COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY HOSPITAL NURSES ASSOCIATION/PASNAP, TEMPLE UNIVERSITY HOSPITAL ALLIED HEALTH PROFESSIONALS/PASNAP, NORTHEASTERN HOSPITAL NURSES ASSOCIATION/PASNAP	:	
	:	Case No. PERA-C-07-212-E
v.	:	
TEMPLE UNIVERSITY HEALTH SYSTEM (TEMPLE UNIVERSITY HOSPITAL AND NORTHEASTERN HOSPITAL)	:	
HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, AFT/AFL-CIO, LOCAL 5106	:	
	:	Case No. PERA-C-07-261-E
v.	:	
TEMPLE UNIVERSITY HEALTH SYSTEM (TEMPLE UNIVERSITY HOSPITAL, EPISCOPAL CAMPUS)	:	

FINAL ORDER

Temple University Health System (Temple) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 21, 2007, challenging a November 1, 2007 Proposed Decision and Order (PDO) of a Board Hearing Examiner. In the PDO, the Hearing Examiner concluded that Temple violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally implementing a random drug and alcohol testing policy for its nurses and other patient care employes. Temple University Hospital Nurses Association, Temple University Hospital Allied Health Professionals, and Northeastern Hospital Nurses Association (collectively PASNAP[1]), representing the nurses and staff at Temple University Hospital and Northeastern Hospital, filed a brief in response to the exceptions on December 11, 2007. The Health Professionals and Allied Employees, AFT/AFL-CIO, Local 5106 (Local 5106), representing the nurses and staff at Temple's Episcopal Campus, filed a response to the exceptions and a supporting brief on December 14, 2007. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

4. On or about April 30, 2007, Temple decided that it would implement the new non-cause-based drug and alcohol policy in all of its facilities effective June 4, 2007. (PERA-C-07-212-E Stipulated Fact 16, Stipulated Document 2; PERA-C-07-261-E Stipulated Exhibit 1, 12). Under the new policy, all Temple employes who are involved with direct patient care or who have safety sensitive positions are subject to random drug and alcohol testing. (N.T. 144, 148, 275; PERA-C-07-212-E Temple Exhibit 2A). By letter dated May 2, 2007, Temple advised the employes of the new random drug and alcohol testing policy to commence June 4, 2007. (PERA-C-07-212-E Stipulated Document 10).

8. Temple has in place a transfer policy that allows employes, including nurses and technical employes, to transfer throughout Temple, among hospitals and bargaining units. (N.T. 129-130, 134, 384).

DISCUSSION

The facts pertinent to the resolution of the exceptions are summarized as follows. Temple currently tests its employes for drug and alcohol use where there is individualized

[1] Temple University Hospital Nurses Association, Temple University Hospital Allied Health Professionals, and Northeastern Hospital Nurses Association are each affiliated with the Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP).

cause to do so. Temple uses both reasonable suspicion testing and protective testing as criteria in deciding which employes will be subject to drug and alcohol testing. Reasonable suspicion testing occurs when a Temple employe is the source of information that another employe may be impaired. Protective testing occurs when the reporting entity is other than a Temple employe. Since 2004 Temple has had in place a Corrective Action/Disciplinary Policy which addresses discipline for "[p]ossession or use of illegal drugs or alcohol, or the sale of legal or illegal drugs on [Temple] property, or reporting to work unfit for duty as a result of the use of drugs whether illegal or prescription drugs or alcohol."

In late November of 2006, Temple advised both PASNAP and Local 5106 that it had prepared a drug and alcohol policy that included a new, non-cause-based component. Temple made it clear to both PASNAP and Local 5106 that it would only engage in "meet and discuss" sessions with the unions and would not bargain over the new policy. On or about April 30, 2007, Temple decided that it would implement the new non-cause-based drug and alcohol policy in all of its facilities, for 4932 employes who Temple determined are involved with direct patient care or who have safety sensitive positions impacting upon patient care. By letter dated May 2, 2007, Temple advised PASNAP, Local 5106 and the approximately 1200 employes represented by PASNAP and Local 5106, of the new random drug and alcohol testing policy to commence June 4, 2007.

On May 17, 2007, PASNAP filed a Charge of Unfair Practices alleging Temple's refusal to bargain the promulgation and implementation of the random drug and alcohol testing policy in violation of Section 1201(a)(1) and (5) of PERA. On June 18, 2007, Local 5106 filed a similar charge regarding implementation of the policy at Temple's Episcopal Campus. On June 27, 2007, PASNAP amended its Charge to include allegations of a refusal to provide information regarding the new random drug and alcohol testing policy and the actual implementation of the policy.

