

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
:
v. : Case No. PERA-C-09-44-E
:
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
FAYETTE SCI :

PROPOSED DECISION AND ORDER

On February 3, 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, on January 5, 2009, the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth), Fayette State Correctional Institution (Fayette SCI), violated Section 1201(a)(1) of the Public Employe Relations Act (PERA). The Union specifically alleges that the Commonwealth engaged in unfair practices when Captain Nose "physically menaced [Sergeant] Sheetz in an attempt to coerce, restrain and interfere with his protected activities." (Specification of Charges, ¶ 7).

On February 20, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on Monday, May 4, 2009, in Harrisburg, Pennsylvania. During the hearing on that date, 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. (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. Sergeant Christian Sheetz is the local Union Secretary and Union Steward at Fayette SCI. (N.T. 5).

4. As local Union Secretary, Sergeant Sheetz attends and participates in Union meetings, labor-management meetings and Union Executive Board meetings. He also records minutes for the Union at those meetings. (N.T. 6-7).

5. As Union Steward, Sergeant Sheetz acts as Weingarten representative for bargaining unit members and has processed grievances. (N.T. 7).

6. Captain Sean Nose is the Shift Commander on the 2:00-10:00 shift. He was the Shift Commander on January 5, 2009. Captain Nose is aware of Sergeant Sheetz's Union duties and responsibilities. (N.T. 9, 16-17, 56, 64).

7. Sergeant Harvey is a local Union Executive Board member and bargaining unit member at Fayette SCI. (N.T. 9).

8. Sometime before the 5:00 p.m. meal break for the 2-10 shift on January 5, 2009, Captain Nose counseled Harvey about being the last one to arrive for work. Harvey reported this counseling to Sergeant Sheetz informing Sergeant Sheetz that Captain Nose gave him a "last and final warning" for being the last one down the hallway coming into work." (N.T. 8-9).

9. At mealtime, Sergeant Sheetz met with Harvey in the dining hall and entered the food service line behind Captain Nose. There were four people, including Captain Nose, Sergeant Sheetz, Harvey and Sergeant Carlson, on the food service line, and Captain Nose was approximately five feet from Sergeant Sheetz. (N.T. 9-11, 29, 56, 59; Employer Exhibit 2).

10. While on line, Sergeant Sheetz told Harvey that, as long as Harvey reported to work on time, Captain Nose did not have the authority to require him to be the first one or not to be the last one to arrive. In a voice loud enough for Captain Nose to hear, Sergeant Sheetz stated:

That's like saying that you—which one of these burgers were last on my tray? I'm giving you the last final warning not to be last on my tray. Which one of these teas were the last one on my tray? I'm giving you a last final warning not to be the last one on my tray. (N.T. 10).

(N.T. 39, 50, 56-57, 65).

11. These Comments were loud enough to be directed toward Captain Nose and related back to the earlier counseling session Captain Nose had with Harvey. Captain Nose ignored Sergeant Sheetz's comments made on the food service line. (N.T. 56-57).

12. Captain Nose understood that Sergeant Sheetz was mocking him about the earlier counseling session with Harvey. (N.T. 58).

13. After sitting at a table to eat, Sergeant Sheetz began explaining to Sergeant Carlson the meaning of his remarks on the food service line and again made more loud remarks referring to the counseling that Captain Nose gave Harvey about being last to arrive for work. Captain Nose, at this time, was seated one table over and heard these remarks as well. At this point, Captain Nose approached Sergeant Sheetz and placed his left hand on Sergeant Sheetz's right shoulder, leaned towards Sergeant Sheetz's face and, in a normal tone of voice, told Sergeant Sheetz that if he had something to say, he should come to Captain Nose's office and handle it privately. Captain Nose told Sergeant Sheetz to be professional and to stop acting like a second grader. Sergeant Sheetz demanded that Captain Nose remove his hand, and he repeated that demand five to seven times. When Captain Nose was finished, he removed his hand and left. (N.T. 12-14, 29-30, 37, 46-47, 50-51, 54, 59-61, 67-68; Employer Exhibits 1 & 2).

14. When Captain Nose was finished, Sergeant Sheetz told Captain Nose that he did not like him and that he would never like him. Sergeant Sheetz also told Captain Nose that, unless he had something to say that was work related, he did not want Captain Nose to talk to him. (N.T. 15, 30, 36, 62; Employer Exhibit 2).

15. All of Sergeant Sheetz's remarks and the exchange between Sergeant Sheetz and Captain Nose occurred in the presence of inmates who heard and observed everything. (N.T. 33, 42, 59; Employer Exhibit 1).

16. The purpose of Captain Nose confronting Sergeant Sheetz was to stop Sergeant Sheetz's public mockery of Captain Nose in front of other staff and inmates. Captain Nose believed that Sergeant Sheetz's comments violated Section B(10) of the Code of Ethics which prohibits inappropriate, insolent or insubordinate behavior. (N.T. 61-62; Employer Exhibit 3).

17. Sergeant Sheetz did not, at any time, directly approach Captain Nose or any other management official, either formally or informally, to discuss the matter involving Sergeant Harvey. (N.T. 28, 57-58, 65).

18. The Office of Professional Responsibility (OPR) within the Department of Corrections conducted an investigation of the incident after Sergeant Sheetz filed a complaint. OPR concluded that both Sergeant Sheetz and Captain Nose violated Section B (10) of the Code of Ethics and both were issued verbal reprimands, which were later withdrawn. OPR concluded that Captain Nose violated Sergeant Sheetz's personal space and that Sergeant Sheetz mocked his superior officer. (N.T. 68, 72-73).

