

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 :  
 v. : Case No. PERA-C-05-445-E  
 :  
 COMMONWEALTH OF PENNSYLVANIA :  
 DEPARTMENT OF CORRECTIONS :  
 COAL TOWNSHIP SCI :

**PROPOSED DECISION AND ORDER**

On September 29, 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 Coal Township (Commonwealth) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA). On October 21, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on December 20, 2005. 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 June 12, 2006, both parties filed post-hearing briefs.

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. Thomas Metzinger, John Yeagle and Alan Haight are employed as corrections officers at the State Correctional Institution at Coal Township (Coal SCI) and are members of the security team. Security team assignments include: conducting searches of cells, common areas and inmates (referred to as "search one or search two"); urine testing; telephone monitoring; video camera monitoring; and operating the metal detector. (N.T. 9, 24-25, 28-29, 41, 52-53; Commonwealth Exhibits 1, 2)
4. In searching cells, common areas and inmates, search one and search two members look for items such as drugs or weapons that could be used on corrections officers, staff members or other inmates. (N.T. 10-11)
5. At some unspecified point in time, the Commonwealth and the Association reached a grievance settlement at the local level which provided that security team members would be rotated through the various assignments on a monthly basis. (N.T. 12, 29-30, 38-39)
6. Lieutenant Timothy Jordan has held the position of security lieutenant at Coal SCI since approximately March 2005. (N.T. 66-67)
7. For at least several months before mid-June 2005, Officers Metzinger, Yeagle and Haight were primarily assigned to search one or search two. Lieutenant Jordan had advised the officers that despite the aforementioned grievance settlement agreement, he intended to keep them on "the hill"<sup>1</sup> because they were doing a good job. (N.T. 11-12, 38-39, 41, 48, 70)

---

<sup>1</sup> As testified to by Lieutenant Jordan, "the hill" refers to search one and search two (N.T. 75).

8. Lieutenant Jordan was aware that Officers Metzinger, Yeagle and Haight preferred working on search one and search two over other possible assignments for security team members. (N.T. 70)

9. At a union meeting in May 2005, Officer Metzinger raised a safety concern regarding boxes that were received by Coal SCI for delivery to inmates. Metzinger expressed concern that the boxes could be used to smuggle contraband to inmates because after passing through the mailroom, the boxes were left unattended on a cart in a hallway for up to several days before they were delivered to the inmates. (N.T. 12-16)

10. In early June 2005, Officer Metzinger stopped a corrections officer who was pushing a cart loaded with boxes from the intake area. Metzinger asked Lieutenant Jordan what should be done about the boxes. Jordan stated, "Tom, you have to trust somebody." Metzinger asked whether the boxes should be allowed to pass through and Jordan answered in the affirmative. (N.T. 16).

11. Association President James Delbaugh prepares the agenda for the monthly labor management meetings. (N.T. 16-17; Commonwealth Exhibit 2)

12. During the first week of June 2005, Officer Metzinger passed through the security office while Major McAnaney was reviewing the agenda for the monthly labor management meeting. The major asked Metzinger, "What's up with this agenda with the mailroom." Metzinger responded that it had something to do with the boxes from the mailroom. Metzinger and Officer Yeagle then approached Lieutenant Jordan to get their assignments for the day. Lieutenant Jordan appeared upset and said that he did not want anything that goes on in the security office about the mailroom or boxes to be brought up at labor management or at the union meeting. (N.T. 16-17, 42-44; Commonwealth Exhibit 2)

13. The June 2005 labor management meeting was held on June 13. (N.T. 18)

14. On June 14, 2005, Officers Yeagle and Haight had a conversation with Lieutenant Jordan in his office. Jordan appeared angry and was pacing behind his desk. He stated that he had had his "nose opened up" over things going on in the security department being discussed at labor management meetings and union meetings. Jordan told the officers that they are not going to take anything from the security office to union meetings or labor management meetings. Jordan further stated that there would be assignment changes, that someone would be assigned to the metal detector and phone room only, that they will check every box, every boot, every sneaker that comes through that area, and that they will not see "the hill" anymore. (N.T. 43-45, 54-55, 57-58)

15. On June 15, 2005, Officer Metzinger reported to the security office after several days off. Lieutenant Jordan jumped out of his chair, pointed at Metzinger and said, "You go over to that metal detector and you'll check every box, every boot, every sneaker until further notice." (N.T. 17-18, 46)

16. Officer Metzinger performed metal detector duty on June 15, 2005, but was injured later in the day. As of the hearing in this matter, Metzinger was still on disability leave. (N.T. 21)

17. Lieutenant Jordan was aware that Officer Metzinger had raised the issue regarding the boxes passing through the mailroom that was discussed at the labor management meeting. (N.T. 70-72)

18. As of the hearing in this matter, Coal SCI was no longer assigning a search team member to search the boxes that are received by the institution. (N.T. 71-72)

#### DISCUSSION

The Association argues that the Commonwealth violated Section 1201(a)(1) and (3) of PERA by giving Officer Metzinger a less desirable assignment in retaliation for his

protected activity of raising a safety issue at a union meeting.<sup>2</sup> The Commonwealth contends that the charge of unfair practices must be dismissed because the Association failed to establish that it had an unlawful motive in assigning Metzinger to search the boxes.

The complainant in a discrimination case has the burden of proving that the employe engaged in protected activity, that the employer was aware of the employe's protected activity, and that the employer took adverse action against the employe because of an unlawful motive or anti-union animus. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Where the complainant establishes a prima facie case that protected activity was a motivating factor in employer action, "the employer may negate or disprove the complainant's case by countering with evidence that the action complained of would have been taken even in the absence of protected activity." City of Wilkes-Barre, 33 PPER ¶ 33087 at 194 (Final Order, 2002), citing Wright Line, Inc., 251 NLRB 150, 105 LRRM 1169 (1980). See also Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993).

Initially, it should be noted that the parties' witnesses offered conflicting testimony regarding the content of Lieutenant Jordan's statements to the corrections officers. Based on my observation of the witnesses and review of the record as a whole, I find the testimony of the corrections officers more credible than the testimony of Lieutenant Jordan. Therefore, the findings of fact reflect this credibility determination.

Turning to the elements of proof under St. Joseph's Hospital, the Commonwealth does not dispute that Officer Metzinger engaged in protected activity by raising a safety issue at a union meeting. Officer Metzinger's stated concern regarding possible use of the boxes to smuggle contraband to inmates clearly relates to safety and security at the prison, and thus constitutes protected activity. Chester Housing Authority, 18 PPER ¶ 18035 (Proposed Decision and Order, 1987)(employe engaged in protected activity by raising safety issue at union meeting). See also Lehigh County, 36 PPER 159 (Final Order, 2005) and cases cited therein (employe's act of raising a safety issue is protected activity).

Nor is there any dispute that the Commonwealth was aware of Officer Metzinger's protected activity. Indeed, Lieutenant Jordan conceded in his testimony that he knew that Metzinger had raised the issue regarding the boxes that was discussed at the labor management meeting (N.T. 70-71, 74). Thus, the first two elements of proof under St. Joseph's Hospital are satisfied in this case.

The remaining issue is whether Lieutenant Jordan retaliated against Officer Metzinger because of his protected activity. The Commonwealth argues that Metzinger conceded in his testimony on cross-examination that Lieutenant Jordan gave him a lawful order to search the boxes, and also conceded that he believed the boxes should be searched (N.T. 33, 35). Therefore, the Commonwealth contends that Jordan's assignment of duties to Metzinger was based on legitimate business purposes, and was not unlawfully motivated.

However, Officer Metzinger's opinion regarding whether Lieutenant Jordan had the authority to direct him to search the boxes, and his opinion regarding whether someone should be assigned to search the boxes shed no light on Lieutenant Jordan's motivation in directing Metzinger to perform this task. Even if Lieutenant Jordan had the authority to direct Metzinger to search the boxes, he violated PERA if he exercised such authority as a means of retaliating against Metzinger for engaging in protected activity. Brentwood Borough, 35 PPER 112 (Final Order, 2004)(even if police chief had managerial prerogative to change employe work schedule absent improper purpose, his discriminatory motive for schedule change transformed permissible action into an unfair practice).

Here I find that the facts support an inference of an unlawful motive for several reasons. First, Lieutenant Jordan was aware that Officers Metzinger, Yeagle and Haight viewed search one and search two (otherwise referred to as "the hill") as a more preferable assignment to other possible assignments such as the metal detector. Second,

---

<sup>2</sup> At the hearing, the Association sought to amend its charge to allege that Officers Yeagle and Haight were also subject to retaliatory action, but the examiner declined to permit the amendment because it was untimely (N.T. 63-65). See 43 P.S. § 1101.1505 (charge must be filed within four months of the alleged unfair practice); 34 Pa. Code § 95.32(a)(charge may not be amended if a new cause of action will be added after the statute of limitations has run).

Lieutenant Jordan's change in Metzinger's assignment was contrary to his previous statement that he would keep the three officers on the hill because they were doing a good job. Third, the change in assignment occurred shortly after Metzinger engaged in protected activity by raising the safety concern about the boxes at the union meeting. Fourth, after the box issue was placed on the agenda for the labor management meeting, a visibly upset Lieutenant Jordan told Officers Metzinger and Yeagle that he did not want anything that goes on in the security office about the mailroom or boxes to be brought up at labor management or at the union meeting. Fifth, the day after the labor management meeting, a visibly angry Lieutenant Jordan told Officers Yeagle and Haight that they are not going to take anything from the security office to union meetings or labor management meetings and further stated that there would be assignment changes, that someone would be assigned to metal detector and phone room only, that they will check every box, every boot, every sneaker that comes through that area, and that they will not see "the hill" anymore. Sixth, the very next day, Officer Metzinger, who raised the issue about the boxes, was assigned to the metal detector to check "every box, every boot, every sneaker until further notice." In view of the close timing between Officer Metzinger's protected activity and his receipt of the less desirable assignment, as well as Lieutenant Jordan's stated displeasure with the type of protected activity in which Metzinger engaged (i.e., raising workplace matters at a union meeting), and the fact that in issuing the less desirable assignment, Lieutenant Jordan contravened his prior statement that he would keep Metzinger and the other officers on "the hill," I find it appropriate to infer that Jordan issued the less desirable assignment to Metzinger in retaliation for his protected activity.

Further, I reject any claim by the Commonwealth that it directed Metzinger to search the boxes for legitimate business reasons. The Commonwealth never saw a need to have someone search the boxes until Metzinger raised the concern at the union meeting with the boxes being left unattended in the hallway. Merely because Lieutenant Jordan, in an angry reaction to the box issue being discussed at a labor management meeting, directed Metzinger to search the boxes does not demonstrate that Jordan issued that directive for legitimate business reasons rather than because of a desire to retaliate against Metzinger. Also, now that Metzinger is on disability leave, no search team member is assigned to search the boxes. Consequently, I find that the Commonwealth has not demonstrated that Metzinger would have received the assignment even in the absence of his protected activity. Accordingly, the Commonwealth violated Section 1201(a)(1) and (3) of PERA.

#### 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 committed unfair practices in violation of Section 1201(a)(1) and (3) 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 Commonwealth shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.

2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(b) 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 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 thirtieth day of August 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

---

PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 :  
 v. : Case No. PERA-C-05-445-E  
 :  
 COMMONWEALTH OF PENNSYLVANIA :  
 DEPARTMENT OF CORRECTIONS :  
 COAL TOWNSHIP SCI :

**AFFIDAVIT OF COMPLIANCE**

The Commonwealth of Pennsylvania, Department of Corrections, Coal Township SCI hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (3) of PERA; that it has posted the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Association at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature of Notary Public

August 30, 2006

Stephen J. Holroyd, Esquire  
JENNINGS SIGMOND  
Penn Mutual Towers 16<sup>th</sup> Floor  
510 Walnut St Independence Sq  
Philadelphia, PA 19106-3683

Patricia Goldband, Esquire  
Commonwealth of Pennsylvania  
OA Legal Office  
405 Finance Building  
Harrisburg, PA 17120-0018

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
COAL TOWNSHIP SCI  
Case No. PERA-C-05-445-E

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