

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME COUNCIL 13 :
 :
 v. : Case No. PERA-C-06-219-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 DEPARTMENT OF GENERAL SERVICES :

PROPOSED DECISION AND ORDER

On May 19, 2006, AFSCME Council 13 (AFSCME) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of General Services (Commonwealth) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On July 11, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on September 20, 2006. At the request of AFSCME, the hearing was continued to December 20, 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. The parties made closing arguments at the hearing and waived the right to file 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. AFSCME is an employe organization for purposes of PERA.
3. The Department of General Services (DGS) employed Donald Spradley Jr. as a custodian for approximately thirteen years. (N.T. 6-7)
4. Spradley was arrested for alleged possession of a controlled substance and his case proceeded to trial sometime in 2005. He entered a plea and was placed on probation, and was required to pay fines and court costs. (N.T. 7-9)
5. Later on October 20, 2005, Spradley was suspended without pay from his job with the Commonwealth. A grievance was filed over his suspension. (N.T. 9-10)
6. Spradley was subsequently arrested for not paying the fines and court costs referenced in Finding of Fact 4. His probation was revoked, and he was incarcerated at the Dauphin County prison for fifteen days from November 30 to December 15, 2005. When he was released from prison, he was placed in work release and worked a job through the holidays. After the first of the year, Spradley obtained another job at a warehouse. (N.T. 9-12, 18)
7. On or about January 24, 2006, DGS forwarded a pre-grievance settlement agreement to AFSCME, which provided that Spradley's suspension will be converted to a disciplinary suspension without pay; that Spradley will receive no back pay; that Spradley will be returned to the position of Custodial Worker 1, probationary status; that Spradley is to report for work on January 30, 2006; that Spradley will serve a six-month probationary period beginning January 30, 2006; that Spradley and AFSCME will not grieve this disciplinary action or anything related thereto and will withdraw the grievance filed over his suspension; and that the pre-grievance settlement is without precedent or prejudice to the contractual rights of either party. The settlement agreement was in the form of a letter that was signed by a representative of DGS, and it contained signature lines for AFSCME and Spradley. (N.T. 32-34, 53-54; Union Exhibit 1)

8. An AFSCME representative signed the pre-grievance settlement agreement on January 24, 2006. When the AFSCME representative attempted to contact Spradley to obtain his signature, he became aware for the first time that Spradley was on work release from prison. Spradley signed the settlement agreement on January 25, 2006. (N.T. 37-39, 44; Union Exhibit 1)

9. Spradley reported for work on January 30, 2006. He brought a form to the personnel office, which sought DGS's approval of a work release arrangement. Without such an arrangement, Spradley would not be released by Dauphin County to work for DGS. Spradley completed his shift on January 30 and was paid for that day. (N.T. 14-15, 19, 59-60, 63)

10. DGS first learned that Spradley was on work release from prison when he dropped off the form requesting approval of a work release arrangement on January 30, 2006. (N.T. 55-56, 59, 63-64)

11. The Commonwealth has a policy dating back to at least February 2003 of permitting individual agencies to deny, but not approve, requests for work release arrangements. If an agency believes that work release should be approved in a particular case, the Commonwealth's policy provides that the agency is required to obtain approval from the Office of Administration before agreeing to the arrangement. Such arrangements must be approved before the employe returns to work. (N.T. 56-59; Commonwealth Exhibit 1)

12. DGS denied Spradley's request for a work release arrangement. DGS suspended Spradley on or about February 21, 2006, and ultimately terminated his employment on or about March 15, 2006, for inability to report for work without restrictions. (N.T. 60-61; Commonwealth Exhibits 2, 3)

13. AFSCME filed a grievance over Spradley's suspension and termination. DGS denied the grievance at the first step of the grievance procedure. (N.T. 61-62; Union Exhibit 2)

DISCUSSION

AFSCME alleges that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by failing to comply with the terms of a grievance settlement. The Commonwealth argues that the charge of unfair practices should be dismissed because the settlement agreement did not address a work release arrangement for Spradley.

The record indicates that the Commonwealth has a policy dating back at least several years before the events at issue that requires advance approval by the Office of Administration (OA) for work release arrangements, and does not permit individual agencies such as DGS to agree to such arrangements without prior approval by OA. Here such prior approval was not sought by DGS because AFSCME and Spradley did not inform DGS that he was on work release from prison. Indeed, neither DGS nor AFSCME knew that Spradley was on work release from prison when they negotiated the settlement agreement. AFSCME only learned of Spradley's status when it sought his signature on the settlement agreement, and DGS only learned of his status after he returned to work and sought approval of a work release arrangement. Given the parties' lack of knowledge of Spradley's need for a work release arrangement and the absence of any provision on this issue in the settlement agreement, the parties clearly did not reach a meeting of the minds on this issue. Thus, the settlement agreement does not require DGS to permit a work release arrangement for Spradley. Accordingly, DGS did not fail to comply with the settlement agreement, and the unfair practice charge 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. AFSCME is an employe organization for purposes of 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) or (5) 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 sixth day of March, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner