

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
:  
v. : Case No. PERA-C-08-402-E  
:  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF CORRECTIONS :  
ALBION SCI :

**PROPOSED DECISION AND ORDER**

On October 16, 2008, the Pennsylvania State Corrections Officers Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that, on September 11, 2008, the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth), Albion State Correctional Institution (Albion SCI), violated Section 1201(a)(1) of the Public Employee Relations Act (PERA). The Union specifically alleged that the Commonwealth engaged in unfair practices at a labor-management meeting when management asked whether it should exercise its right to withdraw from a local bid agreement. Management asked this after the Union presented an issue for resolution pursuant to that alleged agreement. The Union claims that the question posed by management in response to its bid-position issue constituted a threat that interfered with and intimidated Union members in further pursuing the bid-post issue at the meeting and thereafter.

On November 24, 2008, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on Monday, February 9, 2009 in Harrisburg, Pennsylvania. At the hearing on that day, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3; PERA-R-01-153-E, Order and Notice of Election).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3; PERA-R-01-153-E, Order and Notice of Election).
3. On September 11, 2008, Union and management officials at Albion SCI attended a labor-management meeting at the Albion SCI. The following individuals, among others, were present at the meeting: Alfred Harvey, Union President; Sergeant Daniel Zinz; Michael Friederich; Deputy Superintendent, Richard Mason Hall; Major Robert Gilmore; Major Ronald Bryant; Henry Powell; Sergeant William Rhoades. (N.T. 5, 22, 46, 49; Employer Exhibit 1).
4. A bid post is a position that usually involves premium hours and days off with less prisoner contact. They are preferred posts that more senior officers bid on and obtain as a result of their seniority which entitles them to more preferential assignments. (N.T. 11, 46).
5. Local bid-post agreements are collectively bargained between the Union and the local institution. The Restricted Housing Unit (RHU) bid-post agreement provided that either party could withdraw from the agreement with thirty days' written notice to the other party. (N.T. 6, 49, 60).
6. During the September 11, 2008 meeting, the Union presented a grievance concerning the RHU. The RHU grievance alleged that management at Albion SCI violated the

parties' local bid-post agreement which allegedly prohibited the removal of a bid-post officer from his bid-post assignment at the RHU exercise yard to provide meal relief for other officers. Then management would assign non-bid-post officers to cover the RHU bid posts during the periods of meal relief. (N.T. 5, 22; Employer Exhibit 1).

7. After both parties separately caucused to discuss the RHU bid-post meal relief matter, management agreed to stop removing RHU bid-post officers to provide meal relief for thirty days. Management also provided written notice to the Union exercising its right to withdraw from the local bid-post agreement with thirty days written notice. Management had prepared the written notice of withdrawal prior to the September 11, 2008 labor-management meeting in the event that management did not agree with the Union's position regarding the use of RHU bid post officers to cover meal relief. (N.T. 7, 23, 35, 47-48, 56).

8. After discussing grievances, the parties proceeded to discuss items on the monthly agenda outside of the grievance process. (N.T. 7, 23).

9. During this process, Union President Harvey raised an issue involving Sergeant Rhoades who held a bid-post position on the Department of Corrections prisoner transportation bus (DOC bus). (N.T. 8-9, 35-36; Employer Exhibit 1).

10. The DOC bus transports prisoners across the Commonwealth. As such a DOC bus run often does not return within an eight-hour shift. Sergeant Rhoades wanted to switch his DOC bus bid-post position with a position inside the institution. The switch would ensure that Rhoades' shift would not exceed eight hours (and end at 2:00 p.m.) so that he could tend to certain family matters. Rhoades's shift commander denied the request because the shift commander was under the impression that an officer could not switch a bid-post position. (N.T. 8-9, 18-19, 35-36, 49).

11. In response to the Union's request on behalf of Sergeant Rhoades, Deputy Superintendent Hall responded as follows: "Do I need to pull out of that agreement also?"<sup>1</sup> (N.T. 8, 23, 36).

12. The Union abandoned the issue of allowing the DOC bus bid-post officer to switch his assignment within the institution. The Union has not since resurrected this issue with management. (N.T. 9, 17, 24, 31).

13. The parties subsequently discovered that there was no local DOC bus bid-post agreement in place at the time as both parties assumed during the September 11, 2008 labor-management meeting.

#### DISCUSSION

An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions has a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001); Northwest Area Educ. Ass'n v. Northwest Area Sch. Dist., 38 PPER 147 (Final Order, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employes have in fact been coerced. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004). However, an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995).

Here, Deputy Superintendent Hall violated Section 1201(a)(1) when he posed the question: "Do I need to pull out of that agreement also?" Regardless of Deputy Hall's

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<sup>1</sup> There is a conflict in the testimony regarding Deputy Hall's response. The three Union witnesses, who were sequestered for the duration of the hearing, consistently testified that Deputy Hall responded in the manner quoted in this finding of fact. Deputy Hall, however, testified that he made this statement but that he also added language indicating that the withdrawal from the agreement would be to amend the agreement to comply with the Department of Corrections transportation policy. I resolve this conflict in favor of the Union.

intentions or whether the Union leaders at the September 11, 2008 labor-management meeting were in fact intimidated or coerced, a reasonable person would be intimidated by Hall's rhetorical question. The question was posed at a time when both parties believed that a local bid post agreement governed the DOC bus bid-post assignments. Also, the question was posed immediately after management withdrew from another local bid-post agreement when the Union filed a grievance under that agreement. Deputy Hall's rhetorical question clearly had the effect of placing fear in the Union leadership. The specific fear was that, if the Union were to press the Sergeant Rhoades matter, then management would simply withdraw from another collectively bargained local agreement rendering it a nullity. Consequently, there simply would be no agreement under which the Union could either grieve or assert its position.

Even if Deputy Superintendent Hall added to his question that language which he claims, (i.e., "to put the DOC bus bid agreement in line with DOC policy." (N.T. 58)), the added language still reflects Hall's intention to act unilaterally regarding the supposed DOC bus bid-post agreement when those agreements are bilaterally bargained between both the Union and management. To assert that management should unilaterally withdraw from a collectively bargained agreement and modify it to include the Department's transportation policies conveys to a reasonable person that management will withdraw from a bargained for agreement when the Union asserts its rights and challenges management's obligations under that alleged agreement. The Union did not express a desire to modify the agreement which both parties assumed existed at the time. Therefore, even if I credited Hall's testimony regarding his response, which I do not, the response he says he gave still violates Section 1201(a)(1). Even though the local agreements often contain a provision granting either party the right to unilaterally withdraw with thirty days' notice, threatening to exercise that right to avoid possible concessions on an issue violates Section 1201(a)(1) where actually exercising the right may not. Additionally, the Commonwealth has not provided any legitimate explanation that would justify making the coercive statement at issue.

#### CONCLUSIONS

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

1. The Commonwealth of Pennsylvania, Department of Corrections, Albion SCI is a public employer under PERA.
2. The Pennsylvania State Corrections Officers Association is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has committed unfair practices within the meaning of Section 1201(a)(1).

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the Commonwealth shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of June 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

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**AFFIDAVIT OF COMPLIANCE**

The Commonwealth of Pennsylvania, Department of Corrections, Albion SCI hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) of the Public Employe Relations Act; that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has posted a copy of this decision and order as directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public