DISCUSSION

This is the ongoing story of an odd-couple comedy based on the conflict between two characters: Sergeant Sheetz and Captain Nose. The setting for this story is the seemingly serious prison environment at Fayette SCI. The character of Sergeant Sheetz enjoys poking, prodding, provoking and instigating his boss and commanding officer, Captain Nose. Predictably, the Captain takes the bait, bites the hook and allows the Union to reel him into unfair practice hearings time and again rather than simply reporting Sheetz for alleged inappropriate conduct. The comedic genius of this story is the juxtaposition of the petty conflicts between Sergeant Sheetz and Captain Nose on the one hand and the very serious and dangerous environment of containing and controlling violent prisoners on the other. In other words, the comedy flows from the irony that results from destroying the following two expectations: (1) that Sergeant Sheetz and Captain Nose would work together like brother soldiers to effectuate the formidable task of controlling prisoners and (2) that these highly skilled and brave men, who work in a dangerous environment, would maturely resolve mainstream employment issues rather than regressing to boyhood antics.

The first episode in this odd-couple comedy involved the Petition on the Union Bulletin Board. PSCOA v. Commonwealth of Pennsylvania, Department of Corrections, Fayette SCI (Episode I), (PERA-C-08-403-E). The episode under consideration here involves the Conflict in the Dining Hall. The next episode with these two antagonistic characters may be coming soon, unless by some twist in the story, one or both of these men find enough strength of character within to respect and understand the other. Meanwhile, the following is the comedic tale of the Conflict in the Dining Hall.

The Union argues that Captain Nose retaliated against Sergeant Sheetz for engaging in protected activity. The protected activity occurred when "Sheetz was commenting on the propriety of Captain Nose's intended threat of discipline to Harvey for being 'last.'" (Union Brief at 6). The Union further argues that Captain Nose's actions were clearly intended to intimidate Sergeant Sheetz in the course of his performing his duties on behalf of the Union by physically placing his hand upon Sergeant Sheetz's shoulder and putting himself eye-to-eye with Sergeant Sheetz to deliver his message. (Union Brief at 6-7). The Union emphasizes that the incident involved a captain who attempted to use his rank to intimidate a lesser officer. (Union Brief at 6).

In Fayette SCI, supra, (Episode I), I stated the following:

An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions have 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). "If the complainant carries its burden of establishing a prima facie case of a Section 1201(a)(1) violation, the burden shifts to the respondent to establish a legitimate reason for the action it took and that the need for such action justified any interference with the employes' exercise of their statutory rights. Philadelphia Community College, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989)." Bethel Park Custodial/Maintenance Educational Personnel Association v. Bethel Park Sch. Dist., 27 PPER ¶ 27033 (Proposed Decision and Order, 1995). In Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995), the Board countenanced this analysis and held that an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Id. at 360.

(PERA-C-08-403-E). In Teamsters Local No. 429 v. Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000), the Board reaffirmed its position on insubordination and stated that "no policy of PERA would be served if the acts of insubordination were sheltered under

the protection of the right of employes to engage in lawful union activity.'" Id. at 22 (quoting Pittston Area Fed'n of Teachers Local 1590 v. Pittston Area Sch. Dist., 27 PPER ¶ 27066 at 145 (Final Order, 1996)). See also, PSSU, Local 668, SEIU v. Department of Labor and Industry, Office of Vocational Rehabilitation, 31 PPER ¶ 31127 (Final Order, 2000); PSSU, Local 668 v. Erie County, 35 PPER 135 (Proposed Decision and Order, 2004)(opining that "insubordination is not an activity that is protected by the Act").

Sergeant Sheetz was publicly and openly mocking his superior officer in the presence of inmates and other officers, which undermined the command structure at the prison as well as the necessary perception of respect for the Captain regarding both staff and inmates. Sergeant Sheetz's conduct was without a doubt insubordinate. Not having been engaged in protected activity, Captain Nose's actions to confront Sergeant Sheetz and prevent the further compromise of his position as manager and Captain did not interfere with any of Sergeant Sheetz's statutorily protected rights. On this record, it is clear that there is machinery in place to properly address labor-management issues. It is also clear that Sergeant Sheetz is well aware of these processes. Rather than addressing the issue of the Sergeant Harvey counseling at a labor management meeting, through the filing a grievance on Sergeant Harvey's behalf or by having a direct conversation with Captain Nose, Sergeant Sheetz chose to openly mock a superior officer in the paramilitary setting of a prison in front of inmates. Sergeant Sheetz's actions jeopardized the necessary perception of authority and respect for a commanding officer, which is required for the smooth operation of the prison. Although Captain Nose invaded Sergeant Sheetz's personal space, as concluded by OPR, his actions were an effort to abate unprotected, insubordinate activity, as also concluded by OPR.

In light of the totality of the circumstances, Captain Nose's actions do not have a tendency to coerce a reasonable employe in the exercise of protected rights because he interfered with unprotected, insubordinate activity. When an employe openly ridicules his/her manager regarding management decisions, that employe undermines the necessary workplace respect for those managers, which in turn undermines the effective operation of the public employer's enterprise. Moreover, such conduct in a prison is a greater threat to the effective operation of the public employer because it yields the perception among inmates that there is a weakness and lack of cooperation among the officers in control of inmate detention and discipline. The Union is attempting to disguise insubordination behind the mask of protected activity. The record, however, has demonstrated that the mask of so-called protected activity is transparent. And the ugliness behind it has been revealed for what it is.

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, Fayette 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 not 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 PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of July, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner