

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

UNITED MINE WORKERS OF AMERICA, :  
LOCAL 522 :  
 :  
v. : CASE NO. PERA-C-23-41-W  
 :  
WESTMORELAND COUNTY :

**PROPOSED DECISION AND ORDER**

On February 3, 2023, United Mine Workers of America, Local 522 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Westmoreland County (County or Employer) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA or Act) when the County suspended Union President Scott Kennedy on December 7, 2022, and thereafter discharged him on January 2, 2023.

On April 3, 2023, 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 June 12, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was necessary and held on June 12, 2023, in Greensburg. The Union submitted a post-hearing brief on July 20, 2023. The County submitted a post-hearing brief on August 18, 2023.

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

**FINDINGS OF FACT**

1. The Union is a labor organization within the meaning of the Act. (N.T. 7).
2. The County is the public employer of the Union's members within the meaning of the Act. (N.T. 7).
3. The Union is the exclusive bargaining-unit representative of the County's correction officers (COs) employed at the County Prison. (N.T. 19).
4. Scott Kennedy was Union President for approximately three years before he was discharged. He was involved with the Union in a variety of other positions before he was elected president. In his role as Union President, he handled over 100 grievances. Kennedy testified that a CO has never been discharged or suspended for a summary offense such as public drunkenness or disorderly conduct. Kennedy testified that County policy does not require COs to report summary offenses. Kennedy testified that no CO had been suspended or discharged for failure to report a summary offense. (N.T. 57-61).

5. In or about August, 2021, Kennedy was disciplined by the County for alleged excessive use of force against an inmate. As part of this discipline Kennedy was suspended for over two months. The Union grieved the discipline and, on or about October 5, 2021, the parties settled the grievance by reducing the discipline to a written warning for mishandling of inmate property. Kennedy was made whole for his lost wages due to being suspended. (N.T. 62-64; Joint Exhibit 14).

6. In October, 2021, Kennedy attended a public Prison Board Meeting and spoke to the Prison Board. He complained to the Prison Board that County Human Resources (HR) and the Warden had been misusing county funds to keep him suspended. Kennedy specifically mentioned and complained about Warden Kline and the Director of HR, Alexis Bevan. He went over all the costs the County incurred litigating Kennedy's grievance. He also told the Prison Board that HR had been hiding information from the Prison Board regarding the incident which led to Kennedy's suspension and grievance. Present at this meeting were Bevan and Kline. Kennedy testified that after this meeting Bevan's attitude towards him changed and she refused to deal with him. Kennedy testified that Bevan would no longer accept or return his phone calls. (N.T. 64-66, 75, 128).

7. Kennedy testified that he did not have a good relationship with Warden Kline. He testified that he had problems communicating with Kline. Kennedy testified that he would try to go to Kline's office to speak to him and Kline would tell him to come back later. Kennedy testified that Kline would not answer or return his calls. Kennedy testified that he did not have problems with the previous Warden. (N.T. 66-67).

8. Ryan Perry is a CO and the current Union President. Perry testified that when Kennedy was President of the Union, Kennedy acted with passion and fought for the bargaining unit members. Perry testified that Kennedy was boisterous and said what was on his mind. Perry testified that, in comparison to Kennedy, he was more reserved. In Perry's experiences as Union President with Warden Kline, Perry observed that Kline was relieved that he was working with Perry and no longer had to work with Kennedy. Perry testified that after he would finish a meeting with Kline, Kline said "Well that went a lot better than usual." Perry testified that understood this comment to mean that Kline found Perry easier to deal with than Kennedy. (N.T. 94-100).

9. In August, 2022, Kennedy was criminally investigated based on allegations of domestic violence against his girlfriend and charged with a felony and misdemeanors. These charges were ultimately dropped before trial. Kennedy reported these criminal charges to the County. (N.T. 80, 90, 108-109).

