COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	:	
v.	:	Case No. PERA-C-09-353-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS MUNCY SCI	:	

AMENDED PROPOSED DECISION AND ORDER[1]

On August 31, 2009, 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 the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth), violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the Commonwealth engaged in unfair practices when it unilaterally directed that monthly labor-management meetings would be held inside the institution rather than at the offsite venue where they had been held in prior years.

On September 9, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on Monday, December 21, 2009, in Harrisburg, Pennsylvania. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties 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. (PERA-R-01-153-E, Order and Notice of Election, 2001).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-01-153-E, Order and Notice of Election, 2001).

3. The Commonwealth and the Union are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011. (Association Exhibit 1).[2]

4. Labor-management meetings are meetings during which the Union and the Commonwealth attempt to resolve workplace and contractual issues with each other before those matters develop into greater problems or become grievances. (N.T. 7-8).

5. Article 33, Section 8 of the CBA provides, in relevant part, as follows:

> **Section 8.** Committees composed of representatives of the Association and the Employer are to be established at agency and appropriate local levels to resolve problems dealing with the implementation of this Agreement and to discuss other labor-management problems that may arise. The committees shall be established on an institutional/boot camp basis as well as a statewide basis.

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[1] This Amended Proposed Decision and Order is being issued to correct the issuance date on the initial Proposed Decision and Order. Only the issuance date has been changed. The exceptions period begins from the issuance date of the Amended Order.

[2] Association Exhibit 1 is unsigned by the parties and is entitled “Interim Edition Collective Bargaining Agreement.” Some of the provisions of the agreement are subject to appeal from a recent interest arbitration award. However, the contractual provisions at issue in this case are not subject to challenge and the Commonwealth approved the exhibit for those limited purposes.

> When the Association places an item on the agenda for a labor-management meeting, management will respond in writing. When management places an item on the agenda for a labor-management meeting, the Association will respond in writing.
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> . . . .
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> Upon request of the Association, representatives of the Employer will meet and discuss with representatives of the Association on an institutional/boot camp or statewide basis to discuss policies of the Employer that affect wages, hours, terms and conditions of statewide employment as well as the impact thereon. It is understood that this provision includes policies and programs of the Employer on an institutional/boot camp or statewide basis that affect the safety and security of unit employes.

(Association Exhibit 1 [CBA], Article 33, Section 8).

6. AFSCME was the previous exclusive collective bargaining representative of unit employes before the certification of the Union in 2001. During AFSCME representation, labor-management meetings were held offsite at the AFSCME building near Muncy. Before then, they were held offsite at a local Perkins restaurant. (N.T. 24, 37).

7. When the Union became the exclusive collective bargaining representative in 2001, labor-management meetings were held inside the institution. (N.T. 8, 38).

8. In 2004, both management and the Union agreed to move the labor-management meetings to a private upstairs room at a restaurant named Haywood's, approximately two miles away from the jail. The Union paid for all the costs associated with having the meetings at the restaurant. (N.T. 8-10, 18, 20, 25, 38-39, 44).

9. In June, 2009, management at Muncy moved the meetings inside the jail. The Commonwealth did not bargain the change of the location of the labor-management meetings with the Union, and the Union did not agree to the location change. (N.T. 10-11, 25; Association Exhibit 2).

10. Both Union and Commonwealth witnesses agreed that the offsite labor-management meetings were more productive in resolving labor-management issues than the onsite meetings. There were fewer matters that developed into formal grievances. There were fewer interruptions at the offsite meetings. (N.T. 12-13, 21, 26, 47).

11. In her June 22, 2009 letter, the Superintendent stated, in part, as follows:

> In the past 16 months this administration has worked hard to develop and maintain an amicable working relationship with you and the local union officers. The number of grievances filed has been reduced by half, and the communication lines are stronger than they have ever been in the past. I have maintained an open door policy with your union presidents and will continue to do so. I am taking this action to move forward and align SCI Muncy with the other state correctional facilities statewide and have the Deputy Superintendents closer to the institution in the event of an emergency.

(Association Exhibit 2).

12. Onsite meetings between 2001 and 2004 were frequently interrupted when management stopped meetings to discuss matters with onsite staff. Management also stopped onsite meetings to retrieve documentation that was not brought to the meeting. Meetings at Haywood's were interrupted for caucusing only. (N.T. 13, 21).

