

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PA STATE CORRECTIONS OFFICERS :  
ASSOCIATION :  
 :  
v. : Case No. PERA-C-24-196-E  
 :  
COMMONWEALTH OF PA :

**PROPOSED DECISION AND ORDER**

On August 15, 2024, the Pennsylvania State Corrections Officers Association (PSCOA or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania (Commonwealth or Employer), alleging that the Commonwealth violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act) by transferring Corrections Officer Zachary Black from the Training Academy in Elizabethtown to his sending institution at SCI Coal Township on April 17, 2024, in retaliation for his protected activity.

On September 9, 2024, the Board Secretary issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on December 9, 2024, if necessary. The hearing ensued, as scheduled, on December 9, 2024, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed separate post-hearing briefs in support of their respective positions on March 25, 2025.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents 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 employee organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. The Union is the exclusive bargaining representative for a unit of corrections employees working at various Department of Corrections (DOC), State Correctional Institutions (SCI) throughout the Commonwealth. (Joint Exhibit 1)
4. The Union and the Commonwealth were parties to a collective bargaining agreement (CBA) effective July 1, 2021, to June 30, 2024. (Joint Exhibit 1)
5. The Commonwealth operates a Training Academy in Elizabethtown for the DOC employees, which is staffed by corrections officers from multiple institutions throughout the state, who serve on detached duty from those institutions. (N.T. 13-15)

6. The Union and the Commonwealth are parties to a Local Agreement for Detached Duty Training Instructors, which provides in relevant part as follows:

The Department of Corrections (DOC) Training Academy (TRA) is tasked with providing Basic Training and in service training for all DOC employees on a wide variety of subject areas. Instructors must be well versed in DOC policy and procedures. Best practice calls for instructors to have recent experience working in a correctional facility. To that end, the following is proposed:

1. Vacant instructor positions (classified as Corrections Officers) at the TRA will be posted as Detached Duty Corrections Officer 1 or 2 on a state-wide basis. Selection of candidate will be at sole discretion of management and selection will be made via the interview process with consideration of prior work performance. Seniority will not be considered in the selection process. Corrections Officer 1 applicants will need to meet the minimum experience and training for the Corrections Officer 2 job title. During the interview, candidates will be presented with the document "Terms of Acceptance - Detached Duty Training Instructor" for review and signature. Refusal to sign this document will result in the candidate not being considered for the vacancy.
2. TRA's current permanent CO2 positions will be phased out through attrition. As these positions become vacant, they will be posted and filled in accordance with #1 of this Agreement.
3. Corrections Officer 1's selected for the detached duty assignment will be promoted to Corrections Officer 2 and serve a contractual and Civil Service six (6) month probationary period. Corrections Officer 2's with regular status selected for the TRA detached duty assignment will retain their current status. Corrections Officer 2's currently serving a probationary period selected for the TRA detached duty assignment will complete the remaining probationary period at the TRA.
4. The promotion of a Corrections Officer 1 while at TRA is without precedent and will not be used by PSCOA in support to have any other Corrections Officer 1 position reclassified to Corrections Officer 2.
5. Employees whose performance is not conducive to the program will be returned to the institution previously worked. The provisions of Article 26, Discharge, Demotion, Suspension and Discipline, Section 1, will not apply. It is agreed that management must have good reason(s) for the removal of employees from instructor detached duty positions. It is further agreed that whenever management has concerns about an officer's performance, a meeting will be held with that Officer to fully detail these concerns. After receiving input from the officer and considering that input appropriately, the officer will be fully apprised of what performance correction is necessary and by when the correction must be realized. If correction is not realized, another meeting will be held with the officer. Again, the officer's input will be solicited and

considered and he/she will again be advised of the necessary correction and advised failure to do so will result in removal from the TRA. During either or both meetings, the employee may elect union representation.

6. It is understood between the parties that substantiation of inappropriate conduct, such as instructor/cadet fraternization, is grounds to return him/her to their previously worked institution, as well as possible disciplinary action, without going through the process described in #5 of this Agreement. Disputes related to this paragraph may be handled through the grievance procedure outlined in the contract, specific to disciplinary actions taken. The return of any employee to his/her previous [sic] worked institution is not subject to the grievance procedure...

(N.T. 18-19; Union Exhibit 1)

7. Michael Ohler became the full-time PSCOA Business Agent overseeing the Local Union at the Elizabethtown Training Academy in January 2024. Upon his arrival there, Sergeant Zachary Black was the Local Union President, while Sergeant Christopher Cooper was Vice President. (N.T. 13-15, 21)

8. Business Agent Ohler testified that, when he began overseeing the Local Union at the Training Academy, he advised the Commonwealth, and specifically Captain Heidi Glenn, that PSCOA would begin enforcing "all four corners" of the contract. He described how there had apparently been a lapse in previous enforcement with only two grievances filed over the prior year, which he found to be inadequate. (N.T. 22-23)

9. Business Agent Ohler also directed Sergeants Back and Cooper to enforce all four corners of the contract. Ohler did some research and found a number of issues from the Union's perspective. For example, he did not believe that the Commonwealth was hiring overtime correctly. He directed Sergeant Black to place these issues on the agenda at the parties' labor-management meetings, which Black subsequently did. (N.T. 23-24)

10. Business Agent Ohler testified that the labor-management minutes from 2023 were very sparse. He felt that the Local Union should be more involved, which has been his approach at every institution he has serviced. He explained how Sergeant Black followed his advice and began raising all of these new issues with the Commonwealth, which remain unresolved. (N.T. 24-26)

11. Sergeant Zachary Black testified that he is currently retired after serving at the Commonwealth's Training Academy in Elizabethtown. His previously worked institution was SCI Coal Township. He began working at the Training Academy in or around February 2022 and remained there until his removal. (N.T. 27-28)

12. Sergeant Black served as the OC Coordinator at the Training Academy where he was responsible for coordinating and training staff and instructors in the use of OC spray. He possessed a master instructor

designation, which signified that he was qualified to train instructors, as well as the rank-and-file staff employees and cadets. (N.T. 28-30)<sup>1</sup>

13. Sergeant Black became the Local Union President at the Training Academy in the fall of 2022 and held that role until he was removed. He described how the previous Business Agent at the Training Academy, Larry Sonnie, "was more laid back" than Ohler. Black explained that Business Agent Sonnie had an approach where he tried to resolve issues by working with the Commonwealth as best as he could instead of always filing formal grievances. Black testified that Sonnie had a less aggressive and less adversarial style as compared to Ohler. (N.T. 32-33)

