COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COMMONWEALTH ASSOCIATION OF SCHOOL ADMINISTRATORS, TEAMSTERS LOCAL 502	:	
v.	:	Case No. PERA-C-22-158-E
PHILADELPHIA SCHOOL DISTRICT	:	

FINAL ORDER

The Philadelphia School District (District) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on August 16, 2023, challenging a Proposed Decision and Order (PDO) issued on July 27, 2023. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by failing to provide the Commonwealth Association of School Administrators, Teamsters Local 502 (Union) with information concerning the specific allegations of misconduct against Donyelle Barcus that resulted in his reassignment from the high school to the Central Office. Pursuant to an extension of time granted by the Secretary of the Board, the District filed a brief in support of its exceptions on September 12, 2023. The Union filed a brief in opposition to the exceptions on October 16, 2023, after an extension granted by the Secretary.

The facts of this case are summarized as follows. Donyelle Barcus is a Climate Manager[1] for the District, and he has served in that capacity in multiple buildings throughout the District for 6 years. In early 2022, Mr. Barcus was assigned to George Washington High School. (FF 3). On March 3, 2022, Mr. Barcus was summoned to Principal Susan Thompson's office where she hand-delivered a letter reassigning him to the District's Central Office pending completion of an investigation and disciplinary process. (FF 4, 5). Mr. Barcus asked Principal Thompson if she could provide more information concerning the reasons for the reassignment, to which she responded, "You know what you did." (FF 6). Thereafter, Mr. Barcus left the building and called the president of the Union, Dr. Robin Cooper, to explain what had happened. (FF 6, 7).

Dr. Cooper then called Principal Thompson and requested that she provide more information about the nature of the charges against Mr. Barcus. (FF 7, 8). After speaking with Dr. Cooper, Mr. Barcus returned to the building to speak with Principal Thompson to find out the specific allegations against him. During this second meeting, Principal Thompson informed Mr. Barcus that she did not know the nature of the charges against him and handed him a second letter. (FF 10). The second letter was a "204 Conference Notice" that stated, in relevant part, that "[a] conference will be scheduled to discuss lack of professionalism and innappropriate [sic] sexual relations and sexual advances on staff." (FF 11). Principal Thompson

[1] A Climate Manager is an administrator who supports the climate in the school building by redirecting student behavior. (FF 3).

never provided Mr. Barcus or the Union with information about the specific allegations against him. (FF 15).[2]

On March 4, 2022, Mr. Barcus reported to his new assignment at the District's Central Office. (FF 12). Employes reassigned to the Central Office sit in a room without any work. Reassignment to the Central Office results in a loss of reputation for the employe because the perception is that they did something inappropriate with a child or another adult. (FF 13). Dr. Cooper has objected on prior occasions when the District has not provided the specific allegations as to why an employe is being reassigned to the Central Office.

Kristin Johnson is an investigative officer with the Office of Employee and Labor Relations/Office of Talent for the District. (FF 21). On March 6, 2022, Ms. Johnson received the notice of the complaint against Mr. Barcus. Ms. Johnson's investigation was delayed because the employe who lodged the complaint refused to respond to her requests for an interview. Ms. Johnson eventually requested that the Assistant Superintendent pull the employe from her duties at the school to sit for an interview. Ms. Johnson later obtained the names of two other complainants from Principal Thompson. Ms. Johnson interviewed a total of five people, which included Principal Thompson, an alleged witness, and three complainants.[3] All the interviews were finished by mid-May 2022. (FF 24).

On May 18, 2022, Ms. Johnson emailed Mr. Barcus introducing herself as an investigator from Labor Relations and stating that she would have more information about his case in approximately 2 weeks. (FF 22). A video conference was scheduled in June 2022 with Mr. Barcus, Dr. Don Anticoli, the Secretary/Treasurer of the Union, Ms. Johnson, and Assistant Superintendent Dr. Tennant. (FF 26).[4] During the June 2022 video conference, Ms. Johnson informed Mr. Barcus that the allegations against him were unfounded, that there would be no further discipline, and that his reassignment to the Central Office was ending. The specific allegations against Mr. Barcus were not provided during this meeting. (FF 26).