10. On October 22, 2022, a non-traffic citation with a delayed summons was issued to Kennedy by the Irwin Borough Police Department for public drunkenness. The citation states: "[Kennedy] did appear in a public place under the influence of alcohol to such a degree that he endangered or annoyed other persons in his vicinity. TO WIT: [Kennedy] did climb on top of a vehicle and punching [sic] it, while it was being driven." Another non-traffic citation was issued on October 22, 2022, to Kennedy for disorderly conduct. This citation was also a delayed

summons. This citation states "[Kennedy] did recklessly create a risk that created a hazard by committing an act which served no legitimate purpose. TO WIT: [Kennedy] did climb on top of a vehicle and was punching it while it was being driven." The alleged incident date for both citations was October 19, 2022. Kennedy did not receive the citations until about three weeks after October 19, 2022. Kennedy pled guilty to both summary citations. (N.T. 84-87; Joint Exhibit 4, 6).

11. Kennedy did not report the citations to the County. (N.T. 85, 87, 110).

12. After receiving notice of the citations in October, 2022, the County suspended Kennedy with pay. After the Loudermill hearing, Kennedy was moved to unpaid suspension. He was then put on administrative leave pending the County's investigation. The County conducted an investigation which was presented to the Prison Board. The Prison Board voted to terminate Kennedy. The members of the Prison Board are the three commissioners, the County District Attorney, the County Sheriff, and a County Judge. (N.T. 110-112).

13. Bevan has been and employe of the County for over five years. She has been the Director of HR since 2020. She plays a role in discipline of COs at the County Jail. She prepares disciplinary reports for the Prison Board. (N.T. 104-105, 116-120).

14. On December 1, 2022, Bevan sent Kennedy a letter which states in relevant part:

Re: Loudermill Notice

Dear Mr. Kennedy:

Based on conduct described in this letter, you may be subject to disciplinary action, up to and, including discharge. The purpose of this letter is to provide you with timely notice of the potential for disciplinary action against you, a brief explanation of the evidence which the County obtained during its investigation of this matter, and an opportunity for you to offer any and all information which may modify the penalty presently being contemplated. Please be advised you are being placed on administrative leave pending further investigation.

The underlying basis for potential disciplinary action involved in the incident that occurred on October 19, 2022, Irwin Boro Police Department responded to an incident in which you were charged with public drunkenness and similar misconduct, and disorderly conduct by jumping on the top of a vehicle and punch[ing] it while it was being driven. This incident is breaking the County Code of Ethics, Prison Policy A-154- Code of Ethics, specifically, but not limited to Section VII. 10 and 22, Prison Policy A-148.

Arrest and/or Criminal Investigation of Staff, specifically but not limited to Section V.I, Section VI.3 and unprofessional behaviors. You also violated Westmoreland County Prison's Code of Ethics VII.14 by not reporting this information to the supervisor, o [sic] Deputy Warden of Security.

These behaviors violate the Westmoreland County Code of Ethics and Westmoreland County Prison Policies by engaging in activity which would reflect unfavorably on or discredit the department or the county, disrespect for the laws of the Commonwealth of Pennsylvania, and failure to refrain from engaging in any acts or conducts that may lead to a criminal conviction.

As you are aware any allegations of policy violations are taken very seriously and indicate a lack of regard for your responsibilities as a County Employee. You now have the opportunity to provide me with any and all information, which would cause me to reconsider recommending that disciplinary action be taken against you.

Any information which you would like to provide should be submitted in a sealed envelope, delivered to my attention at Westmoreland County Department of Human Resources.

You will have until 4:00pm on December 8, 2022 to provide me with any additional information which you would like me to consider prior to making a formal decision regarding disciplinary action in this case.

(Joint Exhibit 8).

15. Kennedy was put on paid suspension pending investigation on December 1, 2022. (Joint Exhibit 9).

16. On December 8, 2022, Kennedy wrote Bevan a letter where he explained his side of the story of the October, 2022, incidents which led to his two summary citations. In this letter Kennedy confirms that the incident involved his girlfriend who was driving the car. (Joint Exhibit 10).

17. On December 13, 2022, Kennedy filed a grievance with the County contesting his suspension. (Joint Exhibit 3).

18. On January 3, 2023, Bevan wrote Kennedy a letter which states in relevant part:

Dear Mr. Kennedy,

In follow up to the Loudermill letter sent to you on December, 2022 and your response submitted the same day, please be advised that the decision has been made to terminate your employment with the Westmoreland County Prison. Your response letter was received in a timely fashion. However, the contents of the letter have not provided information to contradict the finding of the investigation.

There has been an investigation into your actions involving law enforcement that occurred on October 19, 2022. The following information was discovered during the investigation.

Irwin Boro Police Department responded to an incident in which you were charged with public drunkenness and similar misconduct, and disorderly conduct by jumping on the top of a vehicle and punch[ing] it while it was being driven. This incident is breaking the County Code of Ethics, Prison Policy A-154 Code of Ethics, specifically, but not limited to Section VII.10 and 22, Prison Policy A-148-Arrest and/or Criminal Investigation of Staff, specifically but not limited to Section V.1, Section VI.3 and unprofessional behaviors. You also violated Westmoreland County Prison's Code of Ethic's VII by not reporting this information to the supervisor, o [sic] Deputy Warden of Security.

These behaviors violate the Westmoreland County Code of Ethics and Westmoreland County Prison Policies by engaging in activity which would reflect unfavorably on or discredit the department or the County, disrespect for the laws of the Commonwealth of Pennsylvania, and failure to refrain from engaging in any acts or conducts that may lead to a criminal conviction. As you are aware any allegations of policy violations are taken very seriously and indicate a lack of regard for your responsibilities as a County Employee.

Westmoreland County is dedicated to upholding our policies and creating a fair working environment for all employees, violations as described above will not be tolerated. Please remember that retaliation will also not be tolerated. Please contact Westmoreland County Prison to arrange pick up of any personal belongings and the return of an[y] County issued equipment.

(Joint Exhibit 11).

19. Kennedy was terminated on January 23, 2023. (Joint Exhibit 11).

20. County Prison Policy A-154 states in relevant part:

VII. RULES OF CONDUCT

. . . .

10. Employees are expected to treat their peers, supervisors and the general public with respect and conduct themselves properly and professionally at all times; unacceptable conduct or insolences will not be tolerated.

. . . .

14. Employees will promptly report to their supervisor any information which comes to their attention and indicated violation of the law, rules and/or regulations of the Westmoreland County Prison by either an employee or an inmate, and employees are expected to maintain a reasonable familiarity with the provisions of all applicable policies and procedures.

. . . .

22. During off-duty hours, employees will conduct themselves in such a manner as to demonstrate the public's trust and confidence inherent in their position as a public servant. Any conduct which brings discredit to their profession, responsibilities, the Westmoreland County Prison, or public service at large violates this Code of Ethics.

(N.T. 76-81; Joint Exhibit 16).

21. County Prison Policy A-148 states in relevant part:

V. ILLEGAL CONDUCT OR ACTIVITY INVOLVING CRIMINAL INTENT NOT INVOLVING ACTIVITY WHILE ON ACTIVE DUTY FOR THE WESTMORELAND COUNTY PRISON OR NOT ON THE PREMISES OF THE WESTMORELAND COUNTY PRISON

1. Any conduct away from the workplace may serve as a basis for revocation of any employee's appointment when: (a) The conduct harms the reputation of the Westmoreland County Prison or hinders its operations; (b) The Conduct renders the employee unable to perform his or her duties or to appear at work; or (c) The conduct or behavior in question leads to refusal, reluctance or inability of other employees to work with the subject employee.

2. The Westmoreland County Prison may conduct an investigation of any employee arrested or charged in a criminal matter involving activity while not on active duty for the Westmoreland County Prison or on the premises of the Westmoreland County Prison to determine if the conduct harmed the reputation of the prison or hindered its operation; renders the employee unable to perform his or her duties or to appear at work; or creates reluctance or inability of other employees to work with the subject employee. An employee may be suspended without pay pending the investigation by the Westmoreland County Prison to determine if this policy has been violated. A determination will be made by a preponderance of the evidence standard and the Westmoreland County Prison is in no way bound by the determination or outcome by the criminal justice system relative to the disposition of any criminal charges or prosecution.

. . . .

#### VI. CRIMINAL INVESTIGATION OF EMPLOYEE

1. If an employee is subject to a criminal investigation for a misdemeanor and/or felony crime, the employee must notify the Deputy Warden of Security, or his designee, in writing, within 48 hours of becoming aware of such investigation. The Warden of Security will then be responsible to notify the Warden. . . .