14. Sergeant Black testified that Business Agent Ohler wanted him to start enforcing the contract. Black described how labor-management meetings became more hostile once Ohler came in January 2024 and the Union started enforcing the contract. He explained that management developed an attitude with the Union from across the table. (N.T. 34-36)

15. Sergeant Black testified that corrections trainees are required to have four hours of OC training at the Training Academy as part of their required curriculum. He estimated that he taught approximately 34 to 36 OC courses per year during his time at the Training Academy. He described how every trainee gets the same standard uniform training. (N.T. 37-38)

16. Sergeant Black testified that, during his OC training, he always used the same course structure, as an instructor. He described how the beginning of the class consisted of a lecture, which was taught by a PowerPoint slideshow. He explained that hands-on training followed the slideshow, which then proceeded to an exposure, and finally the decontamination process. (N.T. 39-40)

17. Sergeant Black testified that the lecture is supposed to take 1.5 hours, while the hands-on portion of the course would also last 1.5 hours. He described how the exposure stage would then last about 40 to 45 minutes, which could vary. He testified that the decontamination portion of the course was harder to time. He indicated that the instructors would give the trainees ample time following the OC exposure to go into decontamination, which includes washing the OC from their faces, skin, and hair. He stated that, once the instructors felt that the trainees could safely return to their rooms or get in their vehicles to commute home, they were released. (N.T. 46-48)

18. Sergeant Black testified that, according to the Training for Staff Trainers (TST) standards, he was permitted to give a 10-to-15 minute break for every hour of training, along with 30 minutes for lunch. (N.T. 50-51)

19. Sergeant Black testified that the cadet class sizes can vary, depending on a number of factors. He described how the class sizes were fairly big in February 2024. He explained that the bigger class sizes would cause delays in the cafeteria for cadets because of longer lines and crowding. He found that, during this time, cadets were not able to complete their lunch within the allotted 30 minutes. (N.T. 52-56)

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<sup>1</sup> The record shows that OC stands for Oleoresin Capsicum or pepper spray. (N.T. 28).

20. Sergeant Black testified that, on February 28, 2024, he provided a typical day of OC training to cadets as the sole instructor. He was scheduled to teach "Introductory Scenarios" from 0800 to 1100, then break for lunch from 1100 to 1130, and to do the OC lecture, hands-on, and exposure from 1130 to 1600. (N.T. 52-53, 56-57, 60-62; Union Exhibit 2)<sup>2</sup>

21. Sergeant Black testified that the OC training was scheduled for 4.5 hours on February 28, 2024 because the cadets are supposed to have eight hours of training. He explained that the 4.5 hours for OC training was simply a function of filling the rest of the day since the Introductory Scenarios portion of training was only three hours. He indicated that the training blocks on the schedule all add up to eight hours, regardless of whether it correlates exactly to the length of training. (N.T. 62-63)

22. Sergeant Black testified that his OC training actually began at 1200 on February 28, 2024. He described how he finished early with the Introductory Scenarios portion of training in the morning, which was common for that aspect of training. He explained how the class did not have any more questions for him, so after considering that the class grouping was large, he sent them for lunch at that point and gave them an hour for lunch. He reiterated how the cafeteria and the line would be crowded, so he wanted to give the cadets enough time to eat. (N.T. 63-65, 67)

23. Sergeant Black testified that this was not the first time he had given his cadets an hour for lunch. He described how this was something he had done before due to the class sizes. (N.T. 66-67)

24. Sergeant Black testified that he conducted the OC lecture portion of the training on February 28, 2024, and provided an opportunity for the cadets to ask questions both during the lecture itself and also at the end of the lecture. He then proceeded to the hands-on portion of the OC training, which lasted 30 minutes. He indicated that both the lecture and hands-on segments of the training were unremarkable that day. (N.T. 67-69)

25. Sergeant Black testified that he did not give the cadets any breaks during the OC training in the afternoon because he had expanded their lunch time by 30 minutes. He explained that, within the 4.5 hours of time allotted for that afternoon, he would have had at least an hour of break time for the cadets. He front-loaded the breaks, which allowed him to provide the cadets with an hour for lunch. He essentially considered the extra half hour for lunch to be two breaks during the afternoon. (N.T. 70-71)

26. Sergeant Black testified that it was discretionary for the instructor regarding when to provide breaks for the cadets. He was unaware of any policy or rule that specifically mandates when the breaks are required to occur. He indicated that he had front-loaded the breaks before and that it was not uncommon for him to do so. (N.T. 71-72)

27. Sergeant Black conducted the exposure portion of the OC training on February 28, 2024, which consisted of a safety briefing and having the cadets go through the OC shack. He described how the exposure segment of the training was also unremarkable that day. He was unable to estimate the length of time the exposure took. (N.T. 72-74)

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<sup>2</sup> The Introductory Scenarios portion of training was not related to the OC training. (N.T. 61).

28. Sergeant Black then conducted the decontamination portion of the OC training, which he stated usually ends at 1445. He was unable to say when the decontamination process ended on February 28, 2024, but he indicated that it was similarly unremarkable when compared to the other trainings he has done. (N.T. 74-75)

29. Sergeant Black testified that there was nothing out of the ordinary about the way he conducted the entirety of the OC training on February 28, 2024. He indicated that the Commonwealth never advised him that there were concerns about the way he was conducting the OC training prior to his removal from the Training Academy. (N.T. 76-78)

30. On cross-examination, Sergeant Black agreed that the course lesson plan for the OC training indicates a duration of 4.5 hours for the entire course and 1.5 hours for the hands-on portion. He acknowledged testifying that he did hands-on training for 30 minutes on February 28, 2024. He admitted that he was subject to the DOC Standards of Conduct for Instructors, as well as the DOC Code of Ethics. (N.T. 80-81; Respondent Exhibit 4)

31. The Commonwealth offered the testimony of Captain Heidi Glenn in support of its position. She has been the Basic Training Supervisor and Captain of the Elizabethtown Training Academy since June 2020. In this role, she oversees basic training for the entire department, including correctional officers and parole agents. She works with curriculum development in creating the schedule and supervises day-to-day operations. (N.T. 91-92)

32. Captain Glenn described how the basic training courses are taught by subject matter experts and adjuncts that come to DOC from the field. But the bulk of the courses are taught by detached training sergeants at the Academy. She explained that detached duty is not a permanent assignment. When the DOC selects a candidate to fill a vacancy at the Training Academy, the DOC reaches out to that individual's facility to see if the facility is willing to let that individual go because their vacancy remains open the entire time that person is at the Training Academy. (N.T. 92-94)

33. Captain Glenn testified that all the bargaining unit instructors at the Training Academy are subject to the detached duty agreement, along with the DOC Standards of Conduct for Instructors and the DOC Code of Ethics. (N.T. 94-97; Respondent Exhibit 2, 3)

34. Captain Glenn testified that every new employe at the Commonwealth DOC has to complete a prescribed amount of basic training, which varies by position. She described how corrections officer trainees must complete five weeks of basic training at the Training Academy. She explained how basic training provides each new employe with everything he or she needs to begin their careers at DOC, including courses required by law, ACA standards, and contract clauses. (N.T. 97-98)<sup>3</sup>

35. Captain Glenn testified that the Commonwealth maintains a shared drive, which houses the course lesson plan cover sheets for every course. She described how the course lesson plan cover sheet tells the instructors what they need to do to teach the class, including the equipment, type of

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<sup>3</sup> ACA stands for the American Corrections Association, which is the accrediting body for DOC, and which sets forth the standards that DOC must follow to maintain accreditation for the State. (N.T. 99).

space, and timeframes required, along with the objectives of the course. She explained that the instructors go to the shared drive to retrieve the PowerPoint presentations, lesson plans, participant guides, and instructor guides, which are all stored together. (N.T. 99-100)

36. Captain Glenn testified that there are three components to the OC training course, the 2-hour lecture, the 1.5 hour hands-on training, and 1 hour of exposure, for a total of 4.5 hours. She indicated that the decontamination process is included within the exposure time. (N.T. 100-101)

37. Captain Glenn was two levels of supervision above Sergeant Black during Black's time at the Training Academy. There was a lieutenant between them. Captain Glenn testified that Black signed the detached duty agreement and that his home institution was SCI Coal Township. (N.T. 101-102; Respondent Exhibit 5)

38. Captain Glenn testified that, on February 28, 2024, Sergeant Black was scheduled to teach the OC training class from 1130 to 1600. She indicated that Lieutenant Anthony Ross, who works for the DOC's Bureau of Facilities Security and Special Operations, was present for Black's class that day, as part of his duties observing classes and reviewing curriculum for the Bureau. (N.T. 103-104)

39. Captain Glenn testified that Lieutenant Ross came to her on February 28, 2024, to report that the timelines for Sergeant Black's course were "not lining up." She described how Ross came to her when the class was dismissed to prepare for the exposure portion of the training. (N.T. 104-105)

40. Captain Glenn testified that Lieutenant Ross eventually provided a witness statement on March 27, 2024, as part of an investigation, which provided in relevant part as follows:

On Wednesday, February 28, 2024 I observed Sgt. Black teach OC to Basic Training in classroom 10. The class was scheduled to start at 1130, however, did not start until 1200 due to the class being given 1 hour for lunch instead of the 30 minutes that was on the schedule. The classroom portion should've been 1130-1330. It was 1200-1337. At 1337 the class was dismissed and told to take their belongings to their rooms, take their contacts out and prepare for exposure and to return in 10 minutes. Class was due back at 1350. The class then went to exposure at 1410 completing at 1440.

(N.T. 104-106; Respondent Exhibit 7)

41. Captain Glenn testified that there were large portions of the instructional period missing, which was a concern. She reported her concerns to her immediate supervisor, Jennifer Wallitsch, who is the Director of the Training Academy, and who oversees the entire operation. (N.T. 105-106)

42. Captain Glenn testified that Director Wallitsch decided to conduct an investigation, which included a factfinding interview with Sergeant Black. Glenn conducted the interview with Black, who had a Union representative present, on March 26, 2024. (N.T. 106-109; Respondent Exhibit 8)

43. Captain Glenn testified that Sergeant Black acknowledged that he gave the class an hour lunch on February 28, 2024, during the interview on March 26, 2024. She indicated that his explanation was that he felt he had the ability to reduce instructional time and give the class extra time. She testified that Black never brought any concerns to her attention that lunch was running late, causing him to start class later after lunch. She described how Black did not deny any of the timelines for the class alleged in Lieutenant Ross's initial complaint. (N.T. 110-111; Respondent Exhibit 8)

44. Captain Glenn concluded that Sergeant Black cut 30 minutes from the OC training on the front end and 80 minutes on the back end, for a total of almost 2 hours. She testified that the deficit in training time had to be made up before the trainees could graduate. (N.T. 112-113)

45. Captain Glenn acknowledged that she also questioned Sergeant Black about an alleged incident from March 1, 2024, during her March 26, 2024 interview with him. She testified that the alleged March 1, 2024 incident did not factor into the decision to return Black to his home institution. However, she clarified that she did not recommend sending him back. That decision came from Director Wallitsch. (N.T. 113-114; Respondent Exhibit 8)

46. Captain Glenn testified that Sergeant Black provided a witness statement following the interview on March 26, 2024, which provided in relevant part as follows:

Feb 28, 2024 I was scheduled to teach OC with class. I finished my first class early so I gave them a[n] extended lunch period which in doing so cut time out of class. Class was done then hands[-]on completed behind classroom 10. Escorted to live exposure...