---

[2] Principal Thompson had received the allegations against Mr. Barcus from Assistant Principal Octavia Tokley prior to March 3, 2022, (FF 20), and had reviewed and discussed the allegations against Mr. Barcus with Dr. Noah Tennant, the Assistant Superintendent for George Washington High School, before giving the transfer letter to Mr. Barcus. (FF 10).

[3] Ms. Johnson testified that one person had alleged that Mr. Barcus was having sexual relations with the other two complainants. However, the other two complainants flatly denied that they had any relationship with Mr. Barcus, and Ms. Johnson did not believe the other witness who made the allegations. The witness ultimately admitted that she never made the allegations against Mr. Barcus. (FF 25).

[4] The day prior to the June 2022 video conference, Dr. Anticoli spoke with Ms. Johnson in which Ms. Johnson explained that the allegations against Mr. Barcus were unfounded and that the purpose of the video conference was to discuss the next steps in assigning Mr. Barcus to another school to resume his duties as a Climate Manager. Dr. Anticoli testified that Ms. Johnson did not tell him any details about the specific allegations against Mr. Barcus during this conversation. (FF 25).

The Union filed a Charge of Unfair Practices with the Board on June 27, 2022, alleging that the District violated Section 1201(a)(1) and (5) of PERA, by failing to provide information regarding the specific charges against Mr. Barcus that resulted in his reassignment. On July 20, 2022, the Secretary of the Board issued a Complaint and Notice of Hearing and assigned this matter to a Hearing Examiner. After two continuances, the hearing was held before the Hearing Examiner on February 22, 2023, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner concluded that the involuntary reassignment of Mr. Barcus to the District's Central Office constituted discipline, *i.e.*, a suspension with pay, and that the information sought by the Union of the specific allegations against Mr. Barcus leading to his reassignment was relevant to assist the Union in policing the parties' collective bargaining agreement (CBA) and determining whether to file a grievance over his reassignment. Therefore, the Hearing Examiner held that the District's failure to provide the requested information violated Section 1201(a)(1) and (5) of PERA. As a remedy, the Hearing Examiner directed the District to, among other things, provide the Union with the specific charges and allegations of misconduct against Mr. Barcus.

In its exceptions, the District initially argues that the Union's Charge was limited to one specific allegation concerning the Union's April 21, 2022 request for information and that the Hearing Examiner erred in relying on any evidence presented by the Union that concerned other instances where it requested the same information from the District. The Board has recognized that strict rules of pleading do not apply in administrative proceedings, but that fundamental due process requires that an employer be given notice of the factual allegations that support the charge. Bucks County Detectives Association v. Bucks County, 45 PPER 2 (Final Order, 2013). To satisfy this due process concern, the Board has consistently held that the charging party must put the responding party on notice of the precise nature of the conduct which is at issue in the charge and is limited to the presentation of evidence as to the specific allegations contained in the charge. Iroquois Education Association PSEA/NEA v. Iroquois School District, 37 PPER 167 (Final Order, 2006); Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control Board, 22 PPER ¶ 22009 (Final Order, 1990); PLRB v. Lawrence County, 12 PPER ¶ 12312 (Final Order, 1981).

In the Charge, the Union alleged, in relevant part, as follows:

> On or about March 3, 2022, a climate manager named Donyelle Barcus was removed from his position at the Washington High School and reassigned to the School District's Central Office.
>
> * * * *
>
> On or about April 21, 2022, [the Union] inquired as to the reason for Barcus' reassignment, but his principal refused to provide the reason.
>
> Thereafter, a meeting was conducted among Barcus, [Union] representative Don Anticoli, Assistant Superintendent Noah Tennant and School District

> investigative officer Kristin Johnson at which time, again, no details of the accusations against Barcus were provided other than to state that they were unfounded.
>
> Barcus was finally assigned to a school other than Washington High School after approximately 13 weeks. To date neither Barcus nor [the Union] has been apprised of the underlying charges that resulted in the investigation of Barcus.

(Charge of Unfair Practices filed June 27, 2022).

The Board finds that the allegations in the Union's Charge were sufficient to put the District on notice of the particular action alleged to be the unfair practice, namely, the failure of the District to provide the requested information to the Union about Mr. Barcus that resulted in his reassignment. Contrary to the District's assertion, the Union was not required to allege in the Charge each and every instance where it requested the District to provide the information during the time of Mr. Barcus' reassignment from March 4, 2022 to June 9, 2022. See Youngwood Borough, 17 PPER ¶ 17039 (Order Directing Remand to Hearing Examiner for Further Proceedings, 1986)(charge alleging unlawful subcontracting of work to state police was sufficient to put employer on notice that charge concerned any instance of subcontracting to non-bargaining unit persons). Further, the District's reliance on the Board's decision in Philadelphia Federation of Teachers AFT Local 3, AFL-CIO v. Philadelphia School District, 54 PPER 59 (Final Order, 2023), is misplaced as that case concerned the union's failure to timely allege the unfair practice at issue, which is not the case here.[5]

The District's exceptions further challenge the Hearing Examiner's factual findings and assert that they are not supported by substantial evidence of record. In particular, the District alleges that the Hearing Examiner erred in finding that a reassignment to the District's Central Office ruins the transferred employe's reputation because it is perceived that the transfer is due to inappropriate conduct with a student or staff (FF 13). It is well-settled that the Hearing Examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence, and draw inferences from those findings of fact. PLRB v. Kaufmann Department Stores, Inc., 29 A.2d 90 (Pa. 1942). The Hearing Examiner's decision will be upheld if the factual findings are supported by substantial and legally credible evidence, and the legal conclusions drawn from those facts are reasonable, and not capricious, arbitrary or illegal. Abington

[5] The District further asserts that the Union's allegation in the Charge that it requested the information from Principal Thompson on or about April 21, 2022, is incorrect and doesn't comply with the Board's notice requirements. However, Union Steward Deana Ramsey testified at the hearing that she contacted Principal Thompson on April 21, 2022 after she received an email from Mr. Barcus about his reassignment. (N.T. 65-66). Additionally, as the Board explained in Youngwood Borough, 17 PPER ¶ 17039 at 103, because the Board's notice pleading requirements are "limited", the fact that a complainant "may be mistaken or simply does not know precisely [what happened] at the time of the filing of the Charge is not fatal to the cause of action" so long as the respondent's due process rights have not been compromised.

Transportation Association v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1990). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007).

Further, absent the most compelling of circumstances, the Board defers to the credibility determinations of its hearing examiners. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Id. In this matter, the Hearing Examiner credited the testimony of the Union's witnesses that an employe's reputation is harmed by the reassignment to the District's Central Office pending investigation as the reassignment is perceived to be that the transferred employe engaged in misconduct. (N.T. 29, 49, 68). The District did not present any evidence to rebut that testimony, nor has it presented any compelling reasons to warrant reversal of the Hearing Examiner's credibility determination with regard to the reassignment of employes pending investigation and, therefore, this exception is dismissed.

The District next asserts that the Hearing Examiner erred in concluding that it violated Section 1201(a)(1) and (5) of PERA because the Union failed to establish the specific information it was requesting. Public employers have a statutory duty to provide information when requested by a union in the performance of the union's duty to negotiate or police the collective bargaining agreement. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). The test to determine the relevancy of the request to collective bargaining is liberal and is satisfied if the information requested by the union could be "potentially relevant or probably relevant" to the union's representation of its members. Commonwealth of Pennsylvania, Department of Corrections v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988); Pennsylvania Social Services Union, Local 668, SEIU v. Commonwealth of Pennsylvania (Department of Public Welfare), 17 PPER ¶ 17042 (Final Order, 1986). Information sought by the union which directly involves matters of negotiable wages, hours and working conditions of represented employes is presumptively relevant. Robinson Township Police Association v. Robinson Township, 31 PPER ¶ 31025 (Proposed Decision and Order, 1999)(*citing* Curtiss-Wright Corporation v. NLRB, 347 F.2d 61 (3rd Cir. 1965)).

