COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NATIONAL CORRECTIONAL EMPLOYEES UNION LOCAL NO. 143	:	
v.	:	CASE NO. PERA-C-25-137-W
ERIE COUNTY	:	

PROPOSED DECISION AND ORDER

On June 9, 2025, the National Correctional Employees Union Local No. 143 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Erie County (County or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) when the County, on or about February 10, 2025, unilaterally changed a policy to forbid bringing in open containers of liquid into the County's prison and also to require bargaining-unit members to perform pat searches on other bargaining-unit members before entering the prison. The Union also alleges the County violated the Act by refusing to bargain over the impacts of implementing the changes to policy.

On July 9, 2025, the Secretary of the Board issued a complaint and notice of hearing designating September 26, 2025, in Pittsburgh, as the time and place of hearing.

The hearing was continued once at the request of the Union and held on January 9, 2026, in Erie, 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 parties filed post-hearing briefs on February 19, 2026.

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

FINDINGS OF FACT

1. The Employer is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. The Union is the certified exclusive bargaining representative of a unit of County correctional officers and shift supervisors. (N.T. 6; PERA-R-22-259-W).

3. The Parties are subject to a collective bargaining agreement (CBA) with the effective dates of January 1, 2023 through December 31, 2026. (PLRB Exhibit 1).

4. The County operates a prison that houses approximately 650 inmates. At the Erie County Prison, there is only one general entrance to the facility that everyone passes through including bargaining-unit members on their way to begin their work shift. People entering the prison, including bargaining-unit members, must pass through security protocols in the prison entrance or lobby. The prison entrance or

lobby includes a belt scanner (similar to an airport scanner) where people must place their belongings to be scanned. People then step through a body scanner. This security area and process is governed by County policy. (N.T. 15-16, 46).

5. County Department of Corrections Policy 200-08 "Facility Entrance Procedures" governs the security process at the prison entrance. The current Policy 200-08 (Union Exhibit 2) has an effective date of February 7, 2025. The immediately preceding version of Policy 200-08 (Union Exhibit 1) had an effective date of September 15, 2024 (N.T. 17; Union Exhibit 1, 2).

6. The current version of Policy 200-08 states in relevant part:

> IV. GENERAL INFORMATION
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> A. Contraband Control
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> 1. To detect and deter the introduction, fabrication, possession and conveyance of contraband in the institution, all individuals shall be subject to search upon entering or leaving the prison.
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> . . .
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> 3. Any items brought into the Erie County Prison by Prison Staff/Employees shall be contained in one (1) clear plastic bag/tote or see through mesh bag. Lunchboxes will be the only exception to the clear bag/tote/mesh restriction. Only items needed to complete the workday will be authorized. Items must be able to be fully inspected. No open containers of liquid will be permitted without prior written approval, and on a case by case basis. Any exceptions to this will be in writing from [the] Warden or designee and posted in the lobby.

(N.T. 18-19; Union Exhibit 2).

7. The language in Paragraph 3 in the above quote regarding open containers of liquid is new and did not exist in the previous version of the policy. (Union Exhibit 1).

8. Prior to the promulgation and implementation of the above revised Policy 200-08 in February 2025, there were no restrictions on what kinds of open containers of liquid bargaining-unit members could bring into the prison at the beginning of their shift. For example, bargaining-unit members had brought in coffee in a disposable cup, a soda from a fast-food restaurant, energy drinks, and protein shakes. (N.T. 19-21).

9. Prior to the promulgation and implementation of the above revised Policy 200-08 in February 2025, if a bargaining-unit member arrived at the prison security lobby with an open container of liquid, they would hand it to the corrections officer or lobby officer working

in the security entrance who would open it and inspect it. The drink would be returned after the bargaining-unit member had passed through security. From there, the bargaining-unit member could take the drink to wherever they were going in the prison for their shift. (N.T. 21-22, 24).

10. Open drinks cannot be run through the security scanners because they would likely be knocked over and spilled by the drapes or on the moving belt. The lobby officer usually cannot see the bottom of drink with an opaque liquid in it. Additionally, a large metal thermos does not properly scan in the scanner. (N.T. 25-26, 42).

