

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, PENNSYLVANIA:	:	
CONSERVATION POLICE OFFICERS	:	
LODGE 114	:	
	:	
v.	:	Case No. PF-C-22-51-E
	:	PF-C-22-53-E
	:	
COMMONWEALTH OF PENNSYLVANIA	:	

FINAL ORDER

The Commonwealth of Pennsylvania, Pennsylvania Game Commission (Commonwealth or PGC) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 11, 2023, challenging a Proposed Decision and Order (PDO) issued on September 21, 2023. The Commonwealth excepts to the Hearing Examiner's conclusion that the Commonwealth violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, when it reposted the Law Enforcement Coordinator position for which Wildlife Conservation Officer (WCO) Jonathan Wyant had applied, and for investigating and issuing a verbal counselling to WCO Wyant for a conversation he had as union president with another applicant. Following extensions of time granted by the Secretary of the Board, the Commonwealth and the Fraternal Order of Police, Pennsylvania Conservation Police Officers Lodge 114 (FOP) filed briefs on exceptions on December 11, 2023, and February 20, 2024, respectively. The facts, as found by the Hearing Examiner, and relevant to the exceptions are summarized as follows.

Jonathan Wyant has been employed with the PGC as a Wildlife Conservation Officer since 1999.¹ (FF 5). WCO Wyant served as President of the FOP from 2016 to 2022, during which he was involved in contract negotiations, Act 111 interest arbitrations, and filing and processing grievances. (FF 6).

On August 25, 2022, the Commonwealth posted a vacancy announcement for a Wildlife Conservation Officer Law Enforcement Coordinator (LEC) position in the PGC Bureau of Wildlife Protection/Enforcement Division. The announcement indicated that the position was Civil Service, and that eligibility was based on "Competitive Promotion Without Examination Only." (FF 15 and 19). The vacancy announcement set forth the minimum experience and training required for the position and was open to candidates who have: "One year of experience as a Wildlife Conservation Officer Supervisor; or Four years of experience as a Wildlife Conservation Officer; or Four years of experience as a Game Land Management Group Supervisor." (FF 16 and 17). All qualifying positions for the promotion, Wildlife Conservation Officer, Wildlife Conservation Officer Supervisor, and Game Land Management Group Supervisor, are law enforcement bargaining unit positions, which receive a state-issued vehicle and are required to maintain a valid Pennsylvania driver's license to perform their duties in those vehicles. (FF 18). The August 25, 2022 vacancy announcement included a closing date of September 8, 2022. (FF 15).

¹ WCO Wyant had a break in PGC service from 2009 to 2010 when he worked as a Federal Aid Supervisor.

Jason DeCoskey, Director of Wildlife Protection, was the hiring manager for the posted LEC position. On August 29, 2022, four days after the posting, Director DeCoskey had a meeting with PGC Executive Director, Brian Burhans, regarding vehicles for the five LEC positions. After the meeting, Executive Director Burhans decided that the LECs would be issued Commonwealth vehicles. (FF 21). By email dated August 30, 2022, Director DeCoskey indicated to the PGC Regional Directors the following, in relevant part:

Greetings-Just an FYI about Travis Pugh's position that just opened last week. I'm not sure if any of your supervisors are interested or not but the position (and all Warden BWP positions) now include a vehicle and 120 OT. The Executive Office was kind enough to look at the position and justification for vehicles to make that decision. Please share with your staff. The position closes in September. Hopefully this decision will have more wardens interested in the position.

(FF 22).

Notably at the time of Director DeCoskey's email there had been no applicants for the vacant LEC position. Director DeCoskey testified that he sent the August 30, 2022 email to the Regional Directors hoping to solicit more applicants for the LEC position. (FF 23). Thereafter, WCO Wyant submitted an application for the LEC position on September 1, 2022 in response to the August 25, 2022 announcement. WCO Wyant was required to possess a valid Class C driver's license for his position with the PGC, and met the requirements for eligibility for the LEC position as set forth in the posting. (FF 24).

On September 7, 2022, nine days after having secured Commonwealth vehicles for the LEC position and one day prior to the closing of the August 25, 2022 vacancy announcement, Director DeCoskey emailed the PGC's Human Resources Analyst, Ashley Boylan, that "I think we will need to repost the [LEC position] due to a change in the position description." (FF 25). Immediately after the September 7, 2022 email, Ms. Boylan called Director DeCoskey to find out what the change was for the position description. (FF 26). Director DeCoskey testified that he requested a change to the job posting because of a driver's license requirement. Director DeCoskey requested the change and reposting despite the fact that all bargaining unit employees qualified under the August 25, 2022 vacancy announcement for the LEC position were already required to have a valid Class C driver's license. (FF 25 and 26).

