COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES INDEPENDENT UNION	:	
v.	:	CASE NO. PERA-C-22-142-W
COUNTY OF ALLEGHENY	:	

SECOND PROPOSED DECISION AND ORDER

On June 2, 2022, the Allegheny County Prison Employees Independent Union (ACPEIU or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Allegheny County (County, Jail or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) when the County unilaterally transferred work to non-bargaining unit sergeants in April and May of 2022.

On June 22, 2022, the Secretary of the Board issued a complaint and notice of hearing. On September 1, 2022, the Union filed an amended charge alleging additional instances of unilaterally transferred work to non-bargaining unit sergeants in July and August of 2022. On September 16, 2022, the Secretary of the Board issued an amended complaint and notice of hearing.

The hearing was held on December 7, 2022. The undersigned Hearing Examiner thereafter issued a Proposed Decision and Order on July 31, 2023, which held that the County had committed unfair practices violating Section 1201(a)(1) and (5) of the Act and ordered the County to cease and desist from violating the Act, return the exclusive bargaining-unit work to the Union, post a copy of the Proposed Decision and Order, and file an Affidavit of Compliance.

The County filed exceptions to the Proposed Decision and Order on August 8, 2023. On March 19, 2024, the Board issued an Order Directing Remand to the Hearing Examiner for Further Proceedings (Remand Order). The Remand Order vacated the Proposed Decision and Order's conclusion that the County had violated Section 1201(a)(1) and (5) of the Act and also vacated the Proposed Decision and Order's directives to the County. In its Remand Order, the Board held:

> Upon review of the proceedings of this case, the Hearing Examiner did not address the County's contractual privilege defense. Accordingly, the Board finds it necessary to remand this matter to the Hearing Examiner for further proceedings and reopening of the record for the inclusion of additional evidence as appropriate, including but not limited to the complete CBA, for the limited purpose of addressing the County's contractual privilege defense.

Pursuant to the Board's Remand Order, a hearing was held on November 11, 2024, during which the parties offered evidence including the admission of the CBA. This hearing was limited to the issues raised in the Remand Order. The County filed its post-hearing brief on January 27, 2025. The Union filed its post-hearing brief on February 7, 2025.

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

ADDITIONAL FINDINGS OF FACT[1]

30. The parties are subject to a connected series of bargained agreements and interest arbitration awards which all refer back to the last full collective bargaining agreement between the parties which has the effective dates of July 1, 1994 through June 30, 1997 (the 1994 to 1997 CBA). The various terms in the successor agreements and awards have not been fully integrated by the parties into a new collective bargaining agreement. At the times relevant to this matter, the parties were subject to an Act 195 Interest Arbitration Award issued by Arbitrator W. Timothy Barry on September 10, 2020, which expired on December 31, 2023. (N.T. 18-19; County Exhibit 14).

DISCUSSION

In its charge, the Union alleged that the County violated Section 1201(a)(5) of the Act when the County transferred bargaining-unit work to sergeants without bargaining.

After the first hearing in this matter, I determined that the record supported the Union's charge and showed that the County assigned sergeants to exclusive bargaining-unit corrections officer (CO) job duties without bargaining. Specifically, the record showed the County transferred the following work to sergeants in 2022: control booth on April 17; nighttime sanitation detail in April; lunch relief duties on May 20, May 21, and August 21; Rayburn kitchen detail on May 24, May 25 and August 23; floor control duties on May 25, July 30 and August 6; special kitchen detail on August 6; intake duties on August 6; escort duties on August 20; and special electric detail on August 23. The County did not contest that it assigned sergeants to these duties, that the duties were exclusive to COs, and that it did not bargain with the Union over the assignment of sergeants to these duties.

I concluded that the actions of the County were thus an unfair practice as they constituted the unilateral removal of bargaining-unit work, which is a mandatory subject of bargaining.

In the first Proposed Decision and Order I addressed and dismissed a number of County defenses. I addressed and dismissed the County's defense that its conduct in this matter was an exercise in inherent managerial prerogative and, thus, there was no bargaining violation. I also addressed and dismissed the County's argument that the issue of removing the bargaining-unit work from the COs is not a

[1] Findings of Fact 1-29 from the first Proposed Decision and Order are incorporated into this Proposed Decision and Order.

mandatory subject of bargaining because the County's interests, and the interests of the public, supersede those of the bargaining unit. I also addressed and dismissed the County's argument that its actions are excused by the "exigent circumstances" doctrine adopted by the Board.

As mentioned above, the Board remanded this matter to enter into the record the evidence needed to consider a contractual privilege defense and then to consider such a defense.

In Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000), the Commonwealth Court affirmed the Board's use of the contractual privilege defense and stated:

> The PLRB has recognized "contractual privilege" as an affirmative defense to a charge of unfair labor practices alleging a failure to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a "sound arguable basis" in the language of the parties' collective bargaining agreement, or other bargained for agreement, for the claim that the employer's action was permissible under the agreement.

Id. at 651. The Board recognizes that there is a fundamental distinction between an employer's application of the terms in a collective bargaining agreement in response to a specific contractual claim, which must have a sound arguable basis in the contract, and an action that attempts to unilaterally alter contractual terms through managerial policies that have prospective unit-wide application. Wilkes-Barre Township v. PLRB, 878 A.2d 977 (Pa. Cmwlth. 2005). Where the employer asserts a contractual right to change a mandatory subject of bargaining or contractual terms, the defense is not a sound arguable basis in the application of the agreement, but one of a waiver of the right to bargain, and the employer must point to specific, agreed-upon contract language which indicates that the union expressly and intentionally authorized the employer to take the precise unilateral action at issue. Commonwealth v. PLRB, 459 A.2d 452 (Pa. Cmwlth. 1983) (Venango County Board of Assistance); Wilkes-Barre Township, supra.; Chester Upland School District v. PLRB, 150 A.3d 143 (Pa. Cmwlth. 2016); Temple University Hospital Nurses Association v. Temple University Health System, 41 PPER 3 (Final Order, 2010); City of York, 50 PPER 18 (Final Order, 2018). In the absence of a clear, express and unequivocal waiver of the statutory right to bargain over previously negotiated contract terms or mandatory subjects of bargaining, an employer's unilateral repudiation or alteration of the terms of the collective bargaining agreement is irrefutably an unfair labor practice. City of York, supra.

To establish the union's waiver of the statutory right to bargain over a mandatory subject of bargaining, there must be specific, agreed-upon contract language negotiated in the collective bargaining agreement in which the union expressly and intentionally authorized the employer to take the precise unilateral action with regard to the specific subject at issue. Venango County Board of Assistance, supra; City of York, supra.

Moving to this matter, the County makes the following argument and citations in its Remand Brief to support its contractual privilege defense:

> That the Allegheny County Jail is a 24/7 operation requiring staffing and security for inmates at all times is recognized by the parties within the Collective Bargaining Agreement, which expressly recognizes the importance of maintaining staffing at all times:
>
> > ARTICLE IV
> >
> > Uninterrupted Operation and Continuous Service
> >
> > 1. The Union recognizes that it is absolutely necessary for the County to be operated on a twenty-four (24) hour, seven (7) day a week basis and that the County's operations be properly manned.
> >
> > 2. The Union, and the employees, accept the responsibility that every employee exerts every effort to assure that all shifts are properly manned at all times. . .
>
> . . . Within the Collective Bargaining Agreement, the parties addressed the Allegheny County Jail's authority regarding matters not specifically addressed with the CBA, providing:
>
> > ARTICLE XV
> > Management Rights
> >
> > The County retains and reserves unto itself all powers, rights, authority, duties and responsibilities, including but not limited to the security of the prison, conferred upon and vested in it by the Commonwealth of Pennsylvania, and with regard to all matters not covered by this Agreement.
>
> The parties expanded upon this clause within the 1997-2002 McDaniel Interest Arbitration Award, wherein this clause is amended to provide additional specificity:
>
> > The County retains and reserves unto itself all inherent, statutory and

> other powers, rights, authority, duties and responsibilities of its management status--including but not limited to those of operating, manning and securing its facilities, hiring, scheduling, directing, supervising and, for just cause, disciplining and discharging its employees-- which are not expressly modified or restricted by any specific and enforceable terms or conditions of these Agreement provisions.

(County's Remand Brief at 3)(internal citations omitted)(County Exhibit 14 at pages "CBA_010", "CBA_031", "CBA_080", and "CBA_081").

In order to succeed in its defense, the County must point to a clear, express and unequivocal waiver of the statutory right to bargain over the removal of bargaining-unit work. City of York, supra. No such language exists in this record. Reviewing the above language cited by the County, the County has cited Article IV which has language commonly referred to as a "No Strike Clause" or similar. The other two citations, to Article XV and to the 1997-2002 McDaniel Interest Arbitration Award, are general management rights sections. The County has not cited any specific language that gives it the sound arguable basis to remove bargaining-unit work or shows that the Union waived its right to bargain over the issue. The County is making a boiler plate argument based on the contractual language cited and such arguments were definitively rejected over forty years ago by the Board and Commonwealth Court in Venango County Board of Assistance:

> [A] union's waiver of the right to bargain on mandatory subjects during the term of an agreement will not be found in a boiler plate waiver clause alone. Instead, ... such clauses may only be employed as a shield by either party to prevent incessant demands during the contract term made by the other party seeking to alter the status quo. Use of the clause as a sword by one seeking to impose unilateral changes without first bargaining is not favored.

Venango County Board of Assistance, 459 A.2d at 457.

Therefore, the County has committed bargaining violations under Section 1201(a)(5) of the Act.

Addressing the County's other arguments raised in its Remand Brief, the County argues at page 8 that: "While the [Union] would prefer to cloak the issue as one of subcontracting, the issue at hand is staffing – an issue clearly addressed within the CBA by the parties during negotiations." The first Proposed Decision and Order already concluded that the issue in this matter is the removal of bargaining-unit work, or subcontracting. The County cannot attempt at this time

to reargue issues that were already decided in the first Proposed Decision and Order.

Moving on, at page 10 of its Remand Brief, the County cites AFSCME District Council 83 v. Centre Area Transportation Authority, 53 PPER ¶ 31 (Proposed Decision and Order, 2021) (CATA), as similar enough to this matter for its outcome to be controlling. In CATA, the undersigned Hearing Examiner found that a transit authority had not committed bargaining violations because it had a contractual privilege to discontinue fixed transit routes worked by bargaining unit members, create new non-fixed transit routes, and assign these non-fixed transit routes to non-bargaining unit members. CATA, however, is clearly distinguishable from this matter as in CATA there was specific contractual language which stated:

> Section 4.1:
>
> . . . [T]he Employer shall have and retain exclusively the following rights which **shall not be subject to collective bargaining**:
>
> . . .
> A. To determine the level of transit service to be provided, recognizing that the level of service may vary from time to time depending on the needs of the public and to reduce service after public patronage declines.
>
> . . .
>
> G. To assign and reassign different routes, as may be needed for providing efficient service to the public.
>
> . . .
>
> J. **The right to contract for the provision of non-fixed route**, demand-responsive transportation. Non-fixed route, demand-responsive transportation shall be defined as transportation which does not operate on a published and publicly distributed fixed route and timetable. . . .

CATA, supra (emphasis added). On its face, the contract language in CATA states that the transit authority had the right to determine the level of services to be provided, assign routes and contract for the provision of non-fixed routes and these rights explicitly "shall not be subject to collective bargaining". Thus, the agreement in CATA explicitly states that the issue of the employer contracting out non-fixed route work to non-bargaining unit members (outsourcing or the removal of bargaining-unit work) is not a bargainable issue.[2] The

[2] On this issue I am persuaded by the Union's discussion of CATA at page 7 of the Union's Remand Brief.

transit union in CATA had clearly, expressly, and unequivocally waived the right to collectively bargain those issues during the lifetime of that contract. No such facts exist in this matter and CATA is distinguishable.

CONCLUSIONS

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

1. The County 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 County has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County of Allegheny 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 the 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 examiner finds necessary to effectuate the policies of PERA:

(a) Immediately return the following work to the bargaining unit: control booth; nighttime sanitation detail; lunch relief; Rayburn kitchen detail; floor control; special kitchen detail; intake; escort; and special electric detail.

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

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

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

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighteenth day of February 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

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

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COUNTY OF ALLEGHENY	:	

AFFIDAVIT OF COMPLIANCE

The County of Allegheny hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it immediately returned the control booth, nighttime sanitation detail, lunch relief, Rayburn kitchen detail, floor control, special kitchen detail, intake, escort, and special electric detail work to the bargaining unit; 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.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public