The Hearing Examiner found that the Charges filed by PASNAP and Local 5106, were timely. The Hearing Examiner noted that both Charges alleged that Temple violated PERA by unilaterally implementing a random drug and alcohol testing policy. Having found that Temple implemented its policy in early June 2007, the Hearing Examiner concluded that the Charge, and Amended Charge, filed in the latter part of June 2007, were clearly within the four-month limitations period under Section 1505 of PERA.

As to the merits, the Hearing Examiner found that random testing at Temple was a mandatory subject of bargaining because Temple failed to sustain its burden under Amalgamated Transit Union, Division 1279 v. Cambria County Transit Authority, 21 PPER ¶21007 (Final Order, 1989), *affirmed sub nom.* Cambria County Transit Authority v. PLRB, 22 PPER 22056 (Court of Common Pleas of Cambria County, 1991) (Cambria County) of showing a drug and alcohol problem that warranted random testing of employes. In rejecting Temple's allegation of a real drug and alcohol problem among the employes, the Hearing Examiner noted that Temple's anecdotal list of twenty-five employes who left Temple's employ for various reasons, included employes not in PASNAP bargaining units; employes who tested positive in pre-employment testing; employes who tested positive in for-cause and protective testing; employes tested because they were reported by other employes; employes dismissed for theft of controlled substances; and employes for whom no reason was listed for their leaving Temple's employ. In addition, the Hearing Examiner pointed out that no members of bargaining units represented by Local 5106 were on the list. In rejecting Temple's justification for its need to change from a for-cause testing policy to a policy that includes purely random testing of employes, the Hearing Examiner noted that bargaining unit nurses have an ethical duty to report other nurses they believe to be impaired on the job, and, in fact have done so in the past. In connection therewith, the Hearing Examiner found, as fact, that nurses at Temple often assist one another in caring for patients, and are regularly observed by physicians and nurse managers. Based on these findings, the Hearing Examiner determined that Temple violated Section 1201(a)(1) and (5) of PERA, by implementing a random drug and alcohol testing policy without first having fulfilled its bargaining obligation with PASNAP and Local 5106.

In addition, the Hearing Examiner found that Temple had not completely responded to PASNAP's request for information concerning the new random drug and alcohol testing

policy. The Hearing Examiner therefore concluded that for this additional reason, Temple had violated Section 1201(a)(1) and (5) of PERA.

Temple asserts that the Charges filed by PASNAP and Local 5106 are untimely under Section 1505 of PERA because since December 2006, Temple had clearly asserted its refusal to bargain over the promulgation and implementation of random drug and alcohol testing. Section 1505 of PERA provides, in relevant part, that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." The limitations period under PERA is framed based on the unfair practice that is alleged in the charge. Allegheny Court Associated Professional Employes v. Allegheny County, 38 PPER 116 (Final Order, 2007) (*quoting* Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶32101 (Final Order, 2001)). While the Charges filed by PASNAP and Local 5106 averred that Temple refused to bargain in good faith, the Hearing Examiner aptly noted that both PASNAP and Local 5106 also alleged that Temple violated PERA by unilaterally implementing a random drug and alcohol testing policy without first having fulfilled its statutory bargaining obligation.

The limitations period for a claim alleging a unilateral change to working conditions commences to run with the implementation of the change, not upon the prior announcement of intent to promulgate the new policy. Lebanon County Detectives Association v. Lebanon County, 27 PPER ¶27260 (Final Order, 1996). Implementation of an employer's directive arises where the announced policy becomes operational. Allegheny County Deputy Sheriff's Association v. Allegheny County, 35 PPER 75 (Final Order, 2004); Upper Gwynedd Township, supra. Here, the employes were advised by Temple that they would become subject to random drug and alcohol testing effective June 4, 2007. Thus, the statute of limitations commenced with implementation of the testing policy on June 4, 2007. The Charges filed by PASNAP and Local 5106 in June of 2007, are clearly within the four month limitations period under Section 1505 of PERA, and thus are timely.

The seminal case in Pennsylvania on random drug testing of public sector employes is Cambria County, supra.[2] In Cambria County, the Board held that to determine whether random drug testing of employes, like other working conditions, was subject to bargaining, the Board must apply the balancing test set forth in Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). In State College, the Pennsylvania Supreme Court held:

> [W]here an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole.

State College, 461 Pa. at 507, 337 A.2d at 268. In Cambria County the Board adopted the analysis of Justice Scalia's dissent in National Treasury Employees Union v. Von Raab, 489 U.S. 656, 109 S. Ct. 1384 (1989), as guidance for the State College balancing test as it pertained to drug and alcohol testing of public employes. In his dissent, Justice Scalia noted:

> Today, in *Skinner,* [a companion case to Von Raab], we allow a less intrusive bodily search of railroad employees involved in train accidents. I joined the Court's opinion there because the demonstrated frequency of drug and alcohol use by the targeted class of employees, and the demonstrated connection between such use and grave harm, rendered the search a reasonable means of protecting

[2] The Board characterized the testing in Cambria County as random because the policy required employes to undergo an annual test for drug use in connection with a fitness for duty examination which was not based on any individualized suspicion. Temple's policy is different from that in Cambria County. Here, Temple's policy is a true random testing process where, on any given day, an employe may be selected at random by a computer program and, at that time, be compelled to provide a sample of bodily fluids to test for drug and alcohol use.

> society. I decline to join the Court's opinion in the present case because neither frequency of use nor connection to harm is demonstrated or even likely. In my view the Customs Service rules are a kind of immolation of privacy and human dignity in symbolic opposition to drug use.

Von Raab, 489 U.S. 656, 680-81, 109 S. Ct. 1384, 1398-99.

In weighing the impact of random drug and alcohol testing on the respective interests of the employer and the employes, the Board held in Cambria County that employes have a compelling interest due to the intrusiveness of such testing on their expectations of privacy. Indeed, being interrupted from work for no apparent reason and required, at that time, to produce a bodily fluid, under pains of discipline or discharge, clearly impacts upon employes' working conditions.

While noting that public employers have an interest in insuring public confidence in the discharge of public services, American Federation of State County and Municipal Employees, Council 13 v. PLRB, 479 A.2d 683 (Pa. Cmwlth. 1984), *affirming* PLRB v. Commonwealth of Pennsylvania, Governor Dick Thornburgh, 13 PPER ¶13,097 (Final Order, 1982), the Board recognized that this generalized interest of public employers, standing alone, cannot outweigh the employes' interests and expectations of privacy in the case of random drug testing. Clearly, given the privacy and working condition interests at stake, an employer must establish more than its desire to test its employes for purposes of advertising their integrity, before it may unilaterally implement a drug and alcohol testing policy.

In Cambria County, the Board reached the following conclusion:

> We emphasize that the negotiability of drug/alcohol testing of public employes depends on the factual context in which such testing is proposed by the public employer. It is important to note that the result we reach today does not mean that the decision to test employes for drug/alcohol abuse will always be a managerial prerogative. Other public employers, even those engaged in similar enterprises, may not decide unilaterally to test their public employes solely in the name of integrity and efficiency of public service. As we have noted earlier in this decision, the balance in this case tips in favor of the public employer because (1) the Employer has demonstrated a real problem among its employes and (2) the public service involved mandates unimpaired service of its employes to prevent immediate and substantial public safety risks. The Board will sanction an employer's unilateral decision to randomly test its employes for drug or alcohol abuse only where a real drug or alcohol problem is demonstrated among the employer's work force and where an immediate and substantial public safety risk is presented. In those instances where the public service involved does not meet the above stated criteria, it cannot be said under the State College balancing test that the impact of such testing is greater on the public employer than on the employes due to the intrusiveness of such testing on employes' privacy rights.

Cambria County, 21 PPER at 26.

Accordingly, the Board recognized in Cambria County that the State College balancing test would tend to favor the employer's interest in random drug testing of employes where there is an actual drug and alcohol problem evidenced among employes and, due to the safety sensitive nature of the service provided by the employer and the nature of the employes' work, employe impairment would pose an immediate risk of very real and substantial harm to the public and property. As recognized in Cambria County, proof of a real drug and alcohol problem among employes performing a public service which poses an immediate and substantial public safety risk is not solely a strict quantitative analysis, but a consideration of the totality of the circumstances.

Thus, in Cambria County, the Board expressly noted that in addition to its public relations interests, providing safe and reliable transportation services lies at the core of the transit authority's mission. Further, the duties of the operators and mechanics, who were to be tested, presented immediate and direct danger to life and property should

those employes be impaired by alcohol or drugs in the performance of their duties. Additionally, the operators and mechanics who held those safety sensitive positions often worked alone without direct co-worker assistance or supervisory oversight. The Board also relied on the fact that one driver voluntarily disclosed a drug problem, that another driver was removed from a bus for driving under the influence, that two drivers lost their driver's licenses and thus could not perform their duties because of off-duty driving under the influence violations, and that the drug testing policy would have disclosed that an epileptic driver who caused a serious accident had not properly taken his medication. It is these facts which tipped the State College balancing test in favor of the employer's need for random drug and alcohol testing of employes in Cambria County. Indeed, what was made obvious in Cambria County was that random testing of drivers and mechanics was warranted to protect the safety of the public and provide reliable service because cause-based testing was inadequate under the circumstances in that case.

In applying the Cambria County analysis in Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh, 22 PPER ¶22080 (Final Order, 1991), the Board expressly noted that the only instances of drug use that the employer offered concerning its employes were readily discovered through cause based means, and there was no basis in the record to find that for-cause testing was ineffective. The Board did recognize that police officers are employed in safety sensitive positions, but given the effectiveness of for-cause testing, rejected the employer's contention that there was a real drug and alcohol problem among the officers that posed an immediate and substantial risk of harm. In this regard, the Board found that only two officers, out of a force of over 1000, were found to have used drugs, both of which were easily discovered through a for-cause based test. The Board concluded that the employer failed to establish a real problem with drug use among its employes which posed an immediate threat of harm to the public, and therefore the random policy required prior negotiations under the Cambria County analysis.

Here, PASNAP, Local 5106, and the Board agree, that providing health care service to the public implicates matters of public safety. See Temple University Hospital Nurses Association v. Temple University Hospital, 38 PPER 38 (Final Order, 2007). As evidence to support a real drug and alcohol problem among its employes involved in patient care, Temple offered a list of twenty-five PASNAP bargaining unit employes who allegedly had drug or alcohol issues. Temple argues on exceptions that the Hearing Examiner erred in discounting employes from the list as not evidence of a real drug and alcohol problem among employes at Temple.

The Hearing Examiner determined that to support the unilateral implementation of drug testing of employes, evidence of drug and alcohol use must involve employes in the pool to be tested. Thus, we agree with the Hearing Examiner's recognition that pre-employment drug screening of applicants is irrelevant as a basis for testing current employes. City of Pittsburgh, supra. In addition, we agree that it would be pure speculation to find that an employe had a drug and alcohol problem while in the employ of Temple where there is no indication as to why the particular employe left employment at Temple, and Temple only discovered several years later that the person had drug or alcohol issues through inquiry with the State Board of Licensing. Accordingly, applicants and ex-employes are properly discounted as evidence of a drug and alcohol problem among Temple's current patient care employes.

Also on Temple's list of employes are those who were terminated from employment because of a theft or diversion of narcotics. Temple has in place a system to dispense patients' drugs, known as Pyxis. This system monitors withdrawals of narcotic medications and compares them to physician orders. All narcotic medications dispensed by nurses at Temple pass through the Pyxis system. The system generates a report of instances where a nurse may have withdrawn more of a narcotic medication than was prescribed for a particular patient, known as an "anomalous usage report". Temple may generate anomalous usage reports on demand, and currently reviews them system-wide on a monthly basis. Temple acknowledged before the Hearing Examiner that an unexplained anomalous usage report would be adequate cause to discharge an employe. Thus, as regards those employes on Temple's list who when confronted with an anomalous usage were not tested for drugs, and did not admit to having a substance abuse problem, it is pure speculation on Temple's part to assume that these employes themselves ingested drugs and alcohol. Hence, these employes also do not support Temple's allegations of a real drug and alcohol problem among its employes.

There were four employes on Temple's list who, when confronted with an anomalous usage report, either tested positive for drugs or admitted to a substance abuse problem. While these four employes should not be discounted as evidence of drug and alcohol use by safety sensitive and patient care employes at Temple, as noted above, the weight to be afforded these instances discovered for cause must be assessed under the totality of the circumstances. Clearly, these four instances support for-cause drug and alcohol testing of nurses who have reports of anomalous usage through Pyxis. While Temple argues that these reports are only discovered months after the diversion of drugs, we note that Temple, at its discretion, may access anomalous usage reports more frequently than it does. However, based on these instances of drug use discovered through the Pyxis reporting system, Temple proposes to randomly test all safety sensitive and patient care employes regardless of their ability to access drugs through the Pyxis system. While such reports may reveal cause to "protectively" test nurses, instances of drug use associated with use of the Pyxis system do not outweigh the privacy interests of employes who do not use the Pyxis system so as to justify the unilateral implementation of a broad-based random drug and alcohol testing policy.

In this regard, Temple argues that random testing is indeed warranted because nurses, like the bus drivers in Cambria County, work independently when caring for patients. To support its contention, Temple points to the testimony of its witness who reported that nurses work independently, and that cognitive impairment is not readily visible through physical manifestations. Temple's witnesses also testified that there was no legal requirement for nurses to report suspected impairment of a co-worker.

However, the Hearing Examiner found that nurses are observed by other nurses and have an ethical obligation to report peers who may be impaired by drugs or alcohol. The Hearing Examiner's findings of fact must be supported in the record by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufmann Department Stores, Inc., 345 Pa. 398, 29 A.2d 90 (1942). A finding is not unsupported simply because of conflicting evidence. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Indeed, it is the hearing examiner's function to weigh the credibility of conflicting substantial evidence in order to reach a finding. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004).

The nurse who testified at the hearing stated that nurses do assist one another in the care of patients and dispensing of medications, and are observed on occasion by nurse managers who are responsible for a shift. In fact, there was lengthy testimony of a procedure known as "wasting", where one nurse must observe another in the disposal of excess medications dispensed through Pyxis. While the nurses testified that they have not had formal training in identifying substance abuse, they are trained to be aware of the effects of drugs and medications. As for an obligation to report suspected impairment, there is uncontroverted testimony that nurses should, and do have, an ethical obligation to report suspected impairment of an employe involved in patient care. We have thoroughly reviewed the record and find that there is substantial evidence of record, accepted by the Hearing Examiner, that supports the Hearing Examiner's finding that nurses do encounter other nurses and assist one another, and are observed or supervised during the course of their shift. In addition, there is substantial evidence and testimony of record that nurses have an obligation, ethical or otherwise, to report suspected instances of drug or alcohol impairment.

We agree with the Hearing Examiner, and Temple, that whether employes work independently or together is relevant in weighing the employer's interests in random drug and alcohol testing of employes. Indeed, in Cambria County, the fact that the drivers worked alone and unsupervised during their runs weighed in favor of the employer's unilateral implementation of annual drug testing for all operators. However, as noted above, the record here indicates that nurses do not work in a vacuum, but are observed frequently by other nurses and supervisors, who have at least an ethical obligation to report that a nurse may be impaired by drugs or alcohol. The fact that nurses are observed throughout the day during their shift, tilts the scales in favor of the

employes' privacy interests, and against further intrusion by the employer to test an employe for drug or alcohol use where no cause to test exists.[3]

Upon review of Temple's list, there remain three employes, two of whom were tested for drugs and alcohol under the existing standards for a protective test.[4] The other nurse voluntarily resigned for mental health issues. These few instances of drug or alcohol use by employes that were not discovered immediately by reasonable suspicion weigh on the side of Temple for random testing of nurses. However, as Justice Scalia noted in his dissent in Von Raab:

> What is absent in the government's justifications - notably absent, revealingly absent, and as far as I am concerned dispositively absent - is the recitation of even a single instance in which any of the speculated horribles actually occurred: an instance, that is, in which the cause of bribe taking, or of poor aim, or of unsympathetic law enforcement, or of compromise of classified information, was drug use.

Von Raab, 489 U.S. 656, 682, 109 S. Ct. 1384, 1400; City of Pittsburgh, 22 PPER at 181. Under the totality of circumstances, there are only three instances of abuse from a pool of approximately 1200 employes in the PASNAP bargaining units over a three-year period, with no evidence of actual problems caused by these employes, and where pre-employment, reasonable suspicion, and protective testing for drugs and alcohol currently takes place.[5]

Upon consideration of the totality of the circumstances, the circumstances of these three nurses do not tip the scale in favor of unilateral implementation of a random drug and alcohol test for all patient care and safety sensitive employes. These three instances of record are insufficient to support Temple's claim that random testing is warranted because of the existence of a drug and alcohol problem which poses imminent risk of substantial public harm, or to reverse the Hearing Examiner's determination that Temple's instituting a random drug and alcohol policy was merely for prohibited public relations measures.

We stress that the Board's decision should not be construed as expressing an opinion on the merits of random testing of nurses, nor holding that Temple is unable to test employes for drugs or alcohol where some cause to do so exists. Temple has a cause-based testing program in place and it is not at issue here.[6] We hold only that unless the facts of record demonstrate circumstances warranting an immediate response that would be left uncorrected through cause-based testing, purely random urinalysis or blood testing for public sector employes should be submitted to the bargaining process, given the privacy interests of the vast majority of employes who do not abuse drugs or alcohol.

Because we find that Temple did not sustain its burden of proof to support the unilateral implementation of a random drug and alcohol testing policy for the PASNAP bargaining unit, we must dismiss Temple's argument that once it has established a real drug and alcohol problem among one bargaining unit, it is privileged to implement a testing policy system-wide. Moreover, we note that on the record, Temple has proffered only, at best, three instances of drug or alcohol use discovered through means other than

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[3] We note that there is no testimony or evidence regarding the extent that bargaining unit employes other than nurses work independently, that would support Temple's unilateral implementation of drug and alcohol testing for those employes.

[4] One employe was discharged for failure to report a positive drug screen while in a voluntary recovery program, and the other was tested upon an inquiry from the Department of Health.

[5] While Mr. Birnbrauer testified that from June 4, 2007 to the date of the hearing, Temple had randomly tested 65 employes and had 3 positive test results, these instances occurred after unilateral implementation of the policy, and there was no indication as to what bargaining unit, if any, those employes were in. As such, based on the record before the Board, those test results present no probative evidence for this order.

[6] We in no way suggest what may or may not be cause. It is management's business decision in investigating particular acts of an employe to decide whether an inquiry and testing for alcohol or drug use is warranted. The examples of record of lawful for-cause testing used to date are pre-employment, concerns from other employes, reports of employe drug use from independent sources, test results from voluntary recovery programs, and anomalous usage reports.

reasonable suspicion in a system-wide testing pool of 4932 employes, which would not suffice as cause for unilateral imposition of random testing for all bargaining units. Accordingly, we agree with the Hearing Examiner that, on the record presented, Temple violated its statutory bargaining obligation by unilaterally implementing a random drug and alcohol testing policy for all patient care and safety sensitive employes in the PASNAP and Local 5106 bargaining units.

Finally, Temple asserts that the Hearing Examiner erred in finding that it did not make an adequate response to PASNAP's information requests. As aptly stated by the Hearing Examiner, Board law is clear that the employer is obligated to provide all information requested by the union that is relevant to policing the contract or engaging in collective bargaining. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987); AFSCME v. Berks County (Coroner), 36 PPER 36 (Final order, 2005). As pointed out by the Hearing Examiner, Temple admitted in its post-hearing brief that it "*substantially* discharged any obligation it had to provide requested information", and that it responded to a "majority of [PASNAP's] requests." Moreover, Alan Jerome Silberman, PASNAP staff representative, testified that Temple did not respond to some questions (N.T. 49, 62), and only provided partial answers to other questions. (N.T. 64). Temple's own arguments, and the testimony of Mr. Silberman, support the Hearing Examiner's conclusion that Temple did not provide all relevant information that was requested by PASNAP, and thus failed to fulfill its statutory obligation under PERA.

After a thorough review of the exceptions and all matters of record, we conclude that the Hearing Examiner did not err in finding that Temple violated Section 1201(a)(1) and (5) of PERA by implementing a random drug and alcohol testing policy without first fulfilling its statutory bargaining obligation with PASNAP and Local 5106. In addition, Temple violated Section 1201(a)(1) and (5) by failing to fully comply with PASNAP's request for information. Accordingly, the Board shall dismiss Temple's exceptions, and make the PDO final.

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 the exceptions filed by Temple University Health System are hereby dismissed, and the November 1, 2007 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 fifteenth day of April, 2008. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

Temple hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Act; that it has rescinded the non-cause-based drug and alcohol policy as implemented on June 4, 2007, insofar as it applies to members of PASNAP and Local 5106; that it has provided to PASNAP the requested information still outstanding; that it has posted the final order and proposed decision and order for ten (10) days; and that it has served a copy of this affidavit on PASNAP and Local 5601 at their principal places of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED to before me
The day and year first aforesaid

_____
Signature of Notary Public