

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
v. : Case No. PERA-C-05-367-E
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
FAYETTE SCI :

PROPOSED DECISION AND ORDER

On August 19, 2005, the Pennsylvania State Corrections Officers Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Corrections, State Correctional Institution at Fayette (Commonwealth) violated Section 1201(a)(1), (3), (5) and (8) of the Public Employe Relations Act (PERA).¹ On September 22, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on November 21, 2005. Pursuant to several requests by the parties, the hearing was continued to May 31, 2006. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. On July 28, 2006, the Commonwealth filed a post-hearing brief. The Association filed a brief on August 1, 2006.

The examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer for purposes of PERA.
2. The Association is an employe organization for purposes of PERA.
3. On August 2, 2005, Association representatives toured the State Correctional Institution at Fayette (SCI Fayette). The Association representatives included Executive Vice President Edward McConnell, Western Region Vice President Percy Poindexter, Secretary/Treasurer Sam Bretzler, Business Agent Shawn Hood, Local President Mike Dawson, and Local Vice President Ty Morgan. (N.T. 10, 12-14, 19-20, 26, 37-38, 40, 74)
4. During the August 2, 2005 tour of SCI Fayette, the Association representatives were accompanied by Major Daniel Burns and Captain Manchez. Major Burns is the major of the guard and is responsible for overall supervision of the guard force and security at SCI Fayette. (N.T. 14-16, 19-20, 40, 51, 72-73)
5. When Association Executive Vice President McConnell was advised that Major Burns would accompany the Association representatives on the tour, he asked that Burns not do so. However, Burns stated that "he had his orders." (N.T. 14)
6. Mark Krysevig is the deputy superintendent for facility management at SCI Fayette and oversees the security of the facility. He has held that position since December 2002. Krysevig directed Major Burns to conduct the tour with the Association representatives on August 2, 2005. (N.T. 58-60)
7. During the tour on August 2, 2005, the Association representatives visited various housing units at SCI Fayette, as well as other areas of the institution where Association members are employed. The Association representatives spoke to bargaining unit members and asked them if they had any issues they wished to discuss. (N.T. 15-16)

¹ The Association withdrew the charge under Section 1201(a)(8) of PERA at the hearing (N.T. 8). The Association also withdrew the charge under Section 1201(a)(3) in its post-hearing brief.

8. While the Association representatives talked to bargaining unit members on August 2, 2005, Major Burns stood nearby. The major was holding a pen and notebook and at times made entries in the notebook. At times, Major Burns asked the Association representatives what had been discussed with the employees, and then made an entry in the notebook. (N.T. 16, 19-21, 46, 75-76)

9. During the tour on August 2, 2005, Major Burns asked the Association representatives to provide their input regarding matters which they observed at the institution. (N.T. 22)

10. During the tour on August 2, 2005, the bargaining unit members with whom the Association representatives attempted to speak were stationed at their assigned posts. (N.T. 23-24, 49-50)

11. The Association representatives did not tell Major Burns or Deputy Superintendent Krysevig that they were investigating grievances on August 2, 2005. (N.T. 61, 74-75)

12. For approximately ten years, the Department of Corrections has had a written policy which provides that "institution staff, usually a Commissioned Officer or other managerial employe" will escort non-employees of the Department on tours of Department facilities. (N.T. 63, 68-69, 83; Commonwealth Exhibit 2)

13. Tours by employees of the Department of Corrections are governed by the local established policy at each institution. (N.T. 68-69)

14. Since at least December 2002 when Deputy Krysevig became deputy superintendent at SCI Fayette, all visitors touring the facility have been escorted by management employees. (N.T. 48-49, 58-59, 61-65, 67-70, 80-81; Commonwealth Exhibit 2)

15. During a tour of SCI Fayette before August 2, 2005, Association Executive Vice President McConnell was escorted by a management employee. (N.T. 23)

DISCUSSION

The Association argues in its brief that the Commonwealth violated Section 1201(a)(1) of PERA² by creating the impression that management was engaged in surveillance of employee protected activity during the August 2, 2005 tour by Association representatives of SCI Fayette. The Commonwealth argues that the unfair practice charge must be dismissed because, *inter alia*, the opportunity to speak with touring union officials while on duty is not activity protected by PERA.

An employer commits an independent violation of Section 1201(a)(1) of PERA if it takes action that would tend to coerce employees in the exercise of their protected rights. *City of Philadelphia*, 32 PPER ¶ 32009 (Final Order, 2000). However, employees do not have the statutory right under PERA to conduct union business on employer time.³ *Id.* Because employees do not have a protected right under PERA to engage in union activity during work time, alleged interference by the employer with such activity cannot be the basis for finding an independent violation of Section 1201(a)(1). *Id.*

² The Association does not make any argument in support of a finding that the Commonwealth violated 1201(a)(5). Therefore, I need not address that issue. Nor would the record support such a finding where, as here, the Commonwealth acted consistent with its practice of assigning managerial employees to escort all visitors on tours of SCI Fayette (FF 14, 15). See *Commonwealth of Pennsylvania, Office of Attorney General*, 32 PPER ¶ 32180 (Proposed Decision and Order, 2001)(charge alleging unilateral change in violation of Section 1201(a)(5) must be dismissed where complainant fails to prove that employer made a change in the matter in dispute).

³As noted in *City of Philadelphia, supra*, a collective bargaining agreement may provide a contractual right to conduct union business on employer time. For example, in this case, the contract between the parties provided that "Association representatives shall be permitted to investigate and discuss grievances during working hours on the Employer's premises if notification is given to the human resources officer or a designated representative" (Commonwealth Exhibit 1 at 64). However, no such notification was given in this case (FF 11), and the Association does not claim that its representatives were investigating grievances.

Here the bargaining unit employees were on duty at their assigned posts during the August 2, 2005 tour by the Association representatives (FF 10). Therefore, the employees did not have a protected right under PERA to speak privately with the Association representatives, and the actions of the management employees who were escorting the Association representatives cannot be the basis for finding an independent violation of Section 1201(a)(1). Id. The federal cases cited in the Association's brief are distinguished on the facts because they involved union activity during employe lunch breaks, rather than during work time. Accordingly, those cases are not on point and do not support the finding of an unfair practice in this case. Because the Association failed to show that the Commonwealth took action that would tend to coerce employe protected activity, the charge of unfair practices must be dismissed.

CONCLUSIONS

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

1. The Commonwealth is a public employer for purposes of Section 301(1) of PERA.
2. The Association is an employe organization for purposes 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), (3), (5) or (8) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint issued thereon 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 be and become absolute and final.

SIGNED, DATED AND MAILED this thirteenth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

October 13, 2006

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DEPARTMENT OF CORRECTIONS
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Enclosed please find a copy of the proposed decision and order issued in the above-captioned case.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Donald Adams
Frank Fisher, Esquire
Jeffrey A. Beard
Don McNany
Percy Poindexter
Timothy Musser
Carol Scott