Here, the record shows that Union President Cooper contacted Principal Thompson on March 3, 2022, to determine the reasons Mr. Barcus was being involuntarily reassigned to the Central Office and to inform Principal Thompson that Mr. Barcus was entitled to know the specific allegations against him. Principal Thompson responded that she "didn't know what [the reassignment] was about" even though she had investigated the complaint against Mr. Barcus and made the determination that he be reassigned pending investigation. (N.T. 44; FF 10). Again, on April 21, 2022, Union Steward Ramsey called Principal Thompson and requested "additional information about why [Mr. Barcus] was at the reassignment room." (N.T. 67). Principal Thompson responded that she could not provide specific information because it was a Title IX case. (N.T. 66). The District asserts that the "204 Conference Notice" indicating a "lack of professionalism" and "inappropriate sexual relations and sexual advances on staff" provided to Mr. Barcus was sufficient to put the Union on notice of the charges against him. However,

because Mr. Barcus had not engaged in any misconduct, these statements did not provide enough information for the Union to properly represent him.[6]

The District further argues that it was not required to provide the requested information to the Union because Mr. Barcus was not disciplined, citing Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, SCI Greene, 34 PPER 52 (Final Order, 2003). However, the facts of that case are readily distinguishable. In SCI Greene, the union requested pre-disciplinary investigatory information such as witness statements, which the employer was not required to provide prior to implementing discipline. In this case, the Union merely requested the specific allegations of misconduct against Mr. Barcus that had been submitted to Principal Thompson but did not request the District to provide any investigatory information. Further, unlike in SCI Greene, the Hearing Examiner found that Mr. Barcus' involuntary reassignment to the District's Central Office constituted a suspension with pay pending investigation based upon the fact that Mr. Barcus did not perform any work during his 3 months at the Central Office and the language in the District's March 3, 2022 transfer letter and "204 Conference Notice" read together indicated that the involuntary reassignment was disciplinary. The record supports the Hearing Examiner's inference that Mr. Barcus' reassignment to the District's Central Office was, in effect, a suspension with pay pending investigation of the allegations of misconduct against him and, therefore, the requested information was relevant for the Union to properly represent Mr. Barcus concerning his reassignment. See Commonwealth of Pennsylvania, supra. (lack of pending grievance does not eliminate a union's right to information relevant to monitoring the parties' agreement); see also North Hills Education Association, PSEA/NEA v. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998)(same).

The District additionally argues that the Hearing Examiner erred in dismissing its contractual privilege argument. A refusal to bargain charge will be dismissed if the employer establishes that it had a sound arguable basis in claiming a contractual privilege for its action. Fraternal Order of Transit Police v. SEPTA, 35 PPER 73 (Final Order, 2004). However, to support a contractual privilege defense, the employer must establish that the actions taken are consistent with its interpretation of the express contract terms. FOP, Lodge No. 85 v. Commonwealth of Pennsylvania, 33 PPER ¶ 33078 (Proposed Decision and Order, 2002); Teamsters, Local Union No. 249 v. City of Pittsburgh, 52 PPER 64 (Final Order, 2019). In instances where a contractual privilege is asserted by the employer, the language relied upon in the contract must be specific and indicate that the union expressly and intentionally authorized the employer to take the unilateral action at issue. Temple University Hospital Nurses Association v. Temple University Health System, 41 PPER 3 (Final Order, 2010). The District has failed to point to

[6] The District further asserts that the Hearing Examiner erred in crediting the testimony of Dr. Anticoli that Ms. Johnson did not provide the specific allegations against Mr. Barcus during their conversation the day before the June 2022 video conference. A review of the record demonstrates that Dr. Anticoli consistently testified that the District did not provide any information about the reasons for Mr. Barcus' reassignment (N.T. 79) and that Ms. Johnson did not provide any specific details about the allegations against Mr. Barcus other than that they were unfounded. (N.T. 137-142). The District has not presented any compelling reasons to overturn the Hearing Examiner's credibility determination on this issue.

