

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 :  
v. : CASE NO. PERA-C-23-56-E  
 :  
COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF CORRECTIONS :

**PROPOSED DECISION AND ORDER**

On March 1, 2023, the Pennsylvania State Corrections Officers Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Corrections (Department or Commonwealth) independently violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (Act or PERA). The Union specifically alleged that, during a Step-1 grievance meeting, Chief Investigator Harold Kertes (Kertes) in the Department's Bureau of Investigations and Intelligence (BII) told Union Business Agent Casey O'Neil (O'Neil) that the Commonwealth would not pursue criminal charges against the grievant, Officer Trisha Hoover (Hoover), if the Union did not pursue the grievance and that, if the grievance were to proceed, the Commonwealth would pursue criminal charges. The Union further alleged that, when O'Neil subsequently told the grievant about Kertes' statements, the grievant responded that she felt threatened, intimidated, and concerned about exercising her grievance rights.

On May 3, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing (CNH) designating a hearing date of July 10, 2023, in Harrisburg. I continued the hearing at the request of the Commonwealth, due to witness unavailability, over the objection of the Union, and rescheduled the hearing for September 1, 2023. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimony, admit documents, and cross-examine witnesses. Also during the hearing, the Union withdrew its claims under Section 1201(a)(3) and (5). (N.T. 8-9). On November 27, 2023, the Union filed its post-hearing brief. On December 26, 2023, 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. 8)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. Prior to 2016, Trisha Hoover (Hoover) worked as a Corrections Officer 1 (CO-1) at SCI Cambridge Springs. In 2016, she was promoted to Corrections Officer 2 (CO-2) as a Sergeant in the Drug Interdiction Unit, commonly referred to as the Canine Unit. Hoover is currently a CO-1 at SCI Cambridge Springs. (N.T. 86-89, 114)

4. O'Neil is a Business Agent for the Union. Canine officers are assigned to 1 of 3 regions (i.e., Eastern, Central, and Western), and not to any particular institution. As a result, canine officers do not have a local Union representative. O'Neil conducts Union business on behalf of the canine officers, standing in for a local president or local vice president. The Canine Unit operates out of the Department Headquarters at Tech Park in Mechanicsburg, Pennsylvania and at another location near SCI Rockview and SCI Benner. (N.T. 19-21, 90-91)

5. Kertes is currently a Deputy Superintendent at SCI Phoenix and SCI Chester. Between May 2016 and May 2023, Kertes was the Chief of Investigations at BII. Kertes investigated and interviewed Officer Hoover on September 21, 2022, at the Department's Central Office in Tech Park. Initially Kertes was investigating Hoover's alleged refusal to follow an order to report to SCI Somerset on September 12, 2022. The investigation progressed into investigating theft of time. During the meeting, Kertes stated to Hoover: "you could be facing criminal charges." Also during the meeting, Kertes asked about Hoover's workday and told Hoover that there was a "gray area" in interpreting a side agreement regarding the beginning and end of canine officers' workdays. Kertes did not mention overtime. On September 23, 2022, Hoover was suspended. (N.T. 28, 51-56, 86-89, 90-91, 98, 108-109, 112-113, 117-118, 121-122)

6. Canine officers have a different workday than corrections officers who clock in and out at their assigned institutions. Canine officers do not punch a timeclock because they leave from their homes with their canine and they are dispatched to different institutions in their assigned region. An arbitration award and previous instructions from management provided that a canine officer's workday began when they started handling their dog. If it takes 20 minutes for an officer to prepare his/her dog and get them into their state vehicle before they leave their home, that 20 minutes is included in the officer's workday. Recently, a supervisor believed that canine officers started to get paid when their dog(s) were secured in the state vehicle for departure from the officer's residence. Hoover had to prepare 2 dogs for the day and get them into her vehicle.<sup>1</sup> (N.T. 48)

7. On January 6, 2023, the Department issued a disciplinary notice to Hoover advising her that she was no longer assigned to the Drug Interdiction Unit, that she was demoted from Sergeant to CO-1, and that she was assigned to SCI Cambridge Springs, effective January 7, 2023. Hoover was suspended between September 23, 2022 and January 7, 2023. The notice alleged that Hoover failed to report to her post assignment on September 12, 2022, she deleted text messages from her Commonwealth issued cell phone when asked to turn it over, failed to work full 8-hour shifts on several occasions, and submitted for overtime payment for hours she failed to work. On January 18, 2023, O'Neil filed a grievance on behalf of Hoover for that discipline. (N.T. 22-23, 54-56, 86-89, 124-125; UX-1; CX-3).