11. Joseph Orsini is a corrections officer. He has been a corrections officer for over six years. He serves as the Union President and has held that position for over one and a half years. Orsini testified that the ability to bring open containers of liquid into the prison, such as coffee or protein shakes made before their shift, is important to bargaining-unit members because their daily coffee, energy drink, or protein shake is an important part of their everyday routine. (N.T. 13-14, 22-23).

12. The ability of bargaining-unit members to bring in unopened or sealed containers of liquid is still allowed and has not changed. (N.T. 23, 30, 42).

13. The County did not bargain the change of policy with respect to open containers of liquid with the Union. (N.T. 23; County Exhibit 1).

14. Gary Seymour is the Deputy Warden of the County prison. He has been Deputy Warden for over twelve years. Seymour testified that the prison is extremely concerned about contraband being brought into the prison. Contraband includes drugs, tobacco, weapons and anything that creates a danger to the inmates and employes of the prison. Seymour testified that drugs and tobacco negatively affect the health of the inmates and lead to fights and assaults. (N.T. 33-35).

15. In January 2025, the County found that a correction officer was bringing chewing tobacco into the prison. This corrections officer brought the tobacco to his work-station and chewed it and spit it into a trash can. Inmates would then go into the trash can, dried out the tobacco spit and smoked it. Seymour testified that the County was concerned about this because of the health risk to inmates from going into trash cans and smoking tobacco spit and the safety concerns that comes from trading tobacco which can lead to inmate fights, arguments and fights. Also, in January 2025, the County found a vape in the employe locker room. Finally, Seymour testified that in January 2024 the County found that a corrections officer had brought in vape pens for inmates. The vape pens contained marijuana and led to arguments and fights among the inmates. (N.T. 36-39).

16. With respect to the above January 2024 incident with marijuana vape pens, Seymour testified that the County had, during its investigation of the incident, learned of rumors that the marijuana vape pens had been brought into the prison by a corrections officer through an open container of liquid. (N.T. 39-41).

17. Seymour testified that a visual scan of an open container of liquid is not sufficient because the bottom of the cup is not visible. (N.T. 42).

18. Michael Holman is the Warden of the County prison. He has been Warden for over one year. Prior to being Warden, he was the interim Warden. He has been at the prison for over 30 years. Holman testified that he changed open container policy for the specific purpose of preventing the introduction of contraband into the prison. He testified that he was motivated to change the policy because of recent specific instances of contraband coming into the prison such as tobacco and marijuana vape pens. (N.T. 48-52).

19. After the implementation of the policy, the County installed an "industrial Keurig" coffee machine in the prison. (N.T. 26).

DISCUSSION

At the hearing, the Union withdrew the allegation in its charge that the County had committed an unfair practice with respect to the policy regarding pat searches and the allegation in its charge that the County had failed to bargain over the impacts of the policies. (N.T. 7). The remaining charge is the allegation over the alleged unilateral implementation of the open drink container policy. The County argues that its open container policy falls within its inherent management authority and is not bargainable. (County's Brief at 5-10).

The Board will find an employer has violated its duty to bargain if it unilaterally changes a term and condition of employment that is a mandatory subject of bargaining under § 701 of PERA. Appeal of Cumberland Valley School District, 394 A.2d 946 (Pa. 1978); Commonwealth of Pennsylvania v. PLRB, 459 A.2d 452 (Pa. Cmwlth. 1983).

Section 701 mandates that an employer must bargain with respect to "wages, hours and other terms and conditions of employment". 43 P.S. § 1101.701. These topics are mandatory subjects of bargaining. Counterbalancing § 701, § 702 states: "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel." 43 P.S. § 1101.702. These topics are managerial prerogatives.

In PLRB v. State College Area School District, 337 A.2d 262 (Pa. 1975), the Supreme Court articulated the standard to be applied in determining whether a matter is a mandatory subject of bargaining under § 701 or a managerial prerogative under § 702 as follows:

> [W]here an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the

> courts thereafter to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours and terms and conditions of employment, the public employer shall be required to meet and discuss such subjects upon request by the public employe's representative pursuant to section 702.