(N.T. 114-115; Respondent Exhibit 9)

47. Captain Glenn testified that management meets a week ahead of time to plan how best to fit in classes at the Training Academy when there is a big class of corrections officer trainees, which may be in conjunction with training for staff trainers or instructors, or any other outside entity that might be taking up space at the Academy, so that there are not too many people at the chow hall at one time. She described how management tasked the training sergeants in early 2024 to come up with various scenarios to provide additional instruction on report writing, in the event that a class ends early. She insisted that there are not many times where a class should be dismissed early. (N.T. 116-119)

48. Captain Glenn compiled an Investigative Summary, which consisted of a packet of documents and findings, which she provided to Director Wallitsch in late March 2024. In her Investigative Summary, Glenn made a preliminary determination that Sergeant Black had committed a Code of Ethics violation. (N.T. 118-121; Respondent Exhibit 10)

49. Captain Glenn testified that Sergeant Black did not talk a lot during the labor-management meetings between the parties. She indicated that Business Agent Ohler did most of the talking, while she spoke on behalf of management. She agreed that there were contentious interactions, with Ohler yelling at her at times. She claimed that Black's protected activity as a Union officer did not factor into how she conducted her investigation and what she forwarded to Director Wallitsch. She stated that she would have



still reported Black's alleged misconduct to Wallitsch, even if he was not a Union officer. (N.T. 125-127)

50. On cross-examination, Captain Glenn admitted that part of her investigation of Sergeant Black was to determine whether he held a Union meeting during work hours on March 1, 2024. She agreed that Black would have been aware of Ross's presence in the OC classroom on February 28, 2024. She explained that Ross was present for the classroom segment of the course and that Ross came to her office to give an initial report when the class took a break to change for the OC exposure. Ross then went back to the class for the OC exposure and followed up with Glenn again afterwards. (N.T. 128-129, 139-140, 143)

51. On cross-examination Captain Glenn conceded that the factfinding interview on March 26, 2024, was the first time Sergeant Black had been questioned regarding the events of February 28, 2024. She acknowledged that Black had no prior notice regarding the interview or the contents and subject matter thereof before he was summoned for it on March 26, 2024. (N.T. 146-148)

52. On cross-examination, Captain Glenn testified that breaks vary depending on the presentation and the timing. She claimed that breaks for a one-hour class might be different than they are for a four-hour class. She stated that some classes cannot accommodate 15-minute breaks and that some instructors have given five-minute breaks, depending on the course material. She admitted that the instructors are afforded some discretion. (N.T. 152-153)

53. On cross-examination, Captain Glenn admitted that, despite her earlier testimony that there is never a time when class should be dismissed early, there is an exception for OC exposure "to a point." (N.T. 167-169)

54. On cross-examination, Captain Glenn was confronted with a November 3, 2023 email, which she sent to the training sergeants, including Sergeant Black, with copies to Director Wallitsch and two lieutenants. The email provided, in relevant part, as follows:

Good afternoon,

Please understand that training is conducted from 0800-1600. We will not routinely dismiss classes early. Plan your breaks and days accordingly that dismissal occurs as close to the expected time as possible. There are exceptions to this such as OC exposure day and several Fridays for travel time. Anything other than that needs to be communicated through a supervisor. Please do not assume it is acceptable to dismiss early and take that decision upon yourselves...

(N.T. 168-170; Union Exhibit 3)

55. On cross-examination, Captain Glenn testified that the OC exposure occurs at the end of the day and includes reasonable time for decontamination. She indicated that this is the only factor that will be dependent on group size. She explained that, if there is a large group of trainees, the exposure will take the class pretty close to the full hour mark, while a smaller group will not take as much time to progress through the OC shack. She stated that an hour or more is not within the realm of

when the class should be dismissed because the class should not start until 1500 at the earliest. (N.T. 170-171)

56. On cross-examination, Captain Glenn claimed that she had no firsthand information that classes were being dismissed early when she circulated her November 3, 2023 email. She insisted that she just wanted to make it clear that "we can't dismiss people early." She stated that "they're on the clock from [0800] to [1600]." (N.T. 175-176)

57. On cross-examination, Captain Glenn admitted that she did not know if the Standards of Conduct specifically prohibit dismissing classes early or altering the instruction times. She agreed that, once Business Agent Ohler came to the Training Academy, the parties had more labor-management meetings and issues brought up. (N.T. 179-181)

58. On cross-examination, Captain Glenn acknowledged sending a February 26, 2024 email to the training sergeants, including Sergeant Black, along with Director Wallitsch and two lieutenants. The February 26, 2024 email provided in relevant part as follows:

...Please also understand that training is conducted from 0800-1600. We will not routinely dismiss classes early. Plan your breaks and days accordingly that dismissal occurs as close to the expected time as possible. There are exceptions to this such as OC exposure day and several Fridays for travel time. Anything other than that needs to be communicated through a supervisor. Please do not assume it is acceptable to dismiss early and take that decision upon yourselves. Class schedules should remain as close to their scheduled time as possible. There will be staff scheduled to come in and observe your classes periodically and they would be expecting them to start and end as close to [sic] as possible as the time they are scheduled with few exceptions.

With some new staff joining our team it is a good time to reiterate some previous direction to the current staff as well as bring the new ones up to speed to make sure we are all on the same page. Please let me know if you have any questions...

(N.T. 169; Union Exhibit 4)

59. On cross-examination, Captain Glenn testified that she sent the February 26, 2024 email because the DOC had a lot of new staff, so it was a good time to reiterate the previous direction. (N.T. 175)

60. On redirect examination, Captain Glenn testified that February 28, 2024 was not a Friday. She indicated that Section 1.3 of the DOC's Standards of Conduct for Instructors states that "Instructors shall exhibit the highest standards of professional, moral, and ethical conduct while teaching. She also confirmed that Section 1.6 of the Standards of Conduct for Instructors states, in part, that "Instructors shall present training material in accordance with the PA DOC approved performance objectives in the appropriate curriculum." She further noted that Section 1.7 of the Standards of Conduct for Instructors states that "Instructors shall be responsible to teach as scheduled." She indicated that, while there are sometimes exceptions made for exposure time, there are no exceptions made for hands-on training. (N.T. 184-186; Respondent Exhibit 2)

61. The Commonwealth also offered the testimony of Jennifer Wallitsch, the Director of the Bureau of Training and Staff Development for DOC, in support of its position. At the time of the hearing, she had held that role for 18 months. (N.T. 187-188)

62. Director Wallitsch testified that instructors are not permitted to deviate from the training material. She described how the Commonwealth needs to ensure that all of its instructors are teaching OC training the same way. She considers the training course schedule to be a direct order. (N.T. 194-195)

63. Director Wallitsch learned about the alleged February 28, 2024 incident from Captain Glenn. Wallitsch felt an investigation was warranted because all new employees need to have the same experience learning the material and that the Commonwealth cannot have instructors deviating from it. She indicated that she consulted with human resources during the investigation and that Captain Glenn reported the findings to her. (N.T. 195-196)

64. Director Wallitsch testified that she made the ultimate decision to send Sergeant Black back to his home institution. She claimed that she made her decision based on the sole factor that Black had skipped training. She insisted that the allegations that Black had conducted a Union meeting during work time did not factor into her decision. (N.T. 197-198)

65. By letter dated April 17, 2024, Director Wallitsch indicated the following, in relevant part, to Sergeant Black:

Dear [Sergeant] Black:

This is to advise you that this letter is official notice of your return to your sending institution of SCI Coal Township pursuant to the "Detached Duty Agreement" #6...

On March 26, 2024 a fact finding was conducted to afford you the opportunity to respond to the charges stated below. During the fact finding, information was presented which established that you committed the following violations:

1. Code of Ethics Section B#8 No employee shall leave his/her assigned post or leave the institution or grounds without being properly relieved and receiving proper authorization from a supervisor. Proper relief involves communicating any special observations or orders to relief personnel. *Sgt. Black had a group of approx. 30 COT's. He gave them, along with himself an unauthorized 1-hour lunch. His group had a 30-minute scheduled lunch period. Sgt. Black's previous class did not end early, he intentionally started OC 30 minutes late to accommodate this extended lunch period with the intent of reducing instructional time.*
2. Code of Ethics Section B#9 Lawful orders by a supervisor to a subordinate must be executed promptly and faithfully by the subordinate even though the employee may question the wisdom of such order. The privilege of formally appealing the order may be done at a later date through either the supervisory command structure, civil service appeal, or the grievance machinery. *Sgt. Black had a group of approx. 30 COT's. He*

*gave them, along with himself an unauthorized 1-hour lunch. His group had a 30-minute scheduled lunch period. Additional [sic], OC classroom, hands on and exposure time all add up to 4.5 hours. Sgt. Black decreased the time that group received for OC instruction down to 2.5 hours. The classroom schedule and the scheduled timeframes for the courses are to be considered lawful orders.*

3. Code of Ethics Section B#10 Employees are expected to treat their peers, supervisors, and the general public with respect and conduct themselves professionally at all times; unacceptable conduct or insolence will not be tolerated. *Holding a meeting and purposefully excluding one sergeant that was on duty can be interpreted as disparaging treatment. Holding a sergeant "union" meeting without prior approval is not within the scope of Sgt. Black's position as an instructor.*
4. Code of Ethics Section B#19 Employees shall not read books, magazines, newspapers, or other non-job-related printed material while on official duty. Employees are required to remain alert while on duty; inattentiveness, sleeping or the appearance thereof is prohibited. *Holding a meeting for a group of sergeants that was not "job-related" caused them to be distracted and inattentive from their work duties for a period of time.*
5. Code of Ethics Section B#22 An employee shall submit any necessary and/or requested work related reports in a timely manner and in accordance with existing regulations. Reports submitted by employees shall be truthful and no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information or data, or misrepresent the facts in any Department record or report. *On Sgt. Black's written statement he said he finished class early and that is why he gave them an extended lunch but he actually had to start his next class late due to giving them an extended lunch. Sgt. Black did not submit all of the necessary adjunct instructor paperwork to Ms. Houck prior to the staff being requested and the course taking place.*
6. PSCOA Contract Article 31 Section 2 No association member or representative shall solicit members, engage in organizational work, or participate in other Association activities during working hours on the Employer's premises except as provided for in the processing of grievances. *Sgt. Black admittedly held a meeting with staff during working hours, at the Training Academy to discuss union related items. This meeting was not disclosed or authorized by TRA management. Sgt. Black is currently the Local PSCOA President.*

Specifically, on February 28, 2024 you taught a basic training OC class to approx. 30 participants. You admittedly gave the class an unauthorized one-hour lunch with the intent of cutting time off of their afternoon instruction time. You then decreased the afternoon instructional time by 2.5 hours and the class did not receive adequate, if any, hands-on OC training as directed. This training was required to be made up on a different training day. Additionally, you held an unauthorized meeting of staff where you as the union president admittedly spoke about active union

business, on facility grounds and during work hours without approval. Your inappropriate conduct is contrary to the established work rules and encumber the efficient operation of Basic Training.

**Please advise you are hereby directed to report back to your sending facility of SCI Coal Township effective Sunday, May 12, 2024.**

...

A copy of this letter will be placed in your Official Personnel File...

(N.T. 198-199; Respondent Exhibit 11) (Emphasis in original)

66. Director Wallitsch testified that, even though there were six violations listed in her April 17, 2024 letter to Sergeant Black, the first two listed violations alone, i.e. cutting time from the training course, are grounds to return an instructor to his or her home institution. She denied that she returned Black to his home institution because of his protected activity. (N.T. 202-205)

67. Director Wallitsch testified that Sergeant Black never reported any issues regarding instructional times with the OC course. She indicated that the size of the class should not affect the hands-on portion of the training and that it should take 1.5 hours, regardless of the number of people. (N.T. 205-206)

68. Director Wallitsch acknowledged that the lunch schedule can affect training times if there are large groups of people in the cafeteria. She described the process of fitting in group lunch times as being a "Jenga game." She insisted that this is not something a training sergeant needs to worry about though. She claimed that these issues are handled at the management level, as management works with the kitchen staff. She stated that nobody needs to take it upon themselves to adapt their class schedule to accommodate lunch. She testified that, if lunch time does run longer than expected, that does not give the instructors an excuse to cut time off the training. Instead, she indicated that they should go to their lieutenant for guidance. (N.T. 206-207)

69. On cross-examination, Director Wallitsch testified that she did not know about any alleged lunch time problems until she heard Sergeant Black's testimony during the hearing. She asserted that Black never mentioned any concerns about that issue. She indicated that the 30-minute lunch time is based on the CBA. (N.T. 208-209, 211)

70. On cross-examination, Director Wallitsch agreed that she did not send any emails or directives to the rest of the training staff following Sergeant Black's removal from the Training Academy to ensure compliance with the 30-minute lunch rule. She testified that the extended lunch was not the only reason Black was removed from the Training Academy. She emphasized that she did not know if she would have taken the same action had that been the only alleged problem. (N.T. 211-213)

71. On cross-examination, Director Wallitsch acknowledged that she was not aware of any issues regarding Sergeant Black's conduct or performance

until the February 28, 2024 alleged incident. She admitted that Black did not receive any counseling regarding his performance pursuant to paragraph 5 of the Detached Duty Agreement. She agreed that there is no mention of the Standards of Conduct for Instructors in her April 17, 2024 removal letter. She insisted that Black was still nevertheless removed from the Training Academy for violating the Standards of Conduct for Instructors, in addition to the Code of Ethics and the CBA. She explained that she failed to mention the Standards of Conduct for Instructors in the removal letter because it was the first time she had ever done such a letter. (N.T. 213-215, 218, 226-227)