13. Management scheduled the first labor-management meeting after the location change at the jail on July 13, 2009, but the Union members did not attend. Union members have not attended any meetings since June, 2009. (N.T. 16, 25).

14. The CBA is silent regarding the frequency and location of labor-management meetings. (N.T. 26; Association Exhibit 1).

15. In the summer of 2008, when management first raised the issue of moving the location of labor-management meetings, the Union offered to meet at alternative offsite locations but management insisted that the meetings be moved inside the jail. (N.T. 26-27).

16. In the five years that labor-management meetings were held offsite at Haywood's, security was never an issue as a result of the Major or the Deputy Superintendents being outside the perimeter of the jail.

DISCUSSION

The Union argues that the Commonwealth violated its duty to bargain when it unilaterally changed the past practice of holding labor-management meetings at Haywood's, which constitutes a mandatory subject of bargaining. (Union's Post-hearing Brief at 5-7). I agree for two reasons: (1) the duty to bargain here flows directly from the statutory duty to bargain in good faith under Section 701 of PERA as well as from explicit contractual provisions establishing the labor-management committees; and (2) the duty to bargain derives from the fact that substantial employe interests are directly affected by these meetings, which outweigh the managerial interests presented on this record.

Section 701 of PERA provides as follows:

> Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or ***any question arising thereunder*** and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

43 P.S. § 1101.701 (emphasis added). The emphasized language above imposes a mutual obligation on both unions and public employers to meet at reasonable times and to confer in good faith, not only to negotiate agreements, but also to resolve labor-management disputes that arise under negotiated agreements. Additionally, the parties' CBA contains a collectively bargained for provision that requires the parties to meet to resolve matters affecting the implementation of the CBA; affecting wages, hours and terms and conditions of employment; and affecting labor-management relations. Clearly, the location of these meetings is a question arising under the contractual obligation, under Article 33, Section 8, to have the meetings and, therefore, must be bargained under Section 701.

In Indiana Bell Telephone Company, Inc., 252 N.L.R.B. 544 (1980), the National Board held that it was not a bargaining violation under Section 8(a)(5) of the National Act (the counterpart to our Section 1201(a)(5)) when an employer refused to hold all grievance arbitrations near the plant of operations, as the union wanted, and insisted that at least half of the arbitrations be held near corporate headquarters. In affirming the administrative law judge, the National Board opined that, where the collective bargaining agreement generally provides for grievance arbitration, the location of grievance arbitrations "is simply an example of a negotiable item upon which the parties ha[ve] failed after some discussion and compromise to reach agreement." 252 N.L.R.B at 545, 1980 NLRB 1198 at 10. The National Board emphasized that the National Labor Relations Act "does not compel either party to agree to a proposal or require the making of concessions," id., and thereafter concluded that the employer did not violate the National Act because it was negotiating a location even though it did not agree to the union's proposal. Accordingly, once an employer and union have a collective bargaining agreement containing grievance arbitration provisions, determining the location of grievance arbitration for disputes arising under that agreement is subject to negotiation and, therefore, constitutes a mandatory subject of bargaining where the agreement is silent. As a mandatory subject of bargaining, once a location is agreed upon, the location cannot be changed unilaterally.

In International Chemical Workers Union, Local Union No. 29 and Morton-Norwich Products, Inc. 228 NLRB 1101 (1977), the parties established a practice of participating in monthly meetings to resolve problems and grievances. At some point, the Union

representative requested that monthly meetings be recorded on a tape recorder. The employer objected to the use of the tape recorder, and the union refused to discuss specific grievances thereafter. The National Board, held as follows:

> The established practice has been for the Employer and the Union to take whatever notes they deemed necessary. This method of operation established by mutual consent and practiced over periods of many years became part of the conditions of employment which are not subject to change during the contract term other than by mutual agreement. By its insistence on recording the grievance sessions and refusal to participate in grievance processing unless it was permitted to record the discussions, Respondent attempted to change the implied terms of the collective-bargaining agreement and has in effect terminated the processing of employee grievances for which the collective-bargaining agreement provides. This is a clear violation of Section 8(d) of the Act and thus constitutes a violation of Section 8(b)(3) of the Act.