337 A.2d at 268.

Turning to this matter, the issue in dispute is a new policy limiting the bargaining-unit members' ability to bring open drinks into the prison at the beginning of their shift. It is not contested that prior to the implementation of new policy in February 2025 bargaining-unit members could bring in open containers of drinks such as coffee into the prison at the beginning of their shift to consume during their shift in the prison. It is also not disputed that the County did not bargain with the Union over the issue before the County changed the policy in February 2025.

Beginning the analysis, first, I find the issue of bringing open drink containers into the prison is a topic covered by § 701. While this topic is not directly connected to "wages" or "hours", it is a "condition" of employment. In Crawford County v. PLRB, 659 A.2d 1078 (Pa. Commw. Ct., 1995), the Commonwealth Court discussed the issue of "conditions" under § 701 while addressing the topic of smoking in prison. The Commonwealth Court held:

> Section 701 of Act 195 provides that employers have a mandatory duty to bargain with respect to wages, hours, and "other terms and conditions of employment." The concept of "other terms and conditions of employment " within Act 195 is in itself a broad one. It refers to such things as, but not limited to, various physical conditions of one's working surroundings, what quantity and quality of work is required during one's work period, what safety practices prevail at and near the job site, what sick and other hospital benefits are available, what vacation benefits are available, what retirement benefits will be provided and how eligibility will be determined. State College Educational Association v. Pennsylvania Labor Relations Board, 9 Pa. Commonwealth Ct. 229, 306 A.2d 404 (1973), remanded, 461 Pa. 494, 337 A.2d 262 (1975). The United States Supreme Court in Ford Motor Co. (Chicago Stamping Plant) v. National Labor Relations Board, 441 U.S. 488, 498, 99 S.Ct. 1842, 1850, 60 L.Ed.2d 420 (1979) described the terms and conditions of employment as those matters which "are plainly germane to the 'working environment' " and "not among those

> 'managerial decisions, which lie at the core of entrepreneurial control.'"
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> As relevant to the work environment, while it is true that employee smoking does not affect the hours they work, the amount they will earn for their work or alter their job descriptions, the County has always permitted its guards and employees to smoke in all areas of the jail, including but not limited to the work areas, break rooms and hallways. One may justifiably presume that those employees, who did smoke, did so in order to help pass the time while working or to relax during break periods. In these circumstances, the employees' right to smoke was nothing less than a work related privilege.

Crawford County v. PLRB, supra.

Although the specific issue of indoor smoking as a mandatory subject of bargaining was later proscribed by Commonwealth statue, the analysis in Crawford remains sound. Relying, then, on the above precedent and applying it to this case, I find that the issue of bringing into work an open drink container such as coffee is a § 701 condition of employment. The bargaining-unit member corrections officers had always been allowed to bring in open container drinks such as coffee at the start of their shift to drink during their shift at their work station. These facts are similar and analogous to Crawford, supra, and it is manifest on this record that the ability of bargaining-unit corrections officers to bring in open drink containers is clearly relevant to their work environment.

The determination that the issue of bringing open drink containers into the prison is a condition of employment under § 701 does not end the analysis, however, as this right to collective bargaining over § 701 issues is limited by § 702 of PERA, which permits public employers to refuse to bargain over matters of "inherent managerial policy" or managerial prerogatives.

In this case Warden Holman testified that he changed the open container policy for the specific purpose of preventing the introduction of contraband into the prison. He further testified that he was motivated to change the policy because of recent specific instances of contraband coming into the prison such as tobacco and marijuana vape pens. The record shows the Prison does have an explicit policy on contraband as put forth in Policy 200-08 which is, in part, a policy to prevent the "introduction of contraband into the prison." The County witnesses also credibly testified that the specific ban on open liquid containers was implemented because open containers of liquid cannot be put into the scanning equipment in the prison lobby, cannot be completely visibly inspected, and therefore cannot be fully searched.

Reviewing past Board and court decisions, I have not identified a case which was directly on point and specifically analyzed the status of a public employer's contraband policy (of which the open container ban is a part) under PERA.

