

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
 v. : Case No. PERA-C-06-379-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 DEPARTMENT OF CORRECTIONS :
 DALLAS SCI :

PROPOSED DECISION AND ORDER

On August 9, 2006, the Pennsylvania State Corrections Officers Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Commonwealth of Pennsylvania (Commonwealth) had violated Section 1201(a)(1), (5) and (8) of the Public Employee Relations Act (Act). On September 7, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 12, 2006. Granted continuance requests moved the hearing date to February 7, 2007, when the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On January 27, 2005, each party filed a brief.

Subsequent to the filing of briefs, the case was administratively transferred to the under-signed hearing examiner for disposition.¹ The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On May 31, 2001, the Board certified the Union as the exclusive representative of a bargaining unit that includes corrections officers employed by the Commonwealth at the State Correctional Institution at Dallas (SCI-Dallas). (Case No. PERA-R-01-153-E).

2. In its capacity as bargaining representative, the Union filed a grievance on March 10, 2006, alleging that the Department of Corrections violated the collective bargaining agreement by continuing to require one shift of corrections officers to report five minutes before their regular starting time, yet not compensating them for that time. (Union Exhibit 1).

3. About one month after it was filed, the above-described grievance was settled by the parties with the following writing on April 10, 2006:

Correctional officers on the 1400-2200 shift shall be compensated five (5) minutes of time and one half overtime for each regular[ly] scheduled work day worked from the date of the grievance (#D-05-014) filing (March 10, 2006) and will continue henceforth until the order to be at the Control Key Window by 1400 is rescinded by SCI Dallas Management. In order to receive the compensation[,], the officer must have clocked in prior to 1355 hours on each regular[ly] scheduled work day and [have] entered the facility to comply with the order to be at the Control Key Window by 1400. Officers that clocked in after 1355 and entered the facility, to comply with the order, will be compensated only for the minutes prior to 1400. The compensation listed above will not count as hours worked for the computation of double time and will include all pre-shift activities.

(Union Exhibit 2).

4. The Commonwealth paid correctional officers as stated in the settlement agreement until April 7, 2007, when the Commonwealth changed the location of the keys formerly picked up at the control key window to the main gate. By this change correctional officers were no longer required to report before 1400 hours but could simply pick up the necessary keys on their way into the facility. (N.T. 20, 39, 52).

¹ 34 Pa. Code § 95.91(b)(1995).

5. At the request of the Union, the Commonwealth, on June 15, 2006, issued the following writing to the Union's local president:

The need for bargaining unit members to report to the Control Room by 1400 hours has stopped with the relocation of the keys and key tags from the Control Room to the Main Gate. As per your request[,] and in accordance with the grievance settlement letter regarding grievance D-06-014, the direction that the 1400-2200 hour shift report to the Control Room by 1400 hours is hereby rescinded.

(Union Exhibit 3).

DISCUSSION

The Union charges the Commonwealth with violating Section 1201(a)(1), (5) and (8) of the Act because the Commonwealth "has yet to comply with the provisions of the settlement agreement." The settlement agreement in question, however, does not require what the Union asserts it does, and consequently the Commonwealth has not violated the Act, and the charge is dismissed. An examination of the facts that precipitated this settlement agreement is helpful to understanding why there is no violation.

On March 8, 2006, by verbal order of the deputy superintendent of the facility, James McGrady, correctional officers working the 1400 hours to 2200 hours² shift were mandated to report to the control key window by 1400 hours. To be at the control key window by that time, corrections officers had to arrive at the institution five minutes before the time their shifts officially started in order to clear the various security checkpoints endemic to working in a secure facility.

The Union filed a grievance over the fact that its members were not compensated for the additional minutes it took them to arrive at the control key window by 1400 hours. That grievance was settled by the agreement in dispute. The operative portion of that agreement for our purposes provides:

Correctional officers on the 1400-2200 shift shall be compensated five (5) minutes of time and one half overtime for each regular[ly] scheduled work day worked from the date of grievance (#D-05-014) filing (March 10, 2006) and will continue henceforth until the order to be at the Control Key Window by 1400 is rescinded by SCI Dallas Management.

(Union Exhibit 2).

According to the Union's rendition of the facts, the Commonwealth violated the agreement because it stopped paying correctional officers the five-minute stipend after April 7, 2006, yet did not issue a written memorandum withdrawing the order to be at the control key window at 1400 hours until June 15, 2006. Arguing that the agreement is "remarkably clear", the Union goes on to state "[b]y any fathomable interpretation, the Employer is compelled to continue making the overtime payments until McGrady's Order of March 8, 2006 was rescinded." That rescission, according to the Union, did not occur until the June 15, 2006 written memorandum. (Union brief at 5).

Needless to say, the Commonwealth has a different interpretation of the facts. According to the Commonwealth's theory of the case, the order to report to the control key window by 1400 hours was rescinded on June 7, 2006. On that date the Commonwealth no longer required the correctional officers to report to the control key window by 1400 hours, but rather allowed them to pick up the necessary keys at the main gate on their way into the facility at their regular starting time, thereby negating the necessity for an early arrival.

Essentially then, the question becomes whether the settlement award required the Commonwealth to rescind the control key window policy in writing. Clearly, it did not.

A public employer's failure to comply with a grievance settlement constitutes a violation of Section 1201(a)(1) and (5) of the Act, AFSCME District Council 47, Local

² The parties use the military designation of time. In civilian time, the shift is from 2:00 pm to 10:00 pm.

2187 v. City of Philadelphia, 30 PPER ¶ 30003 (Final Order, 1998). When examining the settlement agreement, where the words are "clear and unambiguous, the intent of the parties is to be determined only from the express language of the agreement." Avery v. Commonwealth, PLRB, 509 A.2d 889 at 891 (Pa. Cmwlth. 1986).

The express language of this agreement simply required the Commonwealth to pay the overtime stipend until it rescinded the order to be at the control key window at 1400 hours. There is no requirement in the settlement agreement that the rescission be in writing. Had the Union wanted to limit a valid rescission to a written one, it could have put that limitation in the agreement. See Avery v. Commonwealth, *supra*, (absent misapprehension or duress, parties have ample opportunity beforehand to refine terms of settlement agreement).

When the Commonwealth removed the necessity for correctional officers to report for their shift five minutes early by moving the keys to the main gate, it, *a fortiori*, rescinded the policy of reporting early to the control key window. The settlement agreement guaranteed the affected correctional officers payment for the five minutes extra they were required to be at work; yet when they were no longer required to be at work five minutes early the payments were to stop. The Commonwealth's relocation of the necessary keys to the main gate negated the necessity for correctional officers to report to work five minutes early. The fact that the Commonwealth, at the repeated behest of the Union, sometime later issued a written memorial of the policy change does not alter the date the policy was initially changed.

In cases where the Board is evaluating a charge by one party that the other party has not complied with the tenets of a grievance arbitration award, the Board has stated that where it "is not able to state with any assurance that the award has not been complied with, a charge alleging non-compliance must be dismissed because the charging party has the burden of proving non-compliance." Pennsylvania Department of Labor and Industry, 13 PPER ¶ 13038 (Proposed Decision and Order, 1982)(citations omitted). That test is equally applicable to the instant case. Because it cannot be said with any assurance that the Commonwealth did not comply with the tenets of the settlement agreement in question, the charge is dismissed.

CONCLUSIONS

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

1. The Commonwealth is an employer under section 301(1) of the Act.
2. The Union is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The Commonwealth has not committed unfair practices under Section 1201(a)(1), (5) and (8) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of April 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Timothy Tietze, Hearing Examiner