

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CORRECTIONAL INSTITUTION VOCATIONAL :
EDUCATION ASSOCIATION PSEA/NEA :
:
v. : Case No. PERA-C-05-544-E
:
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS, ET AL :

FINAL ORDER

The Correctional Institution Vocational Education Association PSEA/NEA (CIVEA) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 10, 2006, challenging a Proposed Decision and Order (PDO) of June 19, 2006.¹ In its exceptions, the Association argues that the Hearing Examiner erred in dismissing the Association's Charge of Unfair Practices filed against the Commonwealth of Pennsylvania Department of Corrections, Governor Edward Rendell, and Secretary of Corrections Jeffrey Beard (collectively the "Commonwealth"), that the Commonwealth violated Section 1201(a)(2), (5), (6) and (9) of the Public Employee Relations Act (PERA) by unilaterally altering telephone access for bargaining unit employees. The Commonwealth filed a brief in response to the exceptions on July 31, 2006. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

10. A grievance filed at SCI-Houtzdale which involved both smoking and telephone access policies was pending at the time Secretary Beard issued the November 8, 2005 e-mail. The Commonwealth representative was awaiting CIVEA's response to a proposal to sever the two issues in the grievance when the Commonwealth advised that there would be no agreement on the telephone access issue for the SCI-Houtzdale grievance. (N.T. 67).

DISCUSSION

For several years a majority of the teachers at correctional institutions across the state have had a telephone in their classroom that had access to an outside connection, either directly or through "voice recognition".² Teacher access to an outside telephone line from the classroom had been the subject of a grievance at SCI-Mercer and settled within that facility. On November 8, 2005, Secretary Beard issued an e-mail advising correctional institutions that direct dial or voice recognition access to outside lines would no longer be permitted on any telephone where inmates might have access, and each institution should bring itself into compliance consistent with any labor relations obligations. The policy directly affected the CIVEA employees throughout the state, who would no longer have access to an outside telephone line from their classrooms.

CIVEA argues that teachers have a substantial interest in having access to an outside telephone line in their classrooms, and therefore employee telephone access cannot be a managerial prerogative. CIVEA also argues that the Examiner erred in failing to recognize that for years the teachers have had access to an outside telephone line in their classrooms without incident.

While it may be argued that teachers do have a substantial interest in use of telephones from their classroom, the test to determine whether the matter is subject to mandatory bargaining is a balancing of the employees' interests against the employer's

¹ The twentieth calendar day after issuance of the PDO fell on Sunday July 9, 2006, 34 Pa. Code 95.98(a), therefore the exceptions were timely filed the next business day, Monday, July 10, 2006. 34 Pa. Code 95.100(b).

² "Voice recognition" access involved going through an "in-house operator" to connect the employee to an outside line, whereas direct access did not involve the intervention of the "in-house operator".

managerial and policy concerns. Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). Merely because there was no direct evidence of prior problems of inmates accessing outside telephone lines from the classrooms, does not diminish the Commonwealth's competing substantial interest in its stated institutional-wide security concerns in connection with operating a correctional facility. Upon review of the Examiner's analysis of the arguments of both CIVEA and the Commonwealth on this issue, we believe the Examiner thoughtfully weighed the competing interests, and concur that the balance tipped in favor of the Commonwealth's concerns of preventing inmate access to outside telephone lines over the teachers' arguably substantial interests in accessing a telephone with an outside connection from the classroom. The Examiner thoughtfully considered and balanced the parties' concerns, which analysis is incorporated herein, and appropriately concluded that it was a managerial prerogative to discontinue teacher access to an outside telephone line from the classroom.³

CIVEA further asserts that the Commonwealth's policy to discontinue all access to outside telephone lines in inmate access areas was overbroad and not narrowly tailored to address the Commonwealth's security concerns. CIVEA's argument in this regard was also thoroughly addressed by the Hearing Examiner, who found, based on a review of the record, that there is "no basis for finding that the Commonwealth's security interests would be served by anything less than an absolute ban on the use of telephones in the classroom to make calls to and receive calls from outside the institutions." (PDO at 7). We add only that, as a general matter, the Board will not delve into the wisdom of an employer policy, once the Board has determined that the issue at hand is one of managerial prerogative. Reading Fraternal Order of Police Lodge #9 v. City of Reading, 30 PPER ¶130121 (Final Order, 1999).

CIVEA also argues that the Commonwealth's actions violated a grievance settlement, and thwarted a separate grievance settlement. First, as aptly noted by the Examiner, the record evidence shows that the Commonwealth remains in compliance with the grievance settlement at SCI-Mercer. (Finding of Fact 7). However, CIVEA also asserts that an unfair practice should be found because immediately prior to issuance of the Commonwealth's November 8, 2005 e-mail, the Commonwealth and CIVEA were discussing a second grievance at SCI-Houtzdale along the same terms as the SCI-Mercer settlement, which CIVEA anticipated would be the model throughout the state. As pointed out by the Hearing Examiner, the SCI-Mercer settlement was expressly made without prejudice to positions taken with other institution, therefore the Commonwealth was not bound to reach the same result elsewhere, nor were the Commonwealth's prerogatives to address the issue statewide limited. Moreover, as of November 8, 2005, there was no firm agreement on the SCI-Houtzdale grievance. As Amy Yokitis, of the Commonwealth Office of Administration Bureau of Labor Relations, testified, the SCI-Houtzdale grievance involved both smoking and telephone access policies, and while she was awaiting CIVEA's response to a proposal to sever the two grievances, the Commonwealth advised her that there would be no agreement on the telephone access issue, which she promptly relayed to CIVEA. (Finding of Fact 10). Shortly thereafter, Secretary Beard issued the November 8, 2005 e-mail to correctional institutions throughout the state. The record reflects no agreement on the SCI-Houtzdale grievance.

CIVEA further claims that the Examiner erred in finding that it had waived its impact bargaining and "meet and discuss" claims. However, not only did the Examiner conclude that CIVEA failed to raise its impact bargaining and meet and discuss claims in its post hearing brief, but he also dismissed these charges on the merits. As noted by the Examiner, a prerequisite to the employer's duty to impact bargain or obligation to meet and discuss, is a demand from the union. Teamsters Locals 77 & 250 v. Pennsylvania Labor Relations Board, 786 A.2d 299 (Pa. Cmwlth. 2001). Notably, the November 8, 2005 e-mail expressly stated that each correctional institution was to "insure that you comply with any labor/management requirements in coming into compliance." (Finding of Fact 8). We agree with the Examiner's determination that the record is devoid of any showing that CIVEA had made a demand to impact bargain or meet and discuss over correctional

³ Moreover, since access to an outside telephone line from inmate areas of a correctional facility is found to be a managerial prerogative, the past practice of teachers having such access from their classroom is irrelevant. South Park Township Police Association v. Pennsylvania Labor Relations Board, 789 A.2d 874 (Pa. Cmwlth. 2002), *petition for allowance of appeal denied*, 569 Pa. 727, 806 A.2d 864 (2002) ("it is necessary that a practice, in order to be preserved, must also be a subject of mandatory bargaining").

institutions complying with Secretary Beard's November 8, 2005 e-mail. Accordingly, the Examiner did not err in dismissing CIVEA's claims that the Commonwealth unlawfully refused to impact bargain or meet and discuss its exercise of managerial prerogative.

Accordingly, after a thorough review of the exceptions and all matters of record, the Examiner did not err in finding no violation of PERA. We adopt the Examiner's Findings, Discussion and Conclusions of Law, and dismiss CIVEA's exceptions to the Proposed Decision and Order.

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 exceptions filed by CIVEA are hereby dismissed, and the June 19, 2006 Proposed Decision and Order, be and the same is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this nineteenth of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

JAMES M. DARBY, MEMBER