

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES
DISTRICT COUNCIL 89

v.

LANCASTER COUNTY

:
:
:
:
:
:
:
:
:
:
:

Case No. PERA-C-12-109-E

PROPOSED DECISION AND ORDER

On April 26, 2012, American Federation of State County and Municipal Employees, District Council 89 (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Lancaster County (County or Respondent) violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by denying the Union's request for information relevant to the processing of discipline grievances it filed on behalf of its members.¹

On May 22, 2012, the Secretary of the Board issued a complaint and notice of hearing assigning the matter to a conciliator for resolution and establishing November 8, 2012 in Harrisburg before Thomas P. Leonard, Esquire, a hearing examiner of the Board, if necessary. Conciliation did not resolve the matter and a hearing was necessary, but was continued to November 22.

The hearing was held on the rescheduled date, at which time the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Lancaster County is a public employer within the meaning of Section 301(1) of PERA.
2. American Federation of State County and Municipal Employees District Council 89 is an employee organization within the meaning of Section 301(3) of PERA.
3. The Union is the exclusive bargaining representative of a unit of corrections officers and maintenance workers at the Lancaster County prison.
4. The Union and the County have negotiated several collective bargaining agreements for this bargaining unit. The last collective bargaining agreement includes Articles XIX, that provide the arbitration of grievances, and Article XX, that discipline should only be for just cause. (N.T. 21, 23, Union Exhibit O)
5. On December 12, 2011, the Union filed a grievance on behalf of corrections officer Jeremiah Small, appealing a three (3) day suspension he received for using excessive force. The grievance alleged that Small was disciplined without just cause. (N.T. 6, Union Exhibit H)
6. On January 23, 2012, the County's Director of Human Resources, Susan Dry, denied the grievance. Dry cited the County's "Justification for the Use of Force" policy. Also, Dry cited a video of the incident as not showing the officer was being subjected to any threat of bodily injury that would allow the kind of force that Small used. (N.T. 23, Union Exhibit I)

¹ As filed, the charge alleged that County had refused to provide information for two grievances. However, at the hearing, the Union informed the Hearing Examiner that it had received the information it sought regarding the grievance involving Officer James Leibig. Accordingly, the only dispute is over the information request for the grievance of Officer Jeremiah Small's three (3) day suspension.

7. On January 25, 2012, the Union appealed the grievance to arbitration. On March 12, 2012, the Union sent a request for information to the County, specifically,

“Any and all reports involving inmate Salvador-Rodriguez Gabriel 11-2008 and Sergeant Juan Pena on March 3, 2012 in the medical department at approximately 10:02 PM (2102 hrs). Any and all video of this incident to include camera 80 but not limited to just camera 80.

(N.T. 24, 25, Union Exhibits J and K)

8. On April 4, 2012, the County’s labor solicitor, Susan R. Friedman, Esquire, replied to the Union, informing the union that it would not provide the information involving Sgt. Pena:

An element of just cause includes comparison of whether a bargaining unit employee’s discipline was consistent with discipline issued to other bargaining unit employees who engaged in similar conduct or malfeasance. Sergeant Pena is not a member of the bargaining unit and is not a valid comparator to CO Small.

(N.T. 26, Union Exhibit L)

9. The County has a Use of Force Policy in place at the prison. The purpose of the policy is “[t]o instruct Lancaster County Prison Corrections Personnel in the policy of the Use of Force and in the justification for its use, to include restraint usage.” (N.T. 27, 28, Union Exhibit N)
10. The Use of Force Policy must be followed by all correctional employees, whether they are bargaining unit members or not. (N.T. 15, 18)

DISCUSSION

The Union charges the County with violating sections 1201(a)(1) and (5) of PERA by failing to provide information the union seeks to assist it with a grievance. Specifically, the Union seeks reports and a video recording of an incident between a supervisor and an inmate to assist in appealing a three (3) day suspension of corrections officer Jeremiah Small. The County suspended Small for using excessive force with the same inmate.

In judging the validity of a union request for information, the Board has adopted the liberal discovery standard announced by the United States Supreme Court in **NLRB v. Acme Industrial Company**, 385 U.S. 432, 64 LRRM 2069 (1967), which has been construed by our Commonwealth Court in **Commonwealth of Pennsylvania**, 16 PPER ¶ 16179 (Proposed Decision and Order, 1985), 17 PPER ¶ 17042 (Final Order, 1986), 527 A.2d 1097 (Pa. Cmwlth. 1987). If the bargaining representative “is seeking information in connection with its pursuit of grievances, the Board need only find: (1) that the union is advancing a grievance which on its face is governed by the parties agreement; and (2) and that the information will be useful to the union. **Acme** at 437, 87 S. Ct. at 568.” 527 A.2d at 1099.

The County argues that the Union has not met the legal standard for the production of information, because the requested information involves a supervisor, while the grievance at issue was filed on behalf of a corrections officer, a bargaining unit member. The County argues that any attempt by the Union to use the facts of the supervisor’s case in a “disparate treatment” argument should fail because his position is not covered by the CBA’s just cause provision.

However, the County’s argument is premature. It is an argument that is more appropriately made to the arbitrator as to the admissibility of the evidence in an arbitration hearing. At this stage of its representation of corrections officer Small, the Union only needs to meet the liberal standards of discovery set forth in of **Commonwealth of Pennsylvania, supra**. The information the Union seeks is relevant under that standard and should be provided to the Union. The County’s failure to provide the information to the Union constitutes an unfair practice.

CONCLUSIONS

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

1. Lancaster County is a public employer under section 301(1) of the PERA.
2. AFSCME District Council 89 is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The County has committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employee representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from refusing to provide the information the Union sought in its March 12, 2012 letter to the County.
4. Take the following affirmative action:
 - (a) Provide the Union with any and all reports involving inmate Salvador-Rodriguez Gabriel 11-2008 and Sergeant Juan Pena on March 3, 2012 in the medical department at approximately 10:02 PM (2102 hrs) and any and all video of this incident to include camera 80 but not limited to just camera 80.
 - (b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and
 - (c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of January, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES
DISTRICT COUNCIL 89

v.

LANCASTER COUNTY

:
:
:
:
:
:
:
:

Case No. PERA-C-12-109-E

AFFIDAVIT OF COMPLIANCE

Lancaster County hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of PERA; that it has produced any and all reports involving inmate Salvador-Rodriguez Gabriel 11-2008 and Sergeant Juan Pena on March 3, 2012 in the medical department at approximately 10:02 PM (2102 hrs) and any and all video of this incident to include camera 80 but not limited to just camera 80.

The County further certifies that it has posted a copy of the proposed decision and order as directed and that it has served an executed copy of this affidavit on the Union.

Signature/Date

Title

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

Signature of Notary Public