COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	:	
v.	:	Case No. PERA-C-02-149-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS PITTSBURGH SCI	:	

FINAL ORDER

On June 26, 2003, the Pennsylvania State Corrections Officers Association (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated June 6, 2003. In the PDO, the Hearing Examiner concluded that the Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI (Commonwealth) did not engage in unfair practices in violation of Section 1201(a)(1) or (5) of the Public Employe Relations Act (PERA) when it denied correctional officer Michael Egnacheski union representation at meetings held on March 13th and 14th 2002. On July 3, 2003, the Board Secretary granted the Union's request for an extension of time to file its brief in support of exceptions. On July 22, 2003, the Board Secretary granted the Union's second request for an extension of time to file a brief in support of exceptions. On August 11, 2003, the Union timely filed its brief in support of exceptions. On August 20, 2003, the Commonwealth timely filed a brief in response to exceptions.

The Commonwealth employs Michael Egnacheski and James Gallagher as corrections officers at the State Correctional Institution at Pittsburgh (Pittsburgh SCI). On March 13, 2002, Egnacheski and Gallagher were directed to attend a meeting with Lieutenant Maria Corriveau, who was their shift supervisor, and Major Frank Cole. The meeting concerned a verbal complaint that Corriveau had received from an inmate. Several times during the meeting on March 13, 2002, Egnacheski requested union representation. However, Corriveau and Cole stated that union representation was unnecessary because the meeting would not result in discipline. Near the conclusion of the meeting, Corriveau advised Egnacheski and Gallagher that if the type of behavior alleged by the inmate continued, it could result in discipline. Egnacheski and Gallagher did not receive any discipline as a result of the meeting on March 13, 2002.

On March 14, 2002, Corriveau had a discussion with Egnacheski and Gallagher concerning inmate passes and releasing inmates in a timely fashion so that they can keep appointments. However, they discontinued their discussion of those issues after Egnacheski raised the issue of union representation. Mark Krysevig was the deputy superintendent of Pittsburgh SCI from July 1999 to December 2002. In June 2002, Krysevig received a complaint from Officer Gallagher against Officer Egnacheski. After receipt of this complaint, Krysevig offered Egnacheski the option of resigning from his post in correctional industries in return for

Krysevig's agreement not to pursue disciplinary action. Egnacheski eventually accepted the offer from Krysevig and now holds a different position. When Krysevig made the decision to seek Egnacheski's resignation from his position in correctional industries, Krysevig was unaware of Egnacheski's March 13, 2002 meeting with Corriveau and Cole.

Initially, the Board notes that the Union has not raised any exceptions to the Examiner's dismissal of the part of the charge alleging a violation of Egnacheski's right to Union representation for the March 14, 2002 meeting. The Union also has not raised any exceptions to the Examiner's dismissal of its cause of action under Section 1201(a)(5). Accordingly, those dismissals shall remain undisturbed. 34 Pa. Code § 95.98(a)(3); FOP, Lodge 5 v. PLRB, 727 A.2d 1187 (Pa. Cmwlth. 1999).

In its exceptions, the Union argues that the Examiner erred in concluding that Egnacheski was assured that no discipline would result from the March 13, 2002, meeting, as stated in Finding of Fact Number 5. Findings of fact must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737 A.2d 313, 315, n.6 (Pa. Cmwlth. 1999); Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000); Manuel Zavala-Lopez v. Kaolin Mushroom Farms, Inc., 29 PPER ¶ 29025 (Final Order, 1997). Substantial evidence is "`relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Kaufman, supra (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)). A review of the Examiner's citations to the record reveals an abundance of repeatedly corroborated evidence that a reasonable mind would accept as adequate to support the conclusion that Egnacheski was expressly assured by both Lieutenant Corriveau and Major Cole that no discipline would result from the March 13, 2002 meeting.

In Finding of Fact Number 5, the Examiner finds that "Corriveau and Cole stated that union representation was unnecessary because the meeting would not result in discipline." (PDO at 2, F.F. 5). In footnote number 3, which is attached to Finding of Fact number 5, the Examiner expressly stated the following: "As this finding indicates, I have determined that the testimony of the Commonwealth witnesses is more credible than the testimony of the Association witnesses regarding the substance of Corriveau's statement about potential discipline." (PDO at 2, fn. 3). It is within the province of the fact-finder, i.e., the Examiner, to accept or reject the testimony of any witness, in whole or in part. Killian v. Workmen's Compensation Board of Review, 434 A.2d 906, 910 (Pa. Cmwlth. 1981). The Examiner expressly made a credibility determination believing the testimony of the Commonwealth's witnesses over the Union witnesses that adequate assurances were given that no discipline would result. The Board strictly adheres to its long-standing policy that it will not disturb the credibility determinations of its hearing examiners, absent the most compelling of circumstances, because the hearing examiners are present to observe the demeanor of the witnesses, AFSCME District Council 84 v. Department of Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986); accord Clarion-Limestone Area Educ. Ass'n v. Clarion-Limestone Area Sch. Dist., 25 PPER ¶ 25033 (Final Order, 1994). The Union has not presented the

Board with any legitimate reason to reverse the credibility determinations of the Examiner.[1]

The Union further claims that the Examiner failed to find that Officer Egnacheski was subjected to questioning on March 13, 2002 by Lieutenant Corriveau. The Hearing Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986). The Examiner's conclusion that the Commonwealth did not violate Egnacheski's Weingarten[2] rights during the March 13, 2002 meeting was based on the fact that Lieutenant Corriveau and Major Cole assured Egnacheski that no discipline would result from that meeting. The Examiner applied the rule from Pennsylvania Nurses Association v. Western Psychiatric Institute and Clinic, 17 PPER ¶ 17225 (Proposed Decision and Order, 1986), which provides as follows:

> An employer can effectively rebut employe claims that they believed that discipline might result from a meeting with the employer by demonstrating that the employes were assured that no discipline would result from the meeting. Where, however, the assurances are less than convincing, the right to union representation still obtains.

Id. at 618 (citations omitted). The Western Psychiatric standard has been adopted and applied by the Board. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, 34 PPER ¶ 34021 (Final Order, 2003). Consequently, the Examiner stated in footnote 2 of the PDO with regard to this issue that "[t]he parties offered conflicting evidence on the factual issues of whether Officer Egnacheski was subjected to questioning on March 13, 2002, . . . However, resolution of those factual issues would not affect the outcome here." (PDO at 1, fn. 2). Accordingly, the Union's proposed finding, that Egnacheski was subject to questioning, is unnecessary to support the Examiner's conclusion that Egnacheski did not have a right to union representation because he was given reasonable assurances that no discipline would result from the meeting.

The Union maintains that the Examiner erred in concluding that the Commonwealth did not engage in unfair practices in violation of Section 1201(a)(1). Specifically, the Union maintains that the Examiner erred in concluding that Weingarten rights did not attach during the March 13, 2002 meeting and in concluding that Egnacheski did not have a reasonable belief that the meeting could result in discipline. The Union relies on Western Psychiatric Institute in its

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[1] The fact that assurances were given that no discipline would result from the March 13, 2002 meeting was also corroborated by Union witness James Gallagher. (1/14/03 N.T. 24).

[2] National Labor Relations Board v. Weingarten, Inc., 420 U.S 251, 95 S.Ct. 959 (1975), adopted by the Board in Conneaut Sch. Dist., 12 PPER ¶ 12155 (Final Order, 1981).

brief to support its argument that, where an employer's assurances that no discipline will result are "less than convincing, the right to union representation still obtains." Western Psychiatric, 17 PPER at 618. The Union's argument essentially objects to the Examiner's factual determination that the Commonwealth sufficiently assured Egnacheski that no discipline would result, and implicitly proposes the alternative finding that Cole's and Corriveau's assurances were "less than convincing" in the context of the surrounding circumstances. The Union emphasizes that both Major Cole and Lieutenant Corriveau admitted that, during the counseling session on March 13, 2002, Corriveau told Egnacheski that if he continued to engage in the alleged misconduct, i.e., harassing certain inmates, he could be subject to discipline in the future (N.T. 48, 59, 66).