any provision in the parties' CBA supporting its argument that it was not required to provide the requested information. Indeed, Article 10.3(a) of the parties' CBA states that "Complaints involving Administrators shall be investigated through line offices. A copy of such a complaint shall be forwarded to the Administrator involved so that he/she may respond." (Union Exhibit 8 at 26). Thus, rather than support the District's claim of a sound arguable basis to refuse to provide the information, the contract indicates that the District has a duty to provide, at a minimum, the complaint containing the allegations of misconduct against Mr. Barcus.

The District lastly asserts that the Hearing Examiner erred in concluding that Mr. Barcus' involuntary reassignment was not for operational needs and that the Hearing Examiner's decision restricts the District's right to conduct investigations of misconduct. As stated by the Hearing Examiner, the District's reassignment of Mr. Barcus was not for operational needs because Mr. Barcus was not reassigned to perform his duties as a Climate Manager at another school. Rather, the District reassigned Mr. Barcus to the Central Office where he did not perform his duties as a Climate Manager for three months until his transfer to Martin Luther King, Jr. High School. Further, the information requested by the Union of the specific allegations contained in the complaint against Mr. Barcus would not hinder the District in conducting investigations of alleged misconduct. Indeed, Article 10.3(a) of the parties' CBA requires the District to provide the complaint to the employe being accused of misconduct. With regard to any confidentiality concerns the District may have about providing the names of the complainants in sexual harassment cases,[7] the District may negotiate these concerns with the Union prior to providing the information. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Revenue, Office of Inspector General, 22 PPER ¶ 22069 (Final Order, 1991)(employer must make a good faith effort to accommodate its confidentiality interests with the union's need for information).

In this case, the Union was seeking the specific allegations of misconduct against Mr. Barcus that led to his involuntary reassignment, which was relevant for the Union to properly represent Mr. Barcus as the reassignment constituted a suspension with pay pending investigation of the allegations of misconduct against him. The record shows that, although Principal Thompson knew the specific charges against Mr. Barcus and was required by the parties' CBA to provide a copy of the complaint, she refused to provide any information to the Union. Further, even after the allegations against Mr. Barcus were determined to be unfounded, the District did not provide the requested information to the Union. Therefore, the Hearing Examiner properly concluded that the District violated Section 1201(a)(1) and (5) of PERA.[8]

---

[7] The District asserts that the Hearing Examiner erred in stating that the Union was entitled to the names of the complainants and witnesses because the record did not establish that the Union was requesting that information. This exception is dismissed as it was not error for the Hearing Examiner to indicate what information the Union was entitled to under Board caselaw.

[8] The District argues that the Hearing Examiner erred in failing to find that the instant matter is moot. However, this matter is not moot because the record establishes that the Union requested the information to police the contract and determine whether to file a grievance, and the District has not provided the requested information to the Union.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Hearing Examiner did not err in concluding that the District violated Section 1201(a)(1) and (5) of PERA by failing to provide the requested information concerning the specific allegations against Mr. Barcus. Accordingly, the Board shall dismiss the 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 Philadelphia School District are dismissed, and the July 27, 2023 Proposed Decision and Order be, and the same is, hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this twenty-first day of May, 2024. 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

COMMONWEALTH ASSOCIATION OF SCHOOL ADMINISTRATORS, TEAMSTERS LOCAL 502	:	
v.	:	Case No. PERA-C-22-158-E
PHILADELPHIA SCHOOL DISTRICT	:	

AFFIDAVIT OF COMPLIANCE

Philadelphia School District 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 immediately provided the Union with the requested information regarding the specific allegations against Mr. Barcus triggering his reassignment; that it has posted a copy of the Proposed Decision and Order and Final Order as directed; 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