8. The grievance progressed to a Step-1 meeting on February 14, 2023, at Tech Park. Attending the meeting in person were O'Neil, Kertes, and Acting Captain Jason Berfield (Berfield). Attending the meeting virtually were Human Resources Analyst for Canine Lauren Damen (Damen) and Major

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<sup>1</sup> The record is not clear on whether management actually disseminated a policy that changed compensatory time for canine officers or made it clear how that time should be submitted.

Torres. Hoover did not attend the Step-1 grievance meeting. (N.T. 24-30, 91-92, 115, 125-127)

9. Damen led the Step-1 meeting by explaining the results of the Commonwealth's investigation of Hoover and its reasons for disciplining her. O'Neil defended Hoover at the meeting, and he was unaware that a criminal referral may have been made. (N.T. 33-35)

10. After O'Neil finished his presentation, Kertes stated that, if the Union and Hoover continued to pursue the grievance for the discipline, he would pursue criminal charges. (N.T. 36-37, 76)

11. O'Neil believed that Kertes' comments were inappropriate during the Step-1 meeting because the meeting was protected activity. O'Neil also believed that criminal charges should not have been threatened in exchange for complete withdrawal of the grievance. (N.T. 39-40)

12. Kertes' statement was reiterated several times throughout the hearing by both O'Neil and Kertes. O'Neil testified that Kertes specifically stated: "If I [O'Neil] were to pull the grievance, he [Kertes] would forego criminal charges, and there would be no criminal charges moving forward." Kertes testified that he stated: "If they [Union and Hoover] were going to choose to move forward with the grievance that we [management] had no choice but to proceed with our criminal investigation and present it to the District Attorney's Office for possible criminal charges." A conviction for theft by deception for allegedly stealing time could result in job loss and pension forfeiture, depending on the monetary amount involved. (N.T. 40-41, 125-127, 129-130, 134-135, 137)

13. After Kertes' statement, O'Neil excused himself from the meeting to make a phone call to his grievance coordinator. He then returned to the meeting to discuss the grievance. (N.T. 42-44, 130-132)

14. The criminal charges were raised again after O'Neil presented his packet of documents showing the state vehicle GPS tracking data, called Telematics, for other canine officers to demonstrate that Kertes was singling out Hoover. The Commonwealth provided the Telematics data for other officers to the Union in response to an RFI, and O'Neil gave the packet back to the Commonwealth representatives at the beginning of the Step-1 meeting. Kertes did not personally provide the telematics data to the Union for other officers, and he had seen the telematics only for Hoover's vehicle prior to the meeting. Kertes responded: "I'm going to question every single one of these people that are in this packet, and I'm going to pursue criminal charges on them and move forward with it, if you do not withdraw." (N.T. 44, 61-64, 130-133, 148)

15. After making a second phone call to PSCOA President John Eckenrode, O'Neil proceeded with the grievance meeting. At this time, Kertes reiterated that the Union should withdraw the grievance or management would pursue criminal charges. After the Step-1 meeting, O'Neil moved the grievance to Step 2, where it remains active, but held in abeyance. (N.T. 45-46)

16. O'Neil did not understand Kertes' statements as part of a settlement negotiation or offer. He believed it to be a "bully tactic," to withdraw the grievance rather than settle it. O'Neil believed that Kertes overstepped. He was "worried" and "taken aback" by Kertes' statements. O'Neil felt that Kertes' statements were "infringing upon her [Hoover's] rights,"

and not that Kertes was trying to negotiate in good faith. At no time during the meeting did the Commonwealth offer settlement terms for the grievance. Kertes admitted during the hearing that he had no role in grievance settlements and that other individuals were involved in settling grievances. (N.T. 71-75, 140-145)

17. After the Step-1 meeting on February 14, 2023, O'Neil told Officer Hoover that Kertes said that if she did not withdraw the grievance, he would pursue criminal charges against her and investigate the other canine officers. Officer Hoover expressed nervousness about hearing Kertes' comments and asked O'Neil if that was legal. She was concerned. (N.T. 46-47, 92-94)

#### DISCUSSION

The Union has alleged that Kertes, a managerial representative of the Commonwealth, independently violated Section 1201(a)(1) of the Act, when he made certain statements during a Step-1 grievance meeting. An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER 32165 at 404 (FO, 2001); Northwest Area Educ. Ass' n v. Northwest Area Sch. Dist., 38 PPER 147 (FO, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employes have in fact been coerced. Pennsylvania State Corrections Officers Ass' n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (FO, 2004). However, an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Ringgold Educ. Ass' n v. Ringgold Sch. Dist., 26 PPER 26155 (FO, 1995).

The right of bargaining representatives to file grievances with a public employer on behalf of employes or the union is a protected, concerted activity for mutual aid and protection within the meaning of Section 401 of PERA. 43 P.S. § 1101.401. Also, the right to file and pursue grievances is enshrined in Section 903 of the Act, which provides that "[a]rbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." 43 P.S. §1101.903. In Section 1201(a)(1) of PERA, the General Assembly ensured that the filing of grievances and other protected activities be exercised free of threats, intimidation, or coercion. Pursuant to that Section, the Board and its examiners have found that employers' agents committed unfair practices when they have made threats or promised benefits regarding grievances.

In Twin Valley Support Professionals Ass'n v. Twin Valley Sch. Dist., 49 PPER 72 (PDO, 2018), the management official was meeting with the union during a grievance meeting where the union officials proposed that an employe's discipline did not warrant a written record. The manager was pressing for the complete withdrawal of a grievance and stated: "if you want documentation, we'll give you some," and stated that "the [u]nion shouldn't go down this road." The examiner in Twin Valley concluded that the statements were threats to coerce the withdrawal, and not the settlement, of the grievance, in violation of Section 1201(a)(1). Also, in Crestwood Education Ass'n v. Crestwood School District, 49 PPER 13 (PDO, 2017), the district superintendent stated during a grievance meeting that, if the union pursues a grievance to protect instructional coaching positions, the union proceeds at its own peril during the school board's budgeting process, implying that management would eliminate the positions. The examiner concluded that the

superintendent's statement constituted a threat in violation of Section 1201(a)(1). In SEIU, Local 585 v. Blair County, 32 PPER 32035 (PDO, 2001), the union presented a grievance during a meeting with management over higher out-of-class pay for alternative work assignments. During that meeting, the manager stated that "if the issue was going to be pursued by the union then he would just lay off people and subcontract the work." The examiner concluded that the statement could be understood by a reasonable person to be a threat for filing the grievance in violation of Section 1201(a)(1). In Pennsylvania Department of Public Welfare, 12 PPER 12026 (PDO, 1980), the union filed 6 grievances alleging contract violations. The manager responded that, since the union wants to follow the letter of the contract verbatim, in the future management will do so. The examiner concluded that the threat to strictly enforce the contract interfered with, restrained, and coerced employees in the exercise of the right to file grievances and constituted a violation of the Act. Also, in TWU of Philadelphia, Local 234 v. SEPTA, 17 PPER 17038 (FO, 1986), the Board held, *inter alia*, that an employer's promise of a benefit, to erase the union representative's disciplinary record if he reduced the number of grievances that he was filing, violated Section 1201(a)(1), because it interfered with the right to file grievances.

In this case, during the Step-1 grievance meeting on February 14, 2023, Kertes, on multiple occasions during the meeting, stated to O'Neil that, if the Union were to move forward with the Hoover grievance, the Commonwealth would have no choice but to pursue its criminal investigation and/or charges against Hoover for allegedly stealing paid time. The Commonwealth representatives, at no time during that meeting, offered any settlement proposals on the merits of the grievance itself, i.e., Hoover's demotion, her pay cut, her separation from her dogs, and her involuntary transfer to SCI Cambridge Springs. Kertes' statements constituted a threat against the Union and Hoover which, under the totality of the circumstances, had a coercive effect on Hoover's and the Union's exercise of protected rights under Article IV and IX of the Act, in violation of Section 1201(a)(1). Both O'Neil and Hoover were understandably and reasonably shaken by Kertes' intimidating threats. O'Neil was "taken aback" and "worried" and reasonably believed that Kertes was "infringing upon [Hoover's] rights." Hoover, upon hearing about Kertes' statements was reasonably and understandably "nervous" and "concerned."

The Commonwealth contends that Kertes was engaged in negotiations and that Kertes' main goal was to settle the grievance at the Step-1 meeting. (Commonwealth Brief at 4). The Commonwealth further posits that Union Business Agent O'Neil conceded that Kertes was bargaining and negotiating regarding the criminal charges. (Commonwealth Brief at 4-5). An excerpt from O'Neil's testimony, which the Commonwealth refers to at pages 38-41 of the Notes of Testimony, shows that O'Neil did say that he felt that Kertes was bargaining and negotiating. However, O'Neil's full testimony shows that O'Neil felt that Kertes was bargaining the criminal charges in a forum where the Union and the Commonwealth were supposed to be bargaining the settlement of the discipline already imposed on Hoover, which did not include criminal charges. O'Neil believed that Kertes was refusing to bargain the discipline imposed and would only accept complete withdrawal of the grievance in exchange for Kertes' not pursuing future criminal charges. O'Neil testified that the trouble for him was that Kertes linked the criminal charges to the settlement of the discipline imposed on Hoover, which should not have been raised at the Step-1 settlement of the discipline. I agree with the Union that Kertes' statements constituted an improper threat.

Within this context, Kertes was not negotiating. He was in a take-it-or-leave-it posture and only the complete withdrawal of the grievance, rather than settlement of the grievance, would suffice. The above-cited cases consistently stand for the proposition that the implications of statements, designed to affect the free pursuit of the grievance process itself, constitute the unlawful threat. Here, Kertes' threatening the Union to gain complete withdrawal of a grievance filed on behalf of a disciplined employee was an attempt to snuff out one of the Union's primary functions, i.e., to file grievances to defend and protect employees experiencing adverse employment actions. Threats that chill the free pursuit of statutory rights have no place in negotiations of any kind. Also, as emphasized by the Union in its brief, Kertes could not have been negotiating because Kertes admitted during the hearing that he had no role to play in settling grievances and that none of the Commonwealth representatives at the Step-1 meeting offered any specific settlement terms related to the matters complained of in the grievance.

Moreover, the threat to pursue criminal action against Hoover for pursuing the grievance was not the only threat. Kertes further threatened to investigate other canine officers' telematics and pursue criminal and disciplinary action against them if O'Neil did not withdraw the Hoover grievance. There can be no greater threat to an employee for exercising protected rights than to threaten the criminal prosecution of a potential felony, a conviction for which could result in the loss of Hoover's and other canine officers' jobs, their income, their freedom, their pensions, and their other benefits. In this manner, Kertes was impliedly threatening Hoover with possible termination if she and O'Neil pursued the grievance. Even if Kertes' threats could be construed as offering a benefit in exchange for complete grievance withdrawal, (i.e., the benefit of not being prosecuted) the promise of a benefit affecting the pursuit and filing of grievances constitutes coercion in violation of Section 1201(a)(1). SEPTA, supra.

Additionally, although the Union does not have the burden to show improper motive here, the evidence shows that Kertes clearly intended to intimidate and coerce O'Neill and Hoover by deliberately repeating threats to pursue criminal charges against Hoover and to investigate other canine officers. Also, Kertes recognized that there was confusion and disagreement over when paid time begins and ends for canine officers. Kertes admitted to Hoover during his September 21, 2022 interview with her that there was a "gray area" in determining when the canine officers were on the clock. Various supervisors had different interpretations of a side agreement or arbitration award regarding the time when canine officers were on the clock and entitled to compensation. Even though Kertes understood this "gray area" for submitting time, he still threatened, multiple times, to exercise his prerogative to pursue criminal charges against Hoover and others, unless the grievance was withdrawn. Kertes' persistence in repeating the threats to obtain complete grievance withdrawal speaks volumes about his unlawful motive to intimidate and coerce the Union and Hoover.<sup>2</sup>

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<sup>2</sup> Although not at issue in this case, a public employer in this Commonwealth may not use managerial prerogatives in a discriminatory manner or as an offensive weapon of retaliation. Teamsters, Local No. 205 v. Brentwood Borough, 35 PPER 112 (Final Order, 2004). The filing of criminal charges against Hoover and/or other officers after continuing to pursue the grievance could arguably violate Section 1201(a)(3).

The Commonwealth also argues that Kertes informed Hoover on September 21, 2022, that Hoover could be facing criminal charges for theft of time. In this manner, contends the Commonwealth, the Union and Hoover were on notice 4 months before the filing of the grievance that Hoover could be facing criminal charges. Consequently, given the prior notice, Kertes' repeated statements at the Step-1 meeting, on February 14, 2023, could not have been perceived as a threat to a reasonable person under the totality of the circumstances. (Commonwealth Brief at 5). However, the September 21, 2022 interview between Kertes and Hoover was part of the Commonwealth's investigation of Hoover. The Commonwealth had not yet imposed discipline and the Union had certainly not yet filed a grievance on behalf of Hoover for that discipline. In this regard, the Commonwealth was exercising its managerial prerogative to investigate, discipline, and determine whether to pursue criminal charges against Hoover in September 2022. Hoover and the Union had not engaged in the protected activity of filing a grievance over discipline, and Kertes' September 21, 2022 statement was not a coercive threat linked to protected activity. Rather, the September 21, 2022 statement constituted the informational conveyance of possible future outcomes of an investigation. The fact that Hoover and the Union had notice of the possibility of criminal charges during the investigation stage and before a disciplinary determination was made has no relationship to the fact that Kertes used the post-investigation and post-discipline threat of future criminal charges to force the complete withdrawal of a grievance complaining of discipline that was completely unrelated to the criminal charges threatened.

Furthermore, the Commonwealth has offered no legitimate reasons for intentionally threatening the pursuit of criminal charges to coerce the complete withdrawal, rather than settlement of, the Hoover grievance challenging discipline that did not include criminal charges. Kertes' statements certainly implied that he had discretion whether to pursue criminal charges against Hoover and the other canine officers. Threatening the use of management's discretionary authority to pursue criminal charges, resulting in additional and more severe adverse employment action, in exchange for the complete withdrawal of the grievance, during a grievance settlement meeting, was intimidating, coercive and unnecessary. Accordingly, the Commonwealth violated Section 1201(a)(1) of the Act.

#### 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 Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth independently committed unfair practices in violation of Section 1201(a)(1).

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, 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 Articles IV and IX of the Act;

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

(a) Immediately cease for all time threatening Hoover, the Union, and other employes with criminal charges/investigations during grievance settlement meetings for grievances challenging discipline that does not involve existing criminal charges;

(b) Post a copy of this decision and order at all canine officer facilities, and all SCIs 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

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this third day of January 2024.

PENNSYLVANIA LABOR RELATIONS BOARD  
/S/ JACK E. MARINO

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JACK E. MARINO, Hearing Examiner



COMMONWEALTH OF PENNSYLVANIA  
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**AFFIDAVIT OF COMPLIANCE**

The Commonwealth hereby certifies that it has ceased and desisted from its independent violations of Section 1201(a)(1) of PERA; that it has ceased from threatening Hoover, the Union, and other employes with criminal charges/investigations during grievance settlement meetings for grievances challenging discipline that does not involve existing criminal charges; that it has posted a copy of this decision and order as prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

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Signature of Notary Public