Morton-Norwich, 228 NLRB at 1101. Indiana Bell and Morton-Norwich contain the proper analyses to be applied here. These cases are factually analogous, and the conclusions therein are based on the same statutory policies that are set forth in Sections 701 and 1201 of PERA, which exalt the ongoing mutual obligations to resolve disputes and to bargain the implementation of collective bargaining agreement procedures.

In this case, the CBA contains machinery for requiring committees to be formed to discuss the CBA and labor-management problems. Pursuant to those provisions, the Commonwealth and the Union had previously agreed to hold monthly labor-management meetings at Haywood's and held them there for approximately five years. The frequency and location of those meetings are not directed by the CBA. Yet, during those five years, "[t]his method of operation established by mutual consent and practiced over periods of many years became part of the conditions of employment which are not subject to change during the contract term other than by mutual agreement." Morton-Norwich, 228 NLRB at 1101. As a mandatory subject of bargaining under Indiana Bell, supra, and Morton-Norwich, supra, the Commonwealth was not authorized to unilaterally move the location of the meetings.

Given that both the statute and the CBA require the Commonwealth and the Union to conduct these meetings to resolve workplace matters in good faith, it follows that the ground rules for conducting the meetings themselves must be mutually agreed upon in good faith or at least established by mutual consent through practice. Neither party has the authority to unilaterally direct when, where or how the meetings will be conducted simply because the CBA is silent. As the Union noted in its post-hearing brief, where the collective bargaining agreement provides for a dispute resolution process, such as grievance arbitration, the extra-contractual procedures for implementing that process are mandatory subjects of bargaining. United Electrical, Radio and Machine Workers of America v. NLRB, 409 F.2d 150 (D.C. Cir. 1969)(holding that arbitration procedures are mandatory subjects of bargaining because they bear just as much a relationship to wages, hours, and working conditions as does the substantive arbitration provisions themselves). The labor-management meetings are contractual dispute resolution procedures much like the contractual grievance procedures. There is no less bargaining obligation regarding the procedures and ground rules for implementing the mandatory labor-management meeting process than there is for implementing the grievance arbitration process.

Additionally, the meeting location is a mandatory subject of bargaining under the analysis set forth in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). State College requires an examination of "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 506, 337 A.2d at 268. Both Union and Commonwealth witnesses agreed that the offsite labor-management meetings were more productive in resolving labor-management issues than the onsite meetings. There were fewer matters that developed into formal grievances. There were fewer interruptions at the offsite meetings. In her June 22, 2009 letter, the Superintendent acknowledged that "[t]he number of grievances filed has been reduced by half, and the communication lines are stronger than they have ever been in the past." (F.F. 11). However, onsite meetings inside the jail between 2001 and

2004 were frequently interrupted for a variety of reasons. Those types of interruptions did not hamper the meetings at Haywood's. Meetings at Haywood's were interrupted for caucusing only. Clearly the more productive dispute resolution environment fostered by holding meetings at Haywood's was very beneficial to employes. These beneficial and constructive meetings had a direct impact on employes in the unit at Muncy whose wages, hours and working conditions were protected and whose contractual disputes were successfully resolved by the meetings at Haywood's.

The Commonwealth offered reasons for acting unilaterally which it argues outweighs the Union's and the employes' interests. (Commonwealth's Post-hearing Brief at 5-6). The Commonwealth specifically argues that the Department of Corrections has a managerial "interest in furthering institutional security by ensuring that its policy of having at least two out of three officials (the superintendent and two deputy superintendents) be onsite during regular business hours (8 a.m. to 5 p.m.) to respond to any emergency or other needs [is properly implemented]." (Commonwealth's Post-hearing Brief at 5). The Commonwealth contends that these interests "outweigh[] any impact on the employees' terms and conditions of employment." (Commonwealth's Post-hearing Brief at 5). The Commonwealth further maintains that the Department of Corrections has "a longstanding policy of not allowing those in uniform to enter a tavern such as Haywood's." The Commonwealth recognizes that this policy was not adhered to when the meetings were moved to and held at Haywood's for five years, but "such a failure does not detract from the significance of the policy or permit SCI Muncy to continue to ignore it." (Commonwealth's Post-hearing brief at 6). The Commonwealth accordingly argues that the Department of Correction's "reasons for moving the meetings back into the institution are real and clearly further the mission of the [Department] to protect the public and to run safe and secure institutions for staff and inmates." (Commonwealth Post-hearing Brief at 6). I disagree.

While the security of the jail and the enforcement of the Department's policy against uniformed officers at taverns are indeed noble managerial interests at the core of the Department's function of providing care, custody and control of inmates, I find that these reasons, in the context of this case, fail to support the Commonwealth's actions. First, the Commonwealth security policy (Policy 6.3.1) more accurately provides that two of the three top jail managers (i.e., the superintendent and two deputy superintendents or a major) must be onsite between 8 a.m. and 5 p.m. ***or must be thirty (30) minutes away***. (N.T. 59, 65-66). As noted by the Union, Haywood's is two miles from the Jail, well within the thirty-minute requirement of the policy. In other words, Muncy management is already complying with the policy by having the meetings at Haywood's. Therefore, there is no security policy compliance issue here and this basis for unilaterally changing the meeting location is dismissed as not supporting the Commonwealth's unilateral action.

Also, I simply do not believe that management at Muncy wanted to move the meetings inside the jail because they became concerned about a policy prohibiting uniformed officers from entering an establishment that serves alcohol. Although compliance with the policy is important (even if it was not important for the past five years) compliance with the policy does not require the Commonwealth to unilaterally move the meetings inside the jail. The Union did offer to hold the meetings at other offsite locations when the Commonwealth raised the issue of moving inside the jail. Accordingly, I also dismiss this argument as not supporting the Commonwealth's unilateral action.

At the hearing, the superintendent testified that she moved the meetings inside the jail because she could have personal interactions with her department heads and access to copiers. Such activities do not support the core managerial functions of the employer and, as such, they do not outweigh employes' interests in the efficient resolution of employment related matters. In the age of cell phones and blackberries, department heads were accessible and available to the management team at the labor management meetings offsite at Haywood's. Although the superintendent testified that she believed that making a decision over the phone is not as good as face-to-face contact with a person, the underlying reason for that conclusion was never explained. Major decisions and deals are made worldwide over cell phones and blackberries. I do not see why managerial representatives at labor-management meetings for Muncy cannot utilize the same technology. This reason is dismissed as not supporting the Commonwealth's unilateral action.

The superintendent also testified at the hearing, and stated in her June 22, 2009 letter, that she wanted to bring the labor-management meetings inside the jail to be in line with the practice at other jails. However, the supposed benefit for wanting Muncy to have a practice like other jails was not explained, especially since the Superintendent acknowledged, in that same letter, that grievances at the time of the location change were "reduced by half" and that the relationship between the parties was "amicable." Therefore, the Commonwealth has not offered credible reasons that outweigh the Union's and the employes' interests in the resolution of contractual disputes and in the preservation of their bargained for working conditions. Accordingly, under State College, supra, the location of the labor-management meetings in this case is, on balance, a mandatory subject of bargaining; the employes have a direct interest in having the labor-management meeting process efficaciously and expeditiously resolve their workplace disputes and enforce their CBA. The Commonwealth has not offered one credible managerial interest that offsets those significant employe interests; that supports its unilateral action; that relates to its core function of operating a jail; or that tips the State College balance in its direction.

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, 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) and (5).

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. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but limited to the discussing of grievances with the exclusive representative.

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

   (a) Immediately rescind the unilateral change in the past practice of meeting the Union representatives for monthly labor-management meetings at Haywood's Restaurant and immediately restore the status quo ante by meeting Union representatives at Haywood's for monthly labor-management meetings.

   (b) Bargain with the Union any proposed change of location of monthly labor-management meetings away from Haywood's.

(c) 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

(d) 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 (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this first day of June 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	:	
v.	:	Case No. PERA-C-09-353-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS MUNCY SCI	:	

AFFIDAVIT OF COMPLIANCE

The Commonwealth of Pennsylvania, Department of Corrections, Muncy SCI hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has rescinded the unilateral change in the past practice of meeting the Union representatives for monthly labor-management meetings at Haywood's Restaurant and that it has restored the status quo ante by meeting Union representatives at Haywood's for monthly labor-management meetings; that it has bargained with the Union any proposed change of location of monthly labor-management meetings away from Haywood's; 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.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public