Although Ms. Boylan could not recall any time when she reposted a position after the closing date and after having a qualified applicant,² she nevertheless testified that she did not forward WCO Wyant's application to Director DeCoskey upon the September 8, 2022 closing, nor during the August 25 to September 8, 2022 window. On September 9, 2022, after the closing date for the August 25, 2022 vacancy announcement, Ms. Boylan responded by email

² Ms. Boylan conceded at the hearing that the PGC previously received only one applicant for a Game Land Management Supervisor position in Lycoming County and that applicant, who was a Mr. Bernardi, was awarded the position. (FF 37).

to Director DeCoskey confirming that there was only one applicant and indicating that "Wyant is the only applicant so I will repost this first thing Monday morning." (FF 28).

On September 12, 2022, the Commonwealth posted a second vacancy announcement for the LEC position, which was open through September 26, 2022. The announcement was identical to the first one, except that two additional requirements were added to the "Essential Functions" listed in the announcement, "[p]ossess a valid driver's license and [o]perates a motor vehicle with a valid Class C driver's license." (FF 31). WCO Wyant submitted an application for the LEC position under the second announcement on September 18, 2022. (FF 35).

On September 20, 2022, WCO Wyant called Ms. Boylan concerning the September 12, 2022 vacancy announcement for the LEC position. Ms. Boylan did not mention anything about a driver's license requirement being the reason for the new posting, but at least two or three times, she told WCO Wyant that the job was reposted because the hiring manager, Director DeCoskey, wanted a deeper applicant pool. (FF 36).

On September 23, 2022, WCO Scott Frederick submitted an application for the LEC position pursuant to the second announcement. WCO Frederick did not apply during the first window. WCO Frederick also met the minimum eligibility requirements for the LEC position. WCO Wyant and WCO Frederick were the only applicants under the second announcement. After the close of the second posting on September 26, 2022, Ms. Boylan sent both applications to the hiring manager, Director DeCoskey. (FF 39). Director DeCoskey decided to interview both applicants. (FF 40).

On October 5, 2022, the FOP filed a Charge of Unfair Labor Practices, docketed at Case No. PF-C-22-51-E, alleging that the reposting of the LEC position on September 12, 2022, after the close of the vacancy announcement on September 8, 2022 for which WCO Wyant was the only qualified applicant, was done in violation of Section 6(1)(a) and (c) of the PLRA. On October 12, 2022, WCO Wyant had a telephone conversation with WCO Frederick concerning the Unfair Labor Practice Charge. WCO Frederick was unaware of the charge or that WCO Wyant had applied for the LEC position and asked what could potentially happen as a result of the unfair labor practice charge. WCO Wyant advised WCO Frederick that the FOP had filed a charge of unfair labor practices because the PGC did not give him an interview after the first posting. WCO Wyant was unsure of the potential remedies but advised WCO Frederick of what he was seeking with the charge, along with the fact that there could be any number of results. (FF 42).

WCO Frederick contacted Director DeCoskey after his conversation with WCO Wyant. WCO Frederick did not make any complaints to Director DeCoskey about how WCO Wyant conducted himself on the call but was concerned with the ramifications of the FOP's litigation. WCO Frederick asked Director DeCoskey that if the FOP prevailed on its unfair labor practices charge, whether he could be forced to return to the field or if the PGC would fill the vacancy left from his prior position potentially displacing him from his job.

During the call, Director DeCoskey directed WCO Frederick to contact human resources. (FF 43). Despite that WCO Frederick told him that he had no concerns with how WCO Wyant conducted himself on the call, Director DeCoskey himself reported to PGC's Labor Relations Coordinator, Delynn Steffan, that WCO Frederick made a complaint about WCO Wyant contacting WCO Frederick

regarding the FOP's charge of unfair labor practices related to the posting of the LEC position. (FF 44).

On October 14, 2022, WCO Frederick provided a witness statement to Labor Relations Coordinator Steffan, in which he stated: "I don't believe Warden Wyant contacted me to intimidate me, rather he wanted me to hear it firsthand that he would be filing a ULP with the possibility if he would win the case, it may impact me if I am the selected candidate for the position." (FF 45). On October 24, 2022, Labor Relations Coordinator Steffan held a pre-disciplinary conference (PDC) with WCO Wyant during which WCO Wyant told her that he did not reach out to WCO Frederick to intimidate WCO Frederick, but indicated that he and WCO Frederick were friends, and the call was simply meant as a heads-up regarding the FOP's charge of unfair labor practices. (FF 47).

On the same day as WCO Wyant's PDC, on October 24, 2022, WCO Frederick and WCO Wyant each separately underwent an interview for the LEC position at 9:00 am and 11:00 am, respectfully. The interview panel included Director DeCoskey, the Bureau Director, along with Director DeCoskey's subordinates, Mike Reeder, the Director of the Communications Division, Mark Rutkowski, the Assistant Bureau Director, and Kyle Jury, the Training School Supervisor. (FF 48).