. . . .

3. If the subject of the criminal investigation involves allegations of conduct that occurred while not on active duty for the Westmoreland County Prison or not on the premises of the Westmoreland County Prison, the Westmoreland County Prison shall, at its discretion conduct and independent investigation to determine the existence of any policy violations of the Westmoreland County Prison and the employee's suitability for employment at the Westmoreland County Prison.

(N.T. 26-27, 83; Joint Exhibit 17).

22. Amy Jo Huffer is an employee of the County Prison but is not a CO in the Union's bargaining unit. On or about January 30, 2023, a criminal complaint was issued against her for driving under the influence of alcohol. At the time of the hearing, she had not been suspended or discharged. (N.T. 95-96; Union Exhibit 1).

23. Casey Mullooy is an employe of the United Mine Workers and has been the representative for the CO Union at the County prison for almost nine years. Mullooy testified that in his time as a representative, there has never been a CO discharged for a being charged with a summary offense such as public drunkenness or disorderly conduct or for failing to report a summary offense charge. Mullooy testified that he does not know of any Prison policy which requires COs to notify management about summary offenses such as speeding tickets or parking tickets. (N.T. 18-19, 31-32, 51).

24. Mike Rae was a CO who was terminated by the County in 2011 for failure to report a DUI and violations of Policy A-148. (N.T. 113; County Exhibit 21).

25. Jacob Schaefer was a CO and was terminated by the County in 2015 for violating Policy A-148 (N.T. 113; County Exhibit 21).

### **DISCUSSION**

In its Charge, the Union asserts that the County violated Section 1201(a)(1) and (3) of the Act when it discriminated against Kennedy for his engagement in protected activity by terminating him in January 2023.

In a discrimination claim, the complainant has the burden of establishing that the affected employe engaged in protected activity, that the employer knew of that activity and that the employer took adverse employment action that was motivated by the employe's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996); York City Employes Union v. City of York, 29 PPER ¶ 29235 (Final Order, 1998).

Because motive is seldom expressed, in Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board set forth several factors to be weighed in determining whether an employer was motivated by anti-union animus. Those factors include, but are not limited to, the entire background of the case, including any anti-union activities by the employer; statements by the employer tending to show the employer's state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the employer's actions on organizing activities; the extent or nature of the employe(s) protected union activities; and whether the action complained of was "inherently destructive" of important employe rights. Id. at 380.

The factors set forth in Child Development Council are not all inclusive, and the Board must look to the totality of the circumstances to infer unlawful union animus. Lancaster County v. PLRB, 124 A.3d 1269 (Pa. 2015). However, generally any one factor standing alone is insufficient to establish the employer's unlawful motive. For example,



the Board has held that close timing between the employee's protected activity and the employer's action alone is insufficient to establish unlawful motive. AFSCME, Council 13 v. Commonwealth, Department of Labor and Industry, Office of Vocational Rehabilitation (OVR), 16 PPER ¶ 16020 (Final Order, 1984). A pretextual reason, standing alone, is also insufficient to establish unlawful motive. Clarion-Limestone Area Education Association v. Clarion-Limestone Area School District, 25 PPER ¶ 25033 (Final Order, 1994). Neither is the employer's processing and denial of a grievance self-evident of an unlawful retaliatory motive. See Fink v. Clarion County, 32 PPER ¶32165 (Final Order, 2001); Teamsters Local Union No. 500 v. Southeastern Pennsylvania Transportation Authority, 28 PPER ¶28025 (Final Order, 1996). Even when the employer's action is "inherently destructive" of important employe rights, (i.e. conduct that has far reaching, debilitating effects with respect to employe bargaining or union organizing), that finding must be coupled with the lack of a purported business justification for the employer's action in order to establish an unlawful motive. Teamsters Local 229 v. Susquehanna County, 30 PPER ¶30060 (Final Order, 1999); NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1967).

An employer's lack of adequate reason for the adverse action taken may be part of the employe's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct. Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 at 64 (Final Order, 1992). The burden only shifts to the employer if the Union establishes a prima facie case of discrimination. Id.