However, the Union has cited no authority to support its position, and Weingarten requires the Union to prove that Egnacheski had a reasonable fear of discipline rather than a subjective one. Commonwealth, supra. Given the assurances by management credited by the Examiner in the PDO, Egnacheski could not have reasonably feared the imposition of discipline. Both Cole and Corriveau repeatedly assured Egnacheski and Gallagher that no discipline would result. Also, Cole testified that any hostilities during the meeting were generated by Egnacheski. (N.T.36). As previously stated, the Examiner was only required to set forth those facts necessary to support his conclusions. Page's Department Store, supra; Ford City Borough, supra. Accordingly, the Examiner was not required to find that the assurances were less than convincing because such a finding did not support his conclusion that Egnacheski received reasonable assurances that no discipline would result, which is a conclusion that is based on substantial credible evidence.

Moreover, the import of Corriveau's statement concerning future discipline simply informed Egnacheski of the obvious, i.e., that if future complaints against him about his future action or conduct are proved, he could be disciplined for that conduct which at the time of March 13, 2002 meeting had not yet occurred. A reasonable employe would not believe that a warning that future misconduct would result in discipline meant that he could be disciplined for the alleged past conduct from which he was assured no discipline could result.

Moreover, any connection between an admission made by Egnacheski and its use to impose progressive discipline in the future, should a future inmate grievance be substantiated, is not presented on this record. There is nothing in this record to suggest that anything Egnacheski may have said or admitted on March 13, 2002 would be used against him to impose discipline for future misconduct. Further, as provided in Finding of Fact No. 8, the Examiner credited the testimony of Mark Krysevig that he was unaware of the March 13, 2002 meeting when he decided to seek Egnacheski's resignation from correctional industries. Therefore, Egnacheski's removal from correctional industries was not in any way related to the meeting of March 13, 2002, and his removal was not part of any progressive discipline resulting from the March 13, 2002 meeting. Indeed, in Finding of Fact No. 6, the Examiner expressly found that neither Gallagher nor Egnacheski was disciplined as a result of the March 13, 2002 meeting. Also, the unfair practice charge was filed on March 21, 2002, approximately three months before Egnacheski resigned his position in correctional

industries. Accordingly, Egnacheski's removal, although disciplinary, is post charge conduct that does not support the charge where the record fails to establish a nexus between the pre-charge, March 13, 2002 meeting and the post-charge discipline.

As regards the alleged hostile environment during the meeting, Cole, whose testimony was credited by the Examiner, testified that Egnacheski was the one who was "loud", "boisterous" and "out of control". (1/14/03 N.T. 36). Accordingly, in light of the numerous assurances from both Cole and Corriveau, that no discipline would result, the Union has failed to meet its burden of proving that Egnacheski could reasonably fear the imposition of discipline from anything that transpired during the March 13, 2002 meeting even though Corriveau warned him that future similar misconduct could result in discipline for those future incidents.

The Examiner's decision, that Weingarten rights did not attach to Egnacheski during the March 13, 2002 meeting, was based on the Examiner's determination that both Major Cole and Lieutenant Corriveau expressly gave assurances during the meeting to Egnacheski and Gallagher that no discipline would result from the meeting. This operative fact is supported by substantial evidence. Under Western Psychiatric, supra, and Commonwealth, supra, Weingarten rights do not attach where, as here, the employe was given assurances that no discipline will result from the meeting and on this record no reasonable expectation that discipline might follow existed. Accordingly, the Examiner properly concluded that the Commonwealth did not violate Egnacheski's Weingarten rights during the meeting of March 13, 2002.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, Member, this twenty-first day of October, 2003. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.