On this record, I find that the County's contraband policy at the prison goes directly to its primary mission of incarcerating prisoners and the related necessary purpose of preventing drugs and weapons from being possessed by prisoners. The Board has held that a public employer's decision that strikes at the core of its public purpose to provide necessary standards of services is within its managerial prerogative under § 702 of PERA. APSCUF v. PLRB, 226 A.3d 1229 (Pa. 2020)(policy requiring employes to submit to background checks is proper exercise of managerial authority because it touches upon the core aspect of providing a safe educational environment); Fraternal Order of Transit Police v. SEPTA, 36 PPER 115 (Final Order, 2005)(SEPTA's policy of requiring transit police officers to take lunch within walking distance of their assigned beat was a managerial prerogative because it was in furtherance of its public purpose of providing a safe public transportation system); Easton Area Education Association v. Easton Area School District, 32 PPER ¶ 32163 (Final Order, 2001)(school district's creation of developmental reading assessment program for education of its students is a managerial prerogative). The contraband policy, including the specific ban on open beverage containers, strongly emanates from the prison's core function of incarcerating prisoners and preventing drugs and weapons from being possessed by prisoners. The contraband policy is thus a § 702 inherent managerial prerogative.

As I have determined that the ban on open drink containers touches conditions of the bargaining-unit members employment and is also part of the County's managerial prerogative, my analysis is to consider if the impact of the issue on the interest of the employes conditions of employment outweighs its probable effect on the basic policy of the system as a whole.

Orsini testified that the ability to bring open containers of liquid into the prison, such as coffee or protein shakes made before their shift, is important to bargaining-unit members because their daily coffee, energy drink, or protein shake is an important part of their everyday routine. On this record this is a minimal though existent interest. This interest is importantly contextualized by the fact that bargaining-unit members may bring in sealed beverages, may request an exception from the policy from the Warden, and the County provided an "industrial Keurig" coffee machine. As mentioned, while this is a minimal interest, it still exists in context.

On the other hand, the County put on evidence from the Warden and Deputy Warden who testified that they believed the policy on open beverage containers, which is part of the larger contraband policy, was necessary to stop contraband from getting to prisoners. The record shows that they were motivated by three recent incidents. In January 2025, the County found that a corrections officer was bringing in chewing tobacco. The inmates were able to take the tobacco spit and make cigarettes from it. Also in January 2025, the County found a vape in the employe locker room. In January 2024, the County learned that a corrections officer had brought in marijuana vape pens for inmates. Seymour testified that the County had, during its investigation of the marijuana vape pen incident, learned of rumors that the marijuana vape pens had been brought into the prison by a corrections officer through an open container of liquid.

While there was no persuasive evidence on this record that the two January 2025 incidents were related to open containers of liquid at all, the January 2024 incident does justify the ban on open containers of liquid based on Deputy Warden Seymour learning of rumors that a corrections officer had brought in marijuana vape pens through an open drink container. Seymour credibly testified about this and, giving deference to his judgment about the credibility of the rumors and the weight he and the County gave them, I find that the County has shown a reasonable connection between the issue of open beverage containers and contraband sufficient to support its policy choice.

Therefore, on the one hand the Union has shown a minimal but real interest in the bargaining-unit members' ability to enjoy a drink that had been opened before they started their shift. On the other hand, the County has shown a connection between their ban on open containers and their larger policy of stopping contraband. I find the record supports an inference that the ban on open containers is likely to or probably will prevent contraband from entering the prison and ending up in the possession of inmates. Based on State College, supra, I am to weigh the impact of the issue on the interest of the employes' conditions of employment against its probable effect on the basic policy of the system as a whole. On this record, therefore, I find that the effect of the ban on open beverage containers on the County's contraband policy outweighs the interest of the bargaining-unit members ability to bring an open beverage into work at the beginning of their shift.

Therefore, the issue of bringing in open containers of liquid at this prison is an issue of managerial prerogative under § 702 and the County is not required to bargain it.

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The County has 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 PERA, 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 fifth day of March, 2026.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner