

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : Case No. PERA-C-04-560-E
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
FAYETTE SCI :

FINAL ORDER

The Commonwealth of Pennsylvania, Department of Corrections, Fayette State Correctional Institution (Commonwealth) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 28, 2009. The Commonwealth challenges a July 8, 2009 Proposed Decision and Order (PDO) in which the Hearing Examiner found that the Commonwealth violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by failing to comply with the terms of a grievance settlement reached with the Pennsylvania State Corrections Officers Association (PSCOA). PSCOA filed a brief in response to the exceptions on September 17, 2009.

Based on the testimony and documentary evidence presented, the Hearing Examiner made the following Findings of Fact (FF). On July 22, 2004, a representative of PSCOA (Business Agent Shawn Hood) and a representative of the Commonwealth (Major Frank Cole) met prior to the second step of the grievance procedure to discuss a settlement of a grievance involving changes to employe work schedules. (FF 3 - 6). Mr. Hood and Major Cole signed a grievance settlement which stated as follows: "Mgmt agrees to negotiate any changes of work schedules with the local union." (FF 6). Since July 22, 2004, the Commonwealth has not negotiated schedule changes at SCI-Fayette. (FF 7). However, correction officers at SCI-Fayette have had their schedules changed for "all kinds of reasons," including training. (FF 8).

Based on the above Findings of Fact, the Hearing Examiner concluded that the Commonwealth violated its good faith bargaining obligation under Section 1201(a)(1) and (5) of PERA by refusing to negotiate scheduling changes after July 22, 2004, as required by the grievance settlement agreement. In its exceptions, the Commonwealth argues that the Hearing Examiner's findings are not supported by substantial evidence. Specifically, the Commonwealth asserts that there is no record evidence presented by PSCOA to support the finding that the schedule of any correctional officer was in fact changed after July 22, 2004. The Commonwealth contends that because there allegedly is no proof of scheduling changes, the Hearing Examiner's finding that it failed to negotiate schedule changes is likewise unsupported.

The Board's review of the Commonwealth's exceptions is guided by the seminal case of PLRB v. Kaufmann Department Stores, Inc., 345 Pa. 398, 99-400, 29 A.2d 90, 92 (1942), in which the Pennsylvania Supreme Court held "that it is the function of the board not only to appraise conflicting evidence, to determine the credibility of witnesses, and to resolve primary issues of fact, but also to draw inferences from the established facts and circumstances...." Indeed, as reiterated by the Pennsylvania Supreme Court in St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977), it is not error for the Board to make findings of fact based on reasonable inferences derived from the testimony and documents of record. See also PLRB v. Steckline, 89 Pa. D. & C. 49, 54 (Court of Common Pleas, 1954) ("[a]fter the examiner has set his seal of credence on the fact, gained through inference from other facts, then it itself becomes a fact in the case and should be so labeled"). Findings based on inferences, if supported by substantial and legally credible evidence, are conclusive. Kaufmann Department Stores, Inc., supra; St. Joseph's Hospital, supra.

Upon review of the record, both Findings of Fact 7 and 8 are supported by substantial evidence. Mr. Hood, PSCOA's Business Agent, testified that he entered into a grievance settlement with the Commonwealth which provided that "[Management] agrees to negotiate any changes of work schedules with the local union." (N.T. 17; Union Exhibit 1). When asked whether the "Commonwealth honored this settlement agreement at Fayette", Mr. Hood stated "No, they have not." (N.T. 20).¹ Further, when giving examples of schedule changes, Mr. Hood testified that "there was an orientation taking place and it wasn't conducive of what was taking place at the facility or the hours and the shift that they were previously assigned ... I mean, it could be anything... Training." (N.T. 44-45). Both the finding that "since July 22, 2004, the Commonwealth has not negotiated schedule changes at SCI-Fayette[,]" (FF 7) and the finding that "the Commonwealth changes schedules at SCI-Fayette for 'all kinds of reasons,' including training" (FF 8), are supported by the credible testimony of Mr. Hood, who testified during PSCOA's case-in-chief.²

The Commonwealth also argues that the Hearing Examiner erred in directing make-whole relief. The appropriate remedy for an unfair practice is discretionary with the Board. 43 P.S. §1101.1303; In re Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978). The premise for the Commonwealth's argument is that PSCOA has failed to establish any scheduling changes, and accordingly there can be no make-whole relief for changes to employes schedules. However, as found above, there is substantial evidence of record to support the Hearing Examiner's findings that scheduling changes have taken place for many reasons including training, and that since July 22, 2004, the Commonwealth has not negotiated schedule changes at SCI-Fayette. Make-whole relief issued by the Board is remedial, and not punitive. Id. Therefore, any make-whole relief is limited to the lost wages, hours and benefits that have been actually incurred by the employes because of a unilateral change to their schedule in violation of Section 1201(a)(1) and (5) of PERA. Given its remedial nature, the Hearing Examiner's direction of make-whole relief for any correctional officer affected by the Commonwealth's unfair practice is appropriate under the circumstances presented.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner's Findings of Fact are supported by substantial evidence of record. Additionally, the Hearing Examiner did not err in directing make-whole remedial relief. Accordingly, the Board shall dismiss the Commonwealth's exceptions, and make the Proposed Decision and Order 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 the Commonwealth of Pennsylvania are hereby dismissed, and the July 8, 2009 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 twentieth day of October, 2009. 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.

¹ Additionally, when asked whether "after this was signed ... isn't it a fact that Barb Bair, the Labor Relations Coordinator from the Department of Corrections, came up to you and said, 'This isn't something we can agree to,]" Mr. Hood responded "that is correct, yes." (N.T. 40).

² The Commonwealth argues that the Hearing Examiner erred in relying on the testimony of its witness, Frank Cole, to support Finding of Fact 8, and to allegedly satisfy PSCOA's burden of proof. However, because Finding of Fact 8 is independently supported by testimony offered by PSCOA, there is no merit to the Commonwealth's exception.

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AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5), that it has complied with the grievance settlement, that it has made its employees whole for any losses sustained by them as the result of its refusal to comply with the grievance settlement, that it has posted the Proposed Decision and Order and Final Order as directed, and that it has served n executed copy of this affidavit on PSCOA.

Signature / Date

Title

SWORN AND SUBSCRIBED TO before me
The day and year aforesaid.

Signature of Notary Public