

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ROBIN CLAYTON :
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 v. : CASE NO. PERA-C-25-108-W
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 ALLEGHENY COUNTY :
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PROPOSED DECISION AND ORDER

On May 20, 2025, Robin Clayton (Clayton) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices against Allegheny County (County). In the charge, Clayton alleges that the County violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (Act or PERA) by refusing to permit Clayton to have a requested union representative at a January 23, 2025 pre-disciplinary hearing and a February 3, 2025 disciplinary meeting, at which the County terminated Clayton, and by not informing AFSCME.

On June 25, 2025, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of September 8, 2025, via Microsoft TEAMS. The hearing was continued twice at the request of the County and rescheduled for December 2, 2025. During the hearing on that date, Clayton and the County were given a full and fair opportunity to present testimony, documents, and cross-examination. Clayton filed a post-hearing brief on March 23, 2026. The County filed a post-hearing brief on March 30, 2026.

The Examiner, based on the hearing testimony and exhibits, and from all the matters and documents of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. Mr. Clayton was an employe of the County and a public employe at all times relevant to this case within the meaning of Section 301(2) of PERA. (N.T. 2)
3. Clayton was a Mental Health Specialist (MHS) at the Allegheny County Jail (Jail or ACJ) from July 2018 until his termination on February 3, 2025. (N.T. 15-16; CP-5)
4. The United Steelworkers (USW) represented a bargaining unit of professional employes at the ACJ which included nurses, counselors, and MHSs. In the spring of 2024, the contract between the County and the USW was expiring, and USW stopped actively representing the employes. In May 2024, the USW informed Clayton and other bargaining unit employes that it would no longer represent them when the contract expired. (N.T. 16-18, 47-48, 96)
5. On March 28, 2024, Clayton signed a "Documented Counseling" for tardiness on 7 occasions between January and March 2024. The documented counseling is dated March 26, 2024, and was issued by Director of Mental

Health Michelle Kovalcik. The counseling document has a signature line for a union representative. On that line, Clayton wrote: "ha ha!" When County employes decline union representation at an investigatory or disciplinary meeting they are supposed to sign a form. On March 28, 2024, Clayton signed a "Decline Union Representation Form." In addition to his signature, Clayton wrote on the form: "What union??" "I acknowledge that due to state law I have no union representation and have agreed to speak about this matter." (N.T. 136-138; CX-A(1); CX-A(3))

6. Clayton testified that he felt that the USW representation was a joke because USW sided with the County "100% of the time" and agreed to a tentative contract that the bargaining unit employes rejected 43-3. Clayton knew that there was no one in the building willing to work with the USW at this time. He felt that it would have been too difficult to get a USW representative into the March 26, 2024 meeting without delaying the meeting. Clayton waived his right to a union representative because he felt that the matter was not serious and there would be no discipline. (N.T. 64-65, 73, 88-89)

7. Shortly after receiving notification from USW, the former USW bargaining unit employes contacted AFSCME. AFSCME already represented County employes. All but 1 of the former USW professionals at the Jail signed cards with AFSCME in June 2024. Clayton was suspended in July 2024. The circumstances and reasons for this suspension are not in the record. (N.T. 16-18, 40)

8. On October 17, 2024, AFSCME filed a petition for unit clarification with the Board seeking to include the positions of discharge planner, mental health registered nurse, MHS, registered nurse, substance abuse counselor, and therapist into a county-wide residual unit of professional County employes. (N.T. 20-21; JX-1)

9. On December 17, 2024, Deputy of Healthcare Administration Debbie Scovill and Director of Mental Health Michelle Kovalcik met with Clayton about keeping the treatments that he provided at the ACJ within the scope of the duties assigned to MHSs and avoiding the provision of therapy. On December 18, 2024, Mental Health Director Kovalcik met with Clayton to discuss tardiness on 9 occasions between July and December 2024. As a result of that meeting, Director Kovalcik issued a "Documented Counseling." On December 19, 2024, Mental Health Director Kovalcik again met with Clayton and provided him with the MHS job description outlining his MHS duties. (N.T. 74-77, 87, 113-115; CP-5; CX-B(1); CX-B(2); CX-B(3); CX-D)

10. On January 21, 2025, Clayton arrived at his office and Deputy Warden Holly Martin told Clayton that he was suspended pending investigation regarding an alleged incident that occurred on January 15 or 16, 2025, and handed him a suspension notice. Human Resources Generalist Nigel Trainer was present for this interaction. Jail Management made Clayton leave the ACJ immediately. The suspension was unpaid. No investigatory interview was conducted that day. (N.T. 22, 40-41, 83, 121; CP-1)

11. After reciting a series of work rules and standards, the January 21, 2025 suspension notice provides, in part, as follows:

Specifically, on December 19th [2024] Director of Mental Health Michelle Kovalcik and Deputy of Healthcare Administration Debbie Scovill [met] with you to go over the parameters of your job

description. An[d] on January 16, 2025 it was reported that you Robin Clayton had once again exceeded the scope of your description. Moreover, you went into the patient's medical chart and suggested that said patient stop taking their prescribed medication. You do not have the proper credentials to perform this task. This action can jeopardize the safety of the patient and the accreditation of Allegheny County Jail.

(CP-1; CX-D)

12. Clayton refused to sign the January 21, 2025 suspension notice. No union representative was present when Clayton refused to sign the letter. (N.T. 24; CP-1; CX-D)

13. Also on January 21, 2025, Human Resources Generalist Nigel Trainer issued a Notice of a "Pre-Disciplinary Due Process Hearing" (PDH) scheduled for Thursday, January 23, 2025, at 2:00 p.m., in the ACJ Administration Small Conference Room. The stated purpose of this meeting was to present Clayton with alleged instances of employe misconduct and to give him an opportunity to respond. The PDH notice again recited the allegations contained in the January 21, 2025 suspension notice. The PDH notice also provided that Clayton could choose not to attend the hearing and instead respond in writing. Nigel Trainer called Clayton and emailed the PDH notice to him on January 21, 2025 to give him 2 days' notice of the PDH and make sure that he could attend. Nigel Trainer could not recall whether Clayton asked for a union representative for the PDH. (N.T. 23, 122-128; CP-2)

14. Paragraph 4 on page 2 of the PDH notice provides: "Please be advised that you have the right to union representation at this hearing. Outside legal counsel is not permitted." Nigel Trainer testified he has never denied anyone a union or staff representative. (N.T. 118-119; CP-2)

15. Clayton did not attend the PDH. He testified that he requested a union representative, and he was told: "you have no union." Clayton also testified that he requested the presence of an attorney, which request was also denied. Clayton testified that he believed that the PDH would not have been fair unless he was able to have a union representative or an attorney. An attorney advised Clayton not to attend the PDH without representation. Clayton did not identify on the record the specific management employe who denied him a union representative for the PDH.¹ (N.T. 24-25, 28, 80-81)

16. In January 2025, there was no designated AFSCME steward because the AFSCME unit clarification petition was still pending before the Board and AFSCME was not yet the certified collective bargaining representative for professionals at the Jail. A Psychiatric or Mental Health Nurse was the AFSCME contact person at the Jail and was at the Jail at the time of the PDH. (N.T. 25-26; JX-1)

17. On January 22, 2025, Clayton emailed Blythe Toma, Manager of Administration, and copied Deputy Martin and HR Generalist Nigel Trainer, with an attachment responding to Martin's January 21, 2025 suspension notice. Clayton's response letter provides, in relevant part, as follows:

¹ Paragraph 7 of the Specification of charges alleges that Clayton directed his request for a union representative to Deputy Warden Martin and HR Generalist Trainer.

I deny the allegations contained within the January 21 letter. I have only acted within the scope of my employment and have not engaged in insubordination. Further, I do not have knowledge of any improper notations made in any patients' chart on January 16, 2025. Therefore, any disciplinary action against me is unwarranted and will be appealed to the fullest extent of the law.

(CP-3)

18. Clayton's January 22, 2025 letter does not request the presence of a union representative or indicate that he was denied a union representative. Present at the January 23, 2025 PDH were Deputy Warden Debbie Scovill, HR Generalist Robert Lee, and HR Generalist Nigel Trainer. Clayton did not attend the PDH, and employees are not required to attend their PDHs. At another meeting held on February 3, 2025, Holly Martin presented Clayton with a Last Chance Agreement (LCA). Clayton testified that he asked for a union representative during the February 3, 2025 meeting and his request was denied. Clayton was not permitted to show the LCA to anyone before signing it. Clayton testified that he asked for a union representative at every meeting except the March 26, 2024 meeting. (N.T. 28, 34, 86, 89, 117, 129, 147-148; CP-3; CP-4)

19. The proposed LCA would have required Clayton to agree that he violated multiple work rules and engaged in insubordination. It also required Clayton to agree to an additional suspension without pay for 30 days. The LCA additionally provided that Clayton could be discharged for any violation of any County or Jail work rule, policy, procedure, law, or ordinance, as well as any time and attendance rule, or "[a]ny other conduct determined by Allegheny County to constitute unacceptable performance and/or conduct." The LCA further provided that Clayton and the union waived all rights to the grievance procedure and unfair practice procedures before the Board. Paragraph 11 of the LCA provides that Clayton could be immediately discharged if he violated any of the conditions of the LCA and for violating any of the above rules, procedures, and laws or for engaging in any unacceptable conduct. (CP-4)

20. At the February 3, 2025 meeting, Clayton was told that, if he did not sign the LCA, his employment would be terminated. Clayton testified that he requested a union representative for this meeting, but he was refused. Nigel Trainer was present for this meeting and testified that he could not specifically recall whether Clayton requested a representative and that he does not recall if Deputy Warden Martin denied him one. Clayton did not identify the management employe who he claims denied him a union representative for this meeting. (N.T. 35-37, 85-86, 89, 118-119, 131-132)

21. On February 3, 2025, Deputy Holly Martin issued a termination letter to Clayton outlining the results of the PDH investigation and sustaining the charges brought against Clayton. The letter repeats the reference to the December 19, 2024 counseling by Director Kovalcik and the January 16, 2025 allegations as contained in the January 21, 2025 suspension letter. The termination letter also states: "Robin Clayton you were offered the opportunity to continue employment as a Mental Health Specialist at the Allegheny County Jail, but you refused to sign the Last Chance Agreement that was offered to you." (N.T. 145; CP-5)

22. Trainer testified that management's practice is that, when an employe is simply handed their outcome without questioning the employe, management does not care if a representative is present because the manager is just informing the employe of the result. (N.T. 145)

23. On June 17, 2025, Hearing Examiner Stephen Helmerich, Esquire issued a proposed order of unit clarification including the MHS position, among others, into the professional unit of residual County employes represented by AFSCME. Exceptions to this order were not filed with the Board. (JX-1; PERA-U-24-245-W)

DISCUSSION

The County posits that the conclusions of the County Personnel Board (that the County had grounds for discharging Clayton for repeatedly interfering with the issuance of medications to inmates after being instructed not to do so) renders Clayton's claims under Section 1201(a)(1) null and void. (County Brief at 11-12). The County contends that this Board has held that an employer's discipline for employe misconduct does not have a tendency to coerce employes in the exercise of protected rights because "no policy of PERA would be served if acts of insubordination were sheltered under the protection of the right of employes to engage in lawful union activity." (County Brief at 12) (quoting Pittston Area School District, 27 PPER 27066 (Final Order, 1996)).

However, Clayton's claims under Section 1201(a)(1) cannot be dismissed merely because the County Personnel Board determined that the ACJ properly discharged Clayton for repeatedly interfering with dispensing medications after management told him not to do so. As discussed in Clayton's Brief at 12-14, the Personnel Board ruled on the merits of whether the County had just cause for Clayton's discharge. Clayton's claims under Section 1201(a)(1) in this case are not rooted in whether his discharge for misconduct can constitute coercion or interference with protected rights, which the Board has held to be unsheltered under PERA. Rather, Clayton's claims under Section 1201(a)(1) are rooted in whether he was unlawfully denied a Weingarten representative at the January 23, 2025 PDH and the February 3, 2025 disciplinary meeting. Accordingly, the Board has jurisdiction to entertain Clayton's Weingarten claims under Section 1201(a)(1). Clayton's claims do not present the question of whether he was unlawfully coerced by his termination for misconduct.

Clayton contends that he was denied requested union representation at meetings in December 2024, and January 2025, where the meetings involved more than simply informing him of a disciplinary outcome. (Clayton Brief at 14). Clayton further argues that he was entitled to Weingarten rights while AFSCME's petition for unit clarification seeking to include his position was pending and while AFSCME was not yet certified to represent his and other professional positions in the Jail. (Clayton Brief at 14-16). As an issue of first impression, Clayton urges the adoption of Anchortank, Inc. v. NLRB, 618 F.2d 1153 (5th Cir. 1980).

The County, however, argues that, in the Commonwealth of Pennsylvania, public employes without a collective bargaining representative, which under PERA are required to be certified, do not have Weingarten rights. The County cites Fraternal Order of Police Christina Lodge No. 84 v. Freeland Borough, 43 PPER 63 (PDO, 2011), *aff'd*, 43 PPER 102 (Final Order, 2012), and argues

that where there can be no Weingarten right at issue, Clayton's claims must be dismissed. (County Brief at 9).

In Freeland Borough, Hearing Examiner Thomas Leonard, Esquire concluded that, where there was no evidence that the FOP was the certified or recognized collective bargaining representative of the police employes in that case, those employes did not have a right to a Weingarten representative during investigatory interviews. Freeland Borough, supra. Freeland Borough, however, would not end the inquiry if the Board were to adopt Anchortank, supra, as urged by Clayton. In Anchortank, the Court concluded that, when an employe requests the presence of a union representative from a union which has won a challenged election, the employer may deny the request at the risk that this conduct will later be found to violate section 8(a)(1) of the NLRA if the union has indeed won the election and is later certified. Anchortank, supra. The Anchortank Court further reasoned that "[a]fter the union has won the election, the employee quite properly perceives his request to be one for the concerted mutual aid and protection of his fellows, for the union then stands in for all the unit employees." Anchortank, 618 F.2d at 1162.

Clayton contends that AFSCME was his union representative at the time because all but 1 of the civilian Jail professionals signed cards in support of AFSCME, AFSCME filed a petition for unit clarification seeking to include his position, among others, into their bargaining unit of professional County employes, the County was not contesting the inclusion of his position in the bargaining unit, and he was certain to soon be covered by the AFSCME contract. Clayton argues that the applicability of Anchortank is even more compelling here because there was no question that the MHS position was going to be included in the AFSCME unit.

However, I need not decide whether the policy espoused in Anchortank should be applicable here or whether it should be adopted by this Board. In AFSCME, Local No. 3936 v. Commonwealth of Pennsylvania, Department of Corrections, 28 PPER 23139 (Final Order, 1997), the Board held that an employer has 3 options when an employe requests a union representative during an investigatory interview. The employer may grant the request, discontinue the interview, or offer the employe the choice of continuing without the representative or having no interview at all. Commonwealth, supra.

Although Clayton argues in his Brief that he was denied requested representation at the December 2024 meetings, his specification of charges makes no such allegations. Thus, his Weingarten claims with respect to the December 2024 meetings were not properly preserved and are untimely. Also, assuming without deciding that Clayton had Weingarten rights in early 2025, Management did not violate those rights during the January 23, 2025 PDH or the February 3, 2025 termination meeting placed at issue in the charge.

Clayton chose not to attend the January 23, 2025 PDH because he was allegedly denied a representative. Management chose to proceed with its investigation without him. Clayton's letter only contained a categorical denial of the allegations, and he did not provide any information regarding the allegations against him. Management has a legitimate prerogative to independently investigate employe misconduct without the participation of the accused employe. Morris v. Commonwealth of Pennsylvania, Department of Corrections, Greene SCI, 32 PPER 32103 (PDO, 2001). No information or answers flowed from Clayton to Management during the PDH because he was not there. The PDH was an investigation, but it was not an interview. Clayton did not participate in or contribute to the investigation. Clayton did not provide

any information that Management relied upon to determine his discipline, and no Weingarten violation occurred.

On February 3, 2025, Deputy Warden Holly Martin presented Clayton with a termination letter and the option to sign an LCA. Clayton testified that he asked for a union representative during the February 3, 2025 meeting and his request was denied. Clayton was not permitted to show the LCA to anyone before signing the LCA, which contained admissions of wrongdoing. Clayton did not sign the LCA or make any admissions without a representative. At that point, Management ended the meeting and presented Clayton with his termination letter. There was no interview on February 3, 2025, and Clayton did not provide any information that Management relied upon to determine his termination. Management, therefore, did not violate any alleged Weingarten rights that Clayton may have had on February 3, 2025.

Clayton also argues that the County violated Section 1201(a)(5) by not informing AFSCME of his disciplinary hearings, suspension, and last chance agreement and by not bargaining with AFSCME over them. (Clayton Brief at 23). Clayton contends that the County acted at its peril in this regard pending the resolution of the unit clarification petition whereby Clayton was assuredly going to be accreted into the professional unit of employees represented by AFSCME. (Clayton Brief at 23-24). However, the County did not have a bargaining obligation to AFSCME under PERA prior to having its certification amended to include Clayton and others, and it did not violate Section 1201(a)(5). Delaware County Prison Employees Independent Union v. Delaware County, 56 PPER 37 (Final Order, 2024). Because PERA is different than the NLRA with respect to requiring the certification of a bargaining representative before the duty to bargain arises, the adoption of Anchortank in the bargaining context is not possible. See also, AFSCME v. State Labor Board, 196 Ill. App.3d 238 (1990).

Accordingly, the County did not violate Clayton's Weingarten rights, and it did not have a duty to bargain with or notify AFSCME.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. Robin Clayton was a public employe within the meaning of Section 301(2) of PERA at all times relevant hereto.
3. The Board has jurisdiction over the parties hereto.
4. The County has not committed unfair practices in violation of Section 1201(a)(1) of PERA.
5. The County has not committed unfair practices in violation of Section 1201(a)(5).

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eleventh day of May 2026.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner