

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 : CASE NO. PERA-C-24-252-E  
v. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :

**PROPOSED DECISION AND ORDER**

On November 12, 2024, Pennsylvania State Corrections Officers Association (PSCOA or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania (Commonwealth or Employer) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) when on September 17, 2024, at State Correctional Institute (SCI) Huntingdon, Lieutenant Kelsey Strong removed Union representative Rachel Kyler from a bargaining unit employee's investigatory interview.

On December 5, 2024, the Secretary of the Board issued a complaint and notice of hearing, designating February 26, 2025, in Harrisburg, as the time and place of hearing.

On January 17, 2025, the Union filed an amended charge and on February 11, 2025, the Secretary of the Board issued an amended complaint and notice of hearing, designating May 7, 2025, in Harrisburg, as the time and place of hearing.

Notwithstanding the date in the amended complaint and notice of hearing, the hearing was held with the agreement of the parties on the previously scheduled date of February 26, 2025, in Harrisburg, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union declined to file a post-hearing brief. The Commonwealth filed a post-hearing brief on June 16, 2025.

The Hearing 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. 6).

2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6).

3. Rachel Kyler is a Corrections Officer 1 at SCI Huntingdon. She has been an employee at SCI Huntingdon since 2015. (N.T. 8).

4. On September 17, 2024, Kyler was working at the prison. She was called to be the Weingarten representative for Trainee Kayshawna Spriggs. Spriggs had specifically requested Kyler to be her Union

representative. Kyler was summoned to the security office in the prison. In the room were Spriggs, Lieutenant Strong and two other security office employees. The purpose of the meeting was a fact finding by the security office, led by Strong, to see if Spriggs had committed a disciplinary violation by issuing false misconduct reports to inmates. (N.T. 8-10, 20; Employer Exhibit 1).

5. During the questioning with Kyler present, Spriggs would from time to time ask for the opportunity to caucus with Kyler. Strong allowed any caucus requested. Kyler also asked for copies of misconduct reports issued by Spriggs that were the focus of the investigation. Strong did not provide the requested documents because she believed Spriggs should have had a copy of them as she had issued them and she wanted to determine if Spriggs was being truthful about the misconducts she issued. (N.T. 10, 15, 33).

6. Sometime into the interview, Kyler asked for permission to speak freely, which Strong granted. Kyler then explained that Spriggs was not trying to be uncooperative and that Kyler had requested multiple times copies or specific information about the misconducts issued by Spriggs to inmates at issue so that Spriggs could cooperate better. Kyler then said: "the lack of cooperation from the security office was disgusting." (N.T. 12, 22).

7. In response, Strong said that Kyler was being "borderline insubordinate" and that she was removing Kyler as Union representative from the meeting. (N.T. 13, 22).

8. Kyler tried to leave, but Strong told Kyler to remain in the room until a replacement Union representative could be found. (N.T. 13, 21).

9. Officer Sean Kyle eventually came to replace Kyler as the Union representative. Spriggs chose Kyle. When Kyle arrived, Kyler left. The meeting proceeded once Kyle arrived. As soon as Kyle arrived, Spriggs was given the misconduct reports that Kyler had been requesting earlier. The investigation led to a conclusion by Strong that Spriggs did nothing wrong and there was no discipline of Spriggs. (N.T. 13-14, 22-23, 48).

## **DISCUSSION**

The Union alleges the Commonwealth violated Section 1201(a)(1) and (5) of the Act by removing Kyler as Spriggs' Union representative during the Commonwealth's investigation of Spriggs.

Public employees in the Commonwealth have the right to union representation, upon request, at an investigatory interview under NLRB v. Weingarten, 420 U.S. 251 (1975), as adopted by this Board in PLRB v. Conneaut School District, 12 PPER 12155 (F.O. 1981). An individual's right to a union representative at an investigatory interview includes the right for the employee to have the union representative of his or her choice at the interview if the chosen representative is reasonably available and there are no extenuating circumstances. Commonwealth Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007).

The Board has recognized that "[t]he representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them." Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, 33 PPER ¶33177 (Final Order, 2002) (quoting Weingarten, 420 U.S. at 260).

In Commonwealth, supra, the Board stated:

In New Jersey Bell Telephone Co., and Local 827 Int'l Brotherhood of Electrical Workers, 308 NLRB 277, 141 LRRM 1017 (1992), the NLRB explained that Weingarten permits "assistance and counsel" to the employee being interrogated. It is generally recognized that an employer is free to insist that it is only interested in hearing the employee's account and that Weingarten does not allow the union representative to disrupt the interview or convert it into an adversarial confrontation. Yellow Freight System, Inc. and Otic Cross, et. al, 317 NLRB 115, 1149 LRRM 1327 (1995).

33 PPER at 414. The permissible extent of participation of Weingarten representatives lies somewhere between mandatory silence and adversarial confrontation. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections (Retreat SCI), 34 PPER ¶ 140 (Proposed Decision and Order, 2003); Commonwealth of Pennsylvania, Department of Corrections (Greene SCI), 32 PPER ¶ 32103 (Proposed Decision and Order, 2001) (citing New Jersey Bell Telephone Co., supra).

Initially, violations of an employee's Weingarten rights are not bargaining violations. Therefore, the Union's charge under Section 1201(a) (5) is dismissed.

Proceeding, the Union has not carried its burden of showing the Commonwealth violated PERA under Section 1201(a) (1). There is no dispute that the interview of Spriggs was investigatory in nature and that discipline could result. There is also no dispute that Spriggs invoked her Weingarten rights by requesting that Kyler serve as her Union representative. Further, the record shows the Commonwealth respected Spriggs' requests to caucus with Kyler.

The Commonwealth did remove Kyler as the Union representative during its interview of Spriggs. The record shows that Kyler requested to see the paper versions of the misconduct reports issued by Spriggs over which Spriggs was being investigated and became frustrated when they were not forthcoming. I find that the Commonwealth's initial refusal to provide the documents was a legitimate investigatory purpose since the investigation was about whether Spriggs had submitted false reports. Kyler's frustration over this led her to eventually say: "the lack of cooperation from the security office was disgusting." With this statement she exceeded the scope of a Weingarten representative as her statement was an adversarial confrontation. While Kyler's frustration was clearly rooted in her legitimate attempt to assist Spriggs, her exasperated exclamation that the lack of cooperation from the Commonwealth was "disgusting" did not assist Spriggs nor was it an

attempt to clarify facts. Kyler's statement is akin to a zealous legal representative's wrangling over discovery requests with opposing counsel in a civil lawsuit and thus outside the scope of Weingarten. New Jersey Bell Telephone Co., supra, ("... the presence of the representative should not transform the interview into an adversary contest or a collective-bargaining confrontation, and that the exercise of the Weingarten right must not interfere with legitimate employer prerogatives"). While a union representative may object to questions that may reasonably be construed as harassing, this record does not support a conclusion that the questioning of Spriggs was harassing. Id. Kyler thus forfeited her protected right to remain as Spriggs' Union representative. Id. Therefore, the Commonwealth was justified in demanding Kyler cease being the Union representative and demanding Kyler leave the interview. Id.

The record shows that after Kyler was removed, Spriggs chose another Union representative, which the Commonwealth honored, and the interview completed. Spriggs was not disciplined.

#### **CONCLUSIONS**

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

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 not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

#### **ORDER**

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

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

that the charge is dismissed and the complaint is rescinded.

#### **IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

**SIGNED, DATED AND MAILED** at Harrisburg, Pennsylvania, this first day of July, 2025.

**PENNSYLVANIA LABOR RELATIONS BOARD**

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