Moving to this matter, the record shows that Kennedy engaged in protected activity. Kennedy attended a Prison Board meeting in October 2021 and criticized the prison management over labor relations issues. It is uncontested that this event is an example of protected activity under the Act. The record also shows that Kennedy, as President of the Union participated in grievances on behalf of the Union and bargaining-unit members.

It is not contested in this matter that the County was aware Kennedy engaged in protected activity and that the County took adverse action against Kennedy when it suspended him in December 2022 and terminated him in January 2023.

The record in this matter supports a conclusion that the County had anti-union animus. The record shows that there was animus against Kennedy held by Kline and Bevan. Kennedy credibly testified that he and Kline did not get along and that he had a hard time working with Kline. Perry testified that, after Kennedy was discharged, Kline told him that he was relieved to work with Perry and not Kennedy. The record clearly supports a conclusion that Kline, who was the Warden of the Prison, had animus towards Kennedy due to how Kennedy acted as President of the Union. The record supports an inference that Kline did not like how Kennedy passionately performed his role as Union President and was boisterous and spoke his mind. This is anti-union

animus as Kline had animus against Kennedy for the way Kennedy performed his job as Union President, which is protected activity.

The record also supports the conclusion that Bevan had anti-union animus. The record shows that after Kennedy publicly criticized Bevan at the October, 2021, Prison Board meeting, Bevan refused to deal with Kennedy or even talk to him. Thus, the record shows that Bevan had animus towards Kennedy because of his protected activity. This is anti-union animus.

Anti-union animus on this record can also be inferred. The Union argues that the disparate treatment of Kennedy supports the inference of anti-union animus. I agree. The most compelling argument for disparate treatment in this matter is the fact that there has never been a CO discharged for being cited with a summary offense such as public drunkenness or disorderly conduct or for failing to report a summary offense citation.

Additionally, the County was aware that Kennedy had been charged with much more serious crimes in August, 2022, including a felony and misdemeanors and did not discharge him or discipline him at all. The County in its Brief at 10 argues that the fact that the County did nothing to Kennedy after he was charged with a felony and misdemeanors as evidence supporting a conclusion that it had no anti-union animus towards Kennedy. However, I believe that this evidence shows disparate treatment since the County did not discipline Kennedy for being charged with a felony and misdemeanors and then shortly thereafter terminated him for being cited for summary offenses.

On the topic of disparate treatment, the Union argues in its Brief:

[O]ther employes who have not engaged in the protected activity in which Mr. Kennedy has engaged are treated differently. For example, on September 17, 2022, Amy Huffer, a non-bargaining unit employe of Westmoreland County subject to the same policies to which Mr. Kennedy is subject and upon which the County relied in terminating Mr. Kennedy's employment, was charged with driving while intoxicated. According to the criminal complaint, Ms. Huffer operated the vehicle with a blood alcohol level of .301%, nearly four times the legal limit of .08%. Drunk driving accounts for approximately one third of all traffic fatalities in the United States. As of the date of the hearing in this matter, however, Ms. Huffer remains actively employed by the County. This is very different from the County's treatment of Mr. Kennedy's investigation of the August or October 2022 incidents, during which investigations Mr. Kennedy was suspended, and in the later case discharged.

(Union's Brief at 7) (citations omitted). I agree that this evidence further supports the inference that Kennedy's termination was a case of disparate treatment.

The County also provided evidence of the cases of bargaining-unit members Mike Rae and Jacob Shaeffer who were both terminated for violating County Policy A-148. In Rae's case, the record shows that he was terminated for failure to report a DUI. However, Rae's DUI was likely a misdemeanor and not a summary citation as in the case of Kennedy. Shaeffer's case is not well established on this record and I cannot draw any conclusions about it.

The County provided many other examples of discipline of County employes. I do not include them in the Findings of Fact above since their value as evidence is low.<sup>1</sup>

Additional evidence supports an inference of anti-union animus. Bevan testified that she made no decision about terminating Kennedy and made no recommendation to the Prison Board regarding the discipline of Kennedy (N.T. 111, 120). However, I do not credit this testimony because in Bevan's letter to Kennedy at Joint Exhibit 8, Bevan states that Kennedy had the opportunity to provide Bevan with information which would cause "[Bevan] to reconsider recommending that disciplinary action be taken against you." That is, the letter clearly states that Bevan had already decided to recommend discipline in the case. Further, the letter goes on to say that Kennedy had the opportunity to provide additional information prior to Bevan "making a formal decision regarding disciplinary action in this case." Thus, the letter clearly states that Bevan, at the time she wrote the letter, was preparing to make a formal decision on Kennedy's discipline. This evidence undermines her testimony that she made no decision on discipline and no recommendation to the Prison Board. Bevan's credibility is also

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<sup>1</sup>County Exhibit 21 contains documents showing examples of discipline the County introduced to show that Kennedy was not treated disparately. The County also elicited testimony from Bevan at N.T. 113-117 on this issue. In general, this evidence is not relevant because the circumstances portrayed are sufficiently different from Kennedy such that they are not comparable. With respect to the termination of Rebecca Walker, I do not find her discharge to be relevant because she was accused of crimes relating to her job which rise to the level above off-duty summary citations. With respect to termination of Dominic Hood, there is insufficient evidence about his case for me to make a determination one way or the other. With respect to the termination of Kimberly Ness, Ness was accused of child abuse while working for the County's Juvenile Detention office. I find that these circumstances are sufficiently different from Kennedy as to not be relevant. With respect to the resignation of William Martin, there is insufficient information in the record about the severity of the charges against him for me to accept the incident as relevant. With respect to the termination of Daniel Gradischeck, the information indicates in the record that he was disciplined for bribing female inmates with cigarettes in exchange for seeing their breasts. I find that this is sufficiently different from the case with Kennedy, which was off-duty and not involving inmates, and not relevant.

undercut by the fact that the County offered no corroborating witnesses. For example, no one on the Prison Board testified to corroborate Bevan's testimony that she made no recommendation to the Prison Board and that it was the Prison Board that decided to terminate Kennedy.

The Union also argues that the County's actions were pretextual. I agree. The letters from Bevan which suspend and terminate Kennedy reference a violation of Policy A-148 Section VI which requires employees to report all misdemeanor and felony charges. However, the citations against Kennedy at Joint Exhibit 4 and 6 are citations for summary offenses and not charges for any misdemeanor or felony. The record is clear in this matter that the County does not discipline employees for the failure to report summary citations. Therefore, I agree with the Union that the County's reliance on this section is not a legitimate reason to terminate Kennedy and is very strong evidence of pretext.

The requirement to report misdemeanor and felony charges is not the only cited reason for Kennedy's termination. The County asserts Kennedy violated Policy A-154, Sections VII.10 and VII.22 and Policy A-148, Sections V.1 and VI.3. The evidence in this case supports a conclusion that the County's reliance on these sections to terminate Kennedy were pretextual. As discussed above, no CO has ever been terminated under these sections for engaging in conduct that led to a mere summary citation. Additionally, as discussed above, the County was aware that Kennedy had been charged with much more serious crimes in August, 2022, including a felony and misdemeanors and did not discipline him at all under these cited sections. It strains my credulity too far to believe the County was legitimately concerned with ethical code violations over the summary citations when it was not similarly concerned with the much more serious felony and misdemeanors allegations against Kennedy in August, 2022.

Therefore, the Union has met its prima facie case. The Union showed that Kennedy engaged in protected activity, that the County was aware of this protected activity, and that that the employer took adverse employment action that was motivated by Kennedy's involvement in protected activity. The evidence supporting a finding of anti-union animus includes: the anti-union animus shown by Kline and Bevan; disparate treatment of Kennedy; and evidence showing that the County's reasons for terminating Kennedy were pretextual.

In this case, the County cannot show by a preponderance of the evidence that it would have terminated Kennedy even if he had not engaged in protected activity. Pennsylvania Federation of Teachers v. Temple University, supra. As discussed above, the County's reasons for terminating Kennedy on this record do not make sense. The County has never terminated an employe for engaging in behavior which led to a summary citation. Further, it does not make sense on this record why the County would terminate Kennedy for a summary citation soon after it declined to terminate him for much more serious felony and misdemeanor charges. Finally, the County's incorrect reliance on Kennedy's supposed failure to report the summary citations strongly undercuts the legitimacy of the discipline.

The County could have possibly adequately explained non-animus reasons for terminating Kennedy, but the County only put on Bevan to explain its actions. Bevan did not go into great detail about the reasons Kennedy was terminated. If the County believed that Bevan was not, in fact, the person who made the ultimate decision to terminate Kennedy, it could have put the person or persons who made that decision on the stand to adequately explain the County's reasons for terminating Kennedy. No member of the Prison Board testified at the hearing, for example, though the County argues that it was the Prison Board who made the decision to terminate Kennedy. Defending its decision to terminate Kennedy, the County argues in its Brief at 11 that:

**Mr. Kennedy had a history of violent outbursts, including an incident where an inmate's arm was broken and the August 2022 incident where it was alleged he strangled his girlfriend. See, Transcript, pp. 76, 80. When he committed yet another act of violence,** and subsequently pled guilty to the charges that arose from the same, all without ever notifying the County or the Prison, he violated Policies A-148 and A-154 and was terminated for those violations - just as others who have violated the same policies have been before him. The fact that his charges were summary in nature is a red-herring and has no bearing on appropriate discipline here. Indeed, the cited sections of the policies do not in any way limit the off-duty conduct they reference to criminal acts graded as either misdemeanors and felonies.

(emphasis added.) As stated above, the County cannot rely on his failure to report summary offenses to terminate him. It is absolutely not a "red-herring". With respect to pleading guilty to the summary citations, neither Bevan's letters to Kennedy nor her testimony indicate that him pleading guilty to the summary offenses was a factor in the decision to terminate him. With respect to the County focusing on Kennedy's series of violent events (bolded above), while it is understandable that the County would like me to believe the repeated incidents of violence were a reason Kennedy was ultimately terminated, the record lacks substantial evidence to arrive at the conclusion that this was an actual reason the County terminated Kennedy. Bevan's letters to Kennedy do not assert this and Bevan, when she testified, never said that Kennedy was terminated for repeated incidents of violence including domestic violence. Thus, there is no substantial evidence to support a conclusion that Kennedy was fired for repeated incidents of violence.

For these reasons, the County cannot rebut the Union's prima facie case.

#### CONCLUSIONS

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

1. Westmoreland County is a public employer within the meaning of Section 301(1) of PERA.

2. United Mine Workers of America, Local 522 is an employee organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. Westmoreland County has committed unfair practices in violation of Section 1201(a) (1) and (3) of PERA.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Hearing Examiner

#### **HEREBY ORDERS AND DIRECTS**

that the County shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately reinstate Kennedy to his former position and rescind his suspension dated December 1, 2022, and his termination dated January 23, 2023;

(b) Immediately pay Kennedy and make him whole for all lost wages and benefits he would have earned had he not been suspended and terminated, including but not limited to wage increases received by the bargaining unit during the backpay period and any other lost benefits, medical and dental payments and co-payments or accoutrements and terms and conditions of employment enjoyed by Corrections Officers, including any differentials in holiday pay, overtime and the accrual of sick and vacation time, as well as pension contributions during the backpay period;

(c) Immediately pay Kennedy interest at the rate of six percent *per annum* on the outstanding backpay owed to him;

(d) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days;

(e) 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

(f) Serve a copy of the attached Affidavit of Compliance upon the Union.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

**SIGNED, DATED AND MAILED** at Harrisburg, Pennsylvania, this third day of October, 2023.

**PENNSYLVANIA LABOR RELATIONS BOARD**

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

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

UNITED MINE WORKERS OF AMERICA, :  
LOCAL 522 :  
 :  
v. : CASE NO. PERA-C-23-41-W  
 :  
WESTMORELAND COUNTY :

AFFIDAVIT OF COMPLIANCE

The County of Westmorland hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it immediately reinstated Kennedy and rescinded his suspension and termination; that it immediately paid Kennedy and made him whole for all lost wages and benefits he would have earned had he not been suspended and terminated; that it immediately paid Kennedy interest at the rate of six percent *per annum* on the outstanding backpay owed to him; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public