## 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

## FINAL ORDER

The Pennsylvania State Corrections Officers Association (PSCOA) filed exceptions with the Pennsylvania Labor Relations Board (Board) on October 30, 2006, challenging a Proposed Decision and Order of October 13, 2006, in which the Board Hearing Examiner had dismissed its Charge of Unfair Practices alleging that the Commonwealth of Pennsylvania, Department of Corrections, State Correctional Institute at Fayette (SCI Fayette) had violated Section 1201(a)(1), (3), (5) and (8) of the Public Employe Relations Act (PERA). Following the grant of an extension of time, PSCOA timely filed its brief in support of the exceptions on December 4, 2006. On December 19, 2006, SCI Fayette filed a brief in response to the exceptions.

The facts for purposes of the Board's review are briefly stated as follows. On August 2, 2005, PSCOA representatives toured the facility at SCI Fayette to speak with the corrections officers while the officers were working at their posts. (Findings of Fact 3, 7, and 10). While the PSCOA representatives were speaking to the employes, Major Daniel Burns, the management staff accompanying PSCOA representatives on the tour, stood nearby with a notebook and pen, taking notes. (Findings of Fact 4 and 8).

Relying on <u>City of Philadelphia</u>, 32 PPER ¶32009 (Final Order, 2000), the Hearing Examiner determined that PERA generally does not protect bargaining unit employes engaging in union business on work time while in a work area. See <u>Republic Aviation Corp v. NLRB</u>, 324 U.S. 793 (1945). Therefore, the Examiner concluded that by accompanying PSCOA representatives on their tour, SCI Fayette did not unlawfully interfere with or prohibit any protected union activity in violation of Section 1201(a)(1) of PERA.

PSCOA's exceptions focus on the Examiner's failure to find a violation of Section 1201(a)(1) of PERA. Section 1201(a)(1) provides that it is an unfair practice for a public employer to interfere with, restrain or coerce employes in the exercise of employes' statutorily protected rights under PERA. Surveillance of employes at times and places where employes may lawfully be engaged in protected activities may constitute an unfair practice under Section 1201(a)(1). Pennsylvania Labor Relations Board v. Western Pennsylvania Hospital, 3 PPER ¶221 (Nisi Decision and Order, 1973).

PSCOA argues on exceptions that the Examiner failed to appreciate that Major Burns' presence with a notebook and pen gave the impression of employer surveillance, such that employes were hesitant to speak freely with the PSCOA representatives during the tour. However, the predicate for a claim under Section 1201(a)(1) is that there must be a protected activity that is being unlawfully monitored or interfered with by the employer. As aptly held by the Examiner, the PSCOA representatives, and bargaining unit employes, were not engaged in any statutorily protected activity when they conducted union business at the employes' assigned posts while employes were working. City of Philadelphia, supra; Republic Aviation, supra. Major Burns' use of a notebook and pen and taking notes while accompanying the PSCOA representatives on their tour, does not transform the union business, conducted on work time in work areas, into statutorily protected activity. Thus, SCI Fayette cannot be said to have unlawfully interfered with protected union activities. After a thorough review of the exceptions and all matters of record, SCI

 $<sup>^1</sup>$  Furthermore, the parties' collective bargaining agreement did not permit employes to engage in union business on work time unless that business pertained to a grievance and was approved by management. (Commonwealth Exhibit 1).

Fayette did not violate Section 1201(a)(1) of PERA, and the exceptions filed by PSCOA are dismissed.

## 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 the Pennsylvania State Corrections Officers Association are hereby dismissed, and the October 13, 2006 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-third day of January, 2007. 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.