union requested the personnel files because it needs to see the employees' past discipline, medical information, and medical or religious exemptions filed in order to determine whether to arbitrate the terminations over failure to comply with the County's COVID-19 vaccine policy. (N.T. 31-35).

14. As of the time of the hearing, the Union had not received any additional information from the County after Attorney Correa's April 4, 2022, letter. (N.T. 53-62).

DISCUSSION

In its Charge, the Union alleged that the County violated Section 1201(a)(1), (3) and (5) of PERA by failing to provide requested information in connection with the termination of bargaining-unit members pursuant to the County's COVID-19 vaccine mandate. The Union did not pursue this charge under Section 1201(a)(3) of the Act at the

hearing or in its Brief, and that charge is dismissed. With respect to the charge under Section 1201(a)(5), the record shows that the Union requested information under seven categories. These categories were numbered by the County in its response to the Union's request for information (RFI) at Union Exhibit 10 (Finding of Fact 3 above) and this Proposed Decision and Order will refer to those numbers.

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. 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 employe 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).

The law is also well settled that the Union's right to such information is not absolute if the information is confidential in nature. Commonwealth of Pennsylvania, Department of Public Welfare, 17 PPER ¶ 17042 (Final Order, 1986); Commonwealth of Pennsylvania, Department of Agriculture, 18 PPER ¶ 18003 (Final Order, 1986) citing Detroit Edison Company v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979); Belle Vernon Area School District, 21 PPER ¶ 21134 (Proposed Decision and Order, 1990); see also New Jersey Bell Telephone Company v. NLRB, 720 F.2d 789 (3d Cir. 1983).

Turning to this case, the Union, in its Brief, concedes that the County has provided sufficient information to fulfill its requests at items 1, 4 and 7. (Union's Brief at page 5).

Item 2 of the Union's RFI is "Listing of other employees alleged to have committed the same infraction and what discipline was issued." Though the language of this request may be read broadly to be asking for information on every County employe terminated or investigated

under the County's COVID-19 vaccine policy, the record in this matter shows that the Union was only interested in obtaining lists of bargaining-unit member employees. The County, eventually, provided lists of bargaining-unit employees that had been terminated excluding any information for the 1301 unit. The 1301 unit is a "meet and discuss" unit and the parties have a Memorandum of Understanding with respect to this unit. The County argues that it has no obligation to provide any information about the 1301 unit and in its Brief at page 12 cites Commonwealth of Pennsylvania, Department of Labor & Industry, 44 PPER 39 (Final Order, 2012), for the proposition that employers do not have a Section 1201(a)(5) obligation to provide information regarding a termination grievance under a Memorandum of Understanding to meet and discuss units. I agree. As the Board states in Labor & Industry: "Because the [employer] has no duty to bargain with the meet and discuss unit represented by [the union], there can be no violation of Section 1201(a)(5)." The Board's decision in Labor & Industry is controlling here and the County did not violate Section 1201(a)(5) by failing to provide the requested information regarding the meet and discuss unit. Thus, the County eventually provided the requested information under Item 2 of the Union's RFI and did not violate Section 1201(a)(5) by refusing to provide information about the meet and discuss unit.

Item 3 of the Union's RFI asks for "Copies of personnel files" for the bargaining unit employees terminated under the County's COVID-19 vaccine policy. As noted above, the Union must only show that its request for information be supported by a showing of probable or potential relevance. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097. I find the direct testimony of Grejda at N.T. 31-35 to be credible and persuasive. I find that the testimony supports the Union's claim that it is entitled to review the requested personnel files in order to see employees' discipline, medical information, and medical or religious exemptions. The Union needs this information in order to determine whether to arbitrate the terminations over failure to comply with the County's COVID-19 vaccine policy.

Both parties admit that the personnel files contain sensitive or confidential information. With respect to the concerns about the confidentiality of records in the personnel files, the Union, in its Brief at 7, states that it understands that the files have sensitive information in them and has offered to request employees to sign a waiver from the County. The Union states in its Brief that the Union is waiting for such a waiver from the County. The County in its Brief at page 22 states that it is waiting for waivers from the Union to provide access to the personnel files.