72. On cross-examination, Director Wallitsch conceded that the alleged incident from February 28, 2024, only made up three of the paragraphs in her April 17, 2024 removal letter, while another alleged incident from March 1, 2024 made up the others. She claimed that the other paragraphs relating to the alleged incident from March 1, 2024, played no part in her decision to remove Sergeant Black from the Training Academy. She admitted that she still included them in the letter informing Black of the basis for his removal. (N.T. 230-231)

73. On cross-examination, Director Wallitsch explained that she included those allegations in the removal letter because she felt that the letter should address the entire investigation. She admitted that there is no way for anyone reading the April 17, 2024 removal letter to know which allegations formed the basis for the removal and which allegations were included for other reasons. She claimed that, if allegations regarding the union meeting were the entire investigation, she "would not care." She reiterated that, if the allegations regarding the instructional time were the entire investigation, she "would care." She stated that all of those events "happened as part of that lump sum event." (N.T. 231-233)

74. On cross-examination, Director Wallitsch acknowledged that she has never disciplined or removed anyone as an instructor for ending class prior to 1600. She conceded that she was aware that took place before her time as Director. (N.T. 235)

75. The Union offered rebuttal testimony from Christopher Cooper, who has been a Training Sergeant working detached duty at the Training Academy since June 25, 2023. He has been the Interim Union President since Sergeant Black retired in September 2024. He is an instructor for OC training, and his home institution is SCI Muncy. (N.T. 243-244, 249)

76. Sergeant Cooper testified that Captain Glenn's November 3, 2023 email came in response to an early dismissal due to testing. He indicated that the cadets had left properly, but the instructors did not inform them about who failed the exam. He described how, typically if the cadets fail an exam on a Friday, they are told to report back at 0700 the following Monday. He explained that, since the instructors did not relay this information, the Commonwealth's response came in the form of an email sent to everyone. (N.T. 245)

77. Sergeant Cooper testified that the subject of staff leaving early became an issue during contentious labor-management meetings between the parties soon after the November 3, 2023 email. He described how management told the Union that the instructors would no longer be dismissed early on OC days, but that the cadets still would be. He explained that OC training has a routine schedule, always starting in the afternoon. He indicated that the reason for this is, that after being exposed, the cadets are dismissed early.

He stated that OC day has never ended at 1600, but rather that it routinely ends significantly earlier than 1600 because part of their dismissal is the decontamination process. He testified that the cadets staying on grounds, along with the commuters, typically get dismissed around 1500. (N.T. 246-248)

78. Sergeant Cooper testified that this has been the practice at the Training Academy since he has been there, which has been known by management because there is always a manager present at the OC exposure. He testified that he dismissed his classes early on OC day until the Commonwealth removed Sergeant Black from the Training Academy, at which point he stopped the practice. He emphasized that this occurred every time he was the sole instructor and also when he was paired with another instructor. He estimated that this would have been for approximately 15 to 20 OC courses. (N.T. 249-251, 253)

79. Sergeant Cooper testified that a management representative was present for every single time he served as an instructor for the OC training. He indicated that it is mandatory for a management representative to be there. He stated that, in each of those instances, the management representative stayed throughout the decontamination process. (N.T. 253-254)

80. On cross-examination, Sergeant Cooper clarified that, after there were contentious labor-management meetings over the issue, the Commonwealth required that the training sergeants stay until the completion of their duty day on OC training days, while the cadets were still released early. On redirect examination, he explained that, prior to those contentious meetings, the practice was for both cadets and training staff to be released early as part of the exposure process. And that the result of those contentious meetings was that the employee who conducted the exposure would remain on grounds even though that individual used to be released like the cadets. (N.T. 256-259)

#### DISCUSSION

The Union argues that the Commonwealth violated Section 1201(a) (1) and (3) of the Act<sup>4</sup> by removing Sergeant Black from his detached duty assignment at the Training Academy on April 17, 2024, in retaliation for his protected activity. Specifically, the Union asserts that Black began to raise the ire of management in January 2024 by following Business Agent Ohler's directive to file more grievances and aggressively enforce the contract. As support for its position, the Union points to the timing of Black's removal from the Training Academy, in combination with the Commonwealth's pretextual reasons for the transfer. The Union maintains that the record contains plain evidence of disparate treatment, given that the other OC training instructors also shortened the OC training course, with the Commonwealth's full knowledge of the same. Likewise, the Union takes issue with Director Wallitsch's alleged shifting reasons for the removal in her April 17, 2024 letter to Black. The Commonwealth, for its part, submits that the charge should be dismissed because the Union has not sustained its burden of proving a

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<sup>4</sup> Section 1201(a) of the Act provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act... (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization... 43 P.S. § 1101.1201.

violation of the Act. Instead, the Commonwealth contends that the record shows that Black's removal from the Training Academy was based on his clear violations of the DOC Standards of Conduct for Instructors and Code of Ethics, as well as the Detached Duty Agreement, which are legitimate nondiscriminatory reasons. As evidence of these purported violations, the Commonwealth points to Black's alleged decision to increase the cadets' lunch from 30 minutes to 60 minutes, along with his alleged reduction in classroom training instruction by nearly two hours, on February 28, 2024. Thus, the Commonwealth insists that it would have taken the same action in removing Black from the Training Academy even in the absence of Black's protected conduct.

In a Section 1201(a)(3) discrimination claim, the Complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee's involvement in protected activity. Audie Davis v. Mercer County Regional Council of Government, 45 PPER 108 (Proposed Decision and Order, 2014) (citing St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977)). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Once a prima facie showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity. Teamsters Local 776 v. Perry County, 23 PPER ¶ 23201 (Final Order, 1992). If the employer offers such evidence, the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual. Teamsters Local 429 v. Lebanon County, 32 PPER ¶ 32006 (Final Order, 2000). The employer need only show by a preponderance of the evidence that it would have taken the same actions absent the protected conduct. Mercer County Regional COG, supra, (citing Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 (Final Order, 1992)).

The Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. City of Philadelphia, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities—for example, whether leading organizers have been eliminated; the extent to which the adversely affected employees engaged in union activities; and whether the action complained of was "inherently destructive" of employee rights. City of Philadelphia, supra, (citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978)). Although close timing alone is insufficient to support a basis for discrimination, Teamsters Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employee engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. Berks Heim County Home, 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the Union has sustained its burden of proving the first two elements of the Section 1201(a)(3) discrimination test. The record shows that Black engaged in significant protected activity in his role as Local Union President, especially once Business Agent Ohler came to the Training



Academy in January 2024, by aggressively enforcing the contract, pursuing potential grievances, and raising various issues with the Commonwealth, during their labor-management meetings. The record also shows that the Commonwealth was aware of Black's protected activity, as Captain Glenn acknowledged his presence during the labor-management meetings and agreed with his characterization of the same as hostile. In fact, the Commonwealth does not dispute the first two prongs of the Section 1201(a)(3) discrimination test in its post-hearing brief. (See Commonwealth brief at p. 18). Thus, the issue depends on whether the Commonwealth was motivated by anti-union animus when it removed Black from the Training Academy in April 2024.

The Union has also sustained its burden of proving that the Commonwealth was unlawfully motivated here. The first factor supporting such a determination is the obvious timing of the removal. Black began aggressively enforcing the contract upon Ohler's arrival at the Training Academy in January 2024. And no sooner than three to four months later, he was gone. What is more, the Commonwealth began an investigation into Black's conduct in late February 2024, which was just one to two months after the Union's new adversarial stance had begun.<sup>5</sup> This short turnaround plainly smacks of retaliation. The Commonwealth has offered no alternative explanation for the timing, aside from its allegations that Black's alleged misconduct happened to occur on February 28, 2024. Upon closer review, however, the Commonwealth's justification for the removal collapses under its own weight.

Indeed, the second factor supporting a determination that the Commonwealth was unlawfully motivated is the clear pretext masking the true motive behind the Commonwealth's actions. While the Commonwealth has proffered a number of reasons for why it chose to remove Black from the Training Academy, those explanations have not been accepted as credible or persuasive. As detailed above, the Commonwealth argues that Black's removal from the Training Academy was based on his clear violations of the DOC Standards of Conduct for Instructors and Code of Ethics, as well as the Detached Duty Agreement, which constitute legitimate nondiscriminatory reasons for the removal. However, Director Wallitsch issued a letter on April 17, 2024, specifically outlining in thorough detail the reasons for Black's removal, which is notably devoid of any mention whatsoever of the DOC Standards of Conduct for Instructors. The only inescapable conclusion to be drawn from such a glaring omission is that the Commonwealth is now trying to use the Standards of Conduct for Instructors as an ex post facto justification for Black's removal.<sup>6</sup> Additionally, Wallitsch has offered shifting reasons for the removal, initially indicating in April 2024 that Black's removal was based on the alleged February 28, 2024 incident, as well as the alleged March 1, 2024 incident. But at the hearing, she later claimed that his removal was based solely on the February 28, 2024 incident and that the March 1, 2024 incident played no part in her decision. Such inconsistencies render her testimony questionable at best and reveal her

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<sup>5</sup> The record is unclear whether Ohler came to the Training Academy in early or late January 2024.

<sup>6</sup> Wallitsch's justification for this omission, that this was the first time she had ever done such a letter, is not persuasive. She readily admitted that she returned at least one other instructor to that employee's home institution in 2024. And although it is unclear whether this other incident predated Black's removal, she acknowledged that she consulted with human resources during the investigation here. (N.T. 196, 204).

initial determination that the February 28, 2024 incident was not sufficient to justify the removal, in and of itself, thereby creating a need to pile on additional allegations of misconduct.

This is further compounded by Wallitsch's testimony that, if the allegations regarding the March 1, 2024 incident comprised the entire investigation, she "would not care." Why then she felt the need to conduct an investigation of that alleged incident at all is troubling. The obvious inference from this assertion is that the Commonwealth was searching for additional manufactured reasons to punish Black for his audacity to challenge management and advocate on behalf of the bargaining unit employees. Perhaps the most compelling evidence of pretext, however, is the Commonwealth's obvious disparate treatment of Black, as compared to the other training sergeants.

The Commonwealth emphasizes the additional 30 minutes for lunch that Black gave the cadets on February 28, 2024, along with his alleged reduction in instructional time from the OC training course that day, as the justification for his removal. But the record clearly shows that Black was permitted to give a 10-to-15 minute break to the cadets for every hour of instruction, which translated into more than an hour of break time for the OC training course on the afternoon of February 28, 2024. Even Captain Glenn confirmed Black's testimony that the instructors are afforded discretion regarding when to allow breaks. Black credibly testified that the large class sizes in February 2024 were causing delays in the cafeteria, such that the cadets were not able to complete their lunch within the allotted 30-minute period. Although Wallitsch took issue with Black's decision to front-load the breaks for the afternoon OC training course, she readily conceded that the lunch schedule can affect training times if there are large groups of people in the cafeteria. In fact, she even described fitting in the lunch times as a "Jenga game," which casts considerable doubt over her claim that this is not something a training sergeant needs to worry about. Black simply gave the cadets two break periods totaling 30 minutes to allow for sufficient time for lunch, and then correspondingly cut off those two break periods for the afternoon course.

Furthermore, the record clearly shows that, while the Commonwealth typically does not allow instructors to dismiss classes earlier than 1600, there is an explicit exception for OC training days. Captain Glenn expressly indicated the same on two different occasions with her emails of November 3, 2023, and February 26, 2024. If that were not enough, the record also demonstrates that the parties had a clear practice whereby the instructors were permitted to dismiss the cadets from OC training days sometime around 1500. Sergeant Cooper credibly and convincingly explained that this occurred every time he was the sole instructor for the OC course and also when he was paired with another instructor, which he estimated to be for approximately 15 to 20 courses. Cooper also persuasively described how there was a management representative present for every single one of these occurrences. This credible evidence buttresses Black's testimony that his instruction on February 28, 2024, was unremarkable in every facet. On this point, Captain Glenn agreed that Black would have been aware of Lieutenant Ross's presence in the OC classroom on February 28, 2024. Yet Black proceeded to dismiss the cadets early anyway, slightly prior to 1500, which further solidifies the evidence of this accepted practice between the parties.

The Commonwealth's reliance on the alleged reduction in hands-on training is misplaced. The Commonwealth maintains that the instructional

portion of the OC training should have been from 1130 to 1330, while the hands-on portion of the training runs from 1330 to 1500. Thus, the Commonwealth reasons that the exposure portion of the training should not even start until 1500. However, this contention conveniently ignores the unrefuted evidence that the instructors were permitted to release the cadets sometime around 1500 on OC days. Clearly then, there were other training instructors who were also shortening or reducing their training portions of the course for quite some time, with management's full knowledge and acceptance. Yet the Commonwealth did not remove any of them from their detached duty assignments at the Training Academy. It was not until Sergeant Black raised the ire of management by following Business Agent Ohler's directive to aggressively enforce the contract that the Commonwealth decided to remove Black from the Training Academy, despite its extended tolerance and express approval for the very same conduct for many months. This is plain evidence of disparate treatment, which necessitates a finding that the Commonwealth's proffered reasons for its action here were pretextual.

Nor does it matter that Black essentially admitted to the timelines alleged by the Commonwealth, that is, the extended lunch and early dismissal on February 28, 2024, and that he allegedly failed to provide an explanation for his conduct during his March 26, 2024 interview with Glenn. This is hardly the death knell for the Union's case that the Commonwealth alleges it to be. While the failure of a witness to mention a particular factor or rationale during questioning may sometimes reflect negatively on that individual's recollection or version of events, that is simply not the case here.

The record shows that Glenn waited approximately one full month before she interviewed Black and questioned him regarding the events of February 28, 2024. Likewise, the record shows that Black had no advance notice of the same or the subject matter thereof, and that he was simply summoned to the interview on that date. His inability to immediately mount a fervent defense at that point for events that were otherwise wholly unremarkable is hardly surprising, especially given the power dynamic imposed upon the economically dependent employee in such situations. I decline to draw a negative inference based on Black's interview responses from March 26, 2024, and instead credit his testimony at the hearing. While the Commonwealth attempts to portray Black as something less than a model employee, the record nevertheless shows that he was acting within his discretion regarding when to provide breaks, along with the early dismissal, consistent with the uncontradicted and well-established practice, which Glenn expressly confirmed in multiple emails.<sup>7</sup> On these facts then, it must be concluded that the Commonwealth violated Section 1201(a)(3) of the Act by removing Black from his detached duty assignment at the Training Academy on April 17, 2024, in retaliation for his protected activity.<sup>8</sup>

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<sup>7</sup> Regardless of whether or not the early dismissals may have been a managerial prerogative, the record shows that the instructors were clearly on notice from management that this was an acceptable practice.

<sup>8</sup> To the extent the Commonwealth implies on pages 20 to 21 of its post-hearing brief that Black has not suffered any adverse employment action because his removal allegedly does not constitute discipline under the Detached Duty Agreement, such an argument must be rejected. The Commonwealth Court has held that simply subjecting an employee to an internal investigation for protected conduct constitutes adverse employment action under Section 6(1)(c) of the Pennsylvania Labor Relations Act, which is an analogous provision to Section 1201(a)(3) of PERA. Pennsylvania State Police v. PLRB, 41 PPER 183

The Union has also alleged an independent violation of Section 1201(a)(1) of the Act. The Board has held that an independent violation of Section 1201(a)(1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employees have been shown in fact to have been coerced. Bellefonte Area School District, 36 PPER 135 (Proposed Decision and Order, 2005) (citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 1201(a)(1). Northwestern School District, *supra*. However, an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

There is little doubt that the Commonwealth has also committed an independent violation of Section 1201(a)(1) of the Act. The Commonwealth's removal of Black from the Training Academy on April 17, 2024, almost immediately after he began aggressively enforcing the contract, would clearly and unequivocally have a tendency to coerce employees. The record shows that the Commonwealth did not have any legitimate reasons for the removal and simply sought to rid itself of a prominent Union advocate at the Training Academy. The Commonwealth had long permitted the training sergeants to dismiss the cadets early on OC training days sometime around 1500 until the Union began taking an adversarial approach to various workplace issues. The message was undeniable, enforce the contract at your own peril. As such, it must be concluded that the Commonwealth also independently violated Section 1201(a)(1) of PERA. Accordingly, the Commonwealth will be directed to reinstate Black to his previous position as a Training Sergeant at the Training Academy, to make him whole in all respects, and to purge his personnel file of any and all mentions of the removal.

### **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 employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has committed unfair practices in violation of Section 1201(a)(1) and (3) of PERA.

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(Pa. Cmwlth. 2011), *affirming* Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 41 PPER 33 (Final Order, 2010). In addition, at least one Board hearing examiner has concluded that any written documentation designed to correct an employee's conduct constitutes discipline. East Allegheny Education Ass'n, PSEA/NEA v. East Allegheny School District, 47 PPER 55 (Proposed Decision and Order, 2015). The April 17, 2024 removal letter easily satisfies this criteria, and therefore, must be purged from Black's personnel file.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

**HEREBY ORDERS AND DIRECTS**

that the Commonwealth shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of PERA;

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 employee organization;

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

(a) Immediately reinstate Black to his previous position as a Training Sergeant at the Commonwealth's Training Academy in Elizabethtown effective April 17, 2024, and make Black whole for any and all lost wages and benefits incurred as a result of the Commonwealth's unfair practices, together with six (6%) percent per annum interest, including but not limited, to any out-of-pocket medical expenses, pension contributions, and seniority;

(b) Immediately purge Black's personnel file, to include all paper and electronic copies and records, of any and all mention of or references to the internal investigation, including but not limited to the April 17, 2024 removal letter;

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

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

(e) 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 with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this fourth day of June, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak  
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PA STATE CORRECTIONS OFFICERS :  
ASSOCIATION :  
 :  
v. : Case No. PERA-C-24-196-E  
 :  
COMMONWEALTH OF PA :

**AFFIDAVIT OF COMPLIANCE**

The Commonwealth hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (3) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately reinstating Zachary Black to his previous position as a Training Sergeant at the Commonwealth's DOC Training Academy in Elizabethtown effective April 17, 2024; by immediately making Black whole for all lost wages and benefits incurred as a result of the Commonwealth's unfair practices, together with six (6%) percent per annum interest, including but not limited, to any out-of-pocket medical expenses, pension contributions, and seniority; and by immediately purging Black's personnel file, to include all paper and electronic copies and records, of any and all mention of or references to the internal investigation, including but not limited to the April 17, 2024 removal letter; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a 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