I agree with the County that it was not obligated to simply provide the copies of entire personnel files to the Union in this matter. The County can meet its burden under the law by sending copies of the personnel files or making them available for review with the consent of the employees. Based on my review of the law and the specific context of this matter, it is the Union's burden to provide employee releases or waivers to the County. New Jersey Bell Telephone Company v. NLRB, 720 F.2d 789 (3d Cir. 1983) (Holding that an employer's requirement that the union obtain releases to view sensitive and confidential employee information was only a minimal burden). If the

Union in this matter wants copies of or access to the personnel files, it must provide employe waivers to the County. The County's response to Item 3 of the RFI did not violate Section 1201(a)(5) of the Act.

Item 5 of the Union's RFI asks for "Health and Safety studies, inspection reports or memos". To support its request for this information in Item 5, Grejda testified on direct:

At this time, you know, the - the vaccine itself was highly-debatable. Right? I mean, it's still a hot topic, a hot potato and, you know, we were looking for any Health Department information that said this is why you need to be vaccinated, right. And we were actually, as an organization, supporting this, as long as it wouldn't harm a member. Right?

If somebody had a medical exemption, like, you know, me and my mumps, right, then we're willing to protect their rights. So if there was any - we asked for health and safety studies. We wanted information from the Health Department as to why they were justifying if this was a reasonable directive. And that was fine for the 90 percent of the people that could get it without any - any worries, but our concern was the ten percent of the people or so that our population said that they didn't want to get it because of a previous medical condition and/or a religious exemption. Right? So that's why we asked for health and safety studies.

(N.T. 44) (emphasis added). Based on Grejda's testimony and the record as a whole, I find that this request would not lead to information that is probably or potentially relevant. The Union, on this record, has not convinced me that the reasonableness of the County's COVID-19 vaccine policy is an issue for the Union to contest at arbitration because the promulgation of the COVID-19 vaccine policy was a proper exercise of managerial prerogative. Allegheny County Prison Employees Independent Union v. Allegheny County, 54 PPER ¶ 62 (Final Order, 2023). Additionally, the lack of response by the County to the Union to this particular request is ameliorated by the information already provided to the Union in the April 4, 2022, response from the County. This response provides justifications for the COVID-19 vaccine policy and information about the COVID-19 vaccines. The information provided to the Union includes links to the Allegheny Health Department's website for resources on the COVID-19 vaccine. Therefore, the County did not violate Section 1201(a)(5) by refusing to provide the information requested in Item 5.

Item 6 of the Union's RFI asks for "Names of any witnesses or potential witnesses, and witness statements." Generally, information about witnesses in an arbitration over a discipline grievance is potentially relevant to the Union. The County's response is that it has not identified any witnesses to be called for any hearings arising

from these grievances. I find this to be an adequate response. I also agree with the County in its Brief at page 26 that the Union may discover the names of potential witnesses (such as those County employees who participated in Loudermill hearings or ruled on exemption requests) when it reviews the requested personnel files discussed above. If, after a review of the personnel files, the Union has further questions about the identity of people involved in the discipline of its bargaining-unit members, it can send a more detailed request for names to the County at that time. The County also asserts that it has no obligation to provide witness statements. I agree with the County. Witness statements the employer receives from witnesses to an employee's misconduct do not need to be provided to a union (though the employer must provide the names of those witnesses). Gas Works Employees Union, Local 686 v. Philadelphia Gas Works, 45 PPER 68 (Final Order 2013). The County's response to Item 6 of the RFI did not violate Section 1201(a)(5) of the Act.

Finally, the Union in its charge and Brief did not argue that the County's response to the Union was unreasonably tardy or delayed. See Ford City Borough, supra (Holding that an unreasonable or inexcusable delay in providing relevant information is a violation of an employer's statutory obligation to bargain in good faith). I therefore will not address whether the County's response was unreasonably delayed.

Therefore, based on the above, the County has not committed any violations of Section 1201(a)(5) of the Act.

CONCLUSIONS

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

1. Allegheny County is a public employer within the meaning of Section 301(1) of PERA.
2. Service Employees International Union, Local 668 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. Allegheny County has not committed unfair practices in violation of Section 1201(a)(1) and (3) of PERA.
5. Allegheny County has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that charge is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixteenth day of June, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

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