After the October 24, 2022, PDC and interview, WCO Wyant received a verbal counseling through his supervisor Harold Malehorn, who simply read WCO Wyant an October 28, 2022 email from Labor Relations Coordinator Steffan stating:

As a follow up to the PDC held for Warden Wyant, he should be issued a verbal counseling upon his return for the inappropriate conduct when he contacted Warden Frederick about his intentions to file a ULP. Please provide Warden Wyant expectations moving forward that he should not be making contact to other Warden's [sic]/employees that may appear to be intimidating, threatening or interfering. Explain that his actions did in fact result in some doubt from Warden Frederick. Please let me know what date you plan to hold this meeting so I can update my records accordingly...

(FF 60 and 61). WCO Wyant questioned Supervisor Malehorn about what WCO Wyant did wrong, to which Supervisor Malehorn replied that he did not know and that he was just supposed to read the email to WCO Wyant. (FF 61).

On November 2, 2022, the FOP filed a Charge of Unfair Labor Practices docketed at Case No. PF-C-22-53-E. In the Charge the FOP alleged that the Commonwealth's investigation and pre-disciplinary conference of WCO Wyant for his telephone call with WCO Frederick interfered with and were in retaliation for the protected activities of WCO Wyant as the FOP President in violation of Section 6(1)(a) and (c) of the PLRA.

Director DeCoskey had the final authority over the hiring determination and testified that WCO Frederick ultimately got the LEC position. (FF 53). WCO Frederick testified that his promotion to the LEC position was effective sometime around November 28, 2022. (FF 62).

On exceptions, the Commonwealth first argues that the FOP failed to plead an independent violation of Section 6(1)(a) in either charge filed at Case No. PF-C-22-51-E or PF-C-22-53-E. However, as noted by the Hearing Examiner, "the FOP, after detailing the numerous factual allegations at length, included the following averment in both of its charges: 'The forgoing amounts to unlawful interference with and discrimination against bargaining unit members for engaging in protected activity.'" A review of the Charges of Unfair Labor Practices at Case No. PF-C-22-51-E and PF-C-22-53-E reveals that the FOP checked the box for the allegation of Section 6(1)(a) in both charges, and alleged, per the statutory violation of Section 6(1)(a), that the Commonwealth "interfere[ed] with ... bargaining unit members ... protected activity." As such, the FOP has sufficiently raised an independent Section 6(1)(a) claim in both Case No. PF-C-22-51-E and PF-C-22-53-E. See Gomes v. Foster Township, 21 PPER ¶ 21159 (Final Order, 1990). Nevertheless, any violation of Section 6(1)(a) of the PLRA on this record, would be derivative of the FOP's claims under Section 6(1)(c) in both Case No. PF-C-22-51-E and PF-C-22-53-E. See PLRB v. Mars Area School District, 389 A.2d 1073 (Pa. 1978); Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 46 PPER 47 (Final Order, 2011).

To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employee was engaged in protected activity, the employer knew of that protected activity, and there was an adverse employment action motivated by anti-union animus. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981); Palmyra Borough Police Officers Association v. Palmyra Borough, 46 PPER 72 (Final Order, 2015). There is no dispute on exceptions that WCO Wyant was involved in protected activity, and that the PGC knew of his involvement and protected activity with the FOP. (FF 6, N.T. 157).

The employer's motive creates the offense under Section 6(1)(c). PLRB v. Ficon, 254 A.2d 3 (Pa. 1969). Because an employer's motives are rarely overt, a finding that the employer harbored union animus or an unlawful motive may be based on inferences from the facts of record. Palmyra Borough, supra. The factors the Board may consider in inferring unlawful union animus include: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities—for example, whether leading organizers have been eliminated; the extent to which the adversely affected employees engaged in union activities; and whether the action complained of was "inherently destructive" of employee rights. PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978); see Lancaster County v. PLRB, 124 A.3d 1269 (Pa. 2015).

In assessing the employer's motive, the Hearing Examiner is free to accept or reject the testimony of any witness in whole or in part. AFSCME, District Council 84, AFL-CIO v. Commonwealth of Pennsylvania, 18 PPER ¶ 18028 (Final Order, 1986). Thus, based on the evidence and testimony of record, the Hearing Examiner is permitted to reject the employer's proffer of a legitimate business reason for its action, and accept as credible the testimony and evidence supporting a reasonable inference of unlawful motive. St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977); Lancaster County, supra. Absent the most compelling of circumstances, the Board will not disturb the credibility determinations of its hearing examiners who are able to observe the manner and demeanor of the witnesses during their testimony.

On this record, there are no compelling circumstances warranting review of the Hearing Examiner's credibility determinations. In fact, there is ample reasons in the record evidence and testimony upon which to base a rejection of the Commonwealth's proffered reasons for reposting the LEC vacancy announcement, and commencing an investigation and counselling of WCO Wyant. (FF 6 - 13). Indeed, upon review of the record, there is more than substantial evidence from which to find as fact that the PGC's proffered reasons were nothing more than mere pretext for an unlawful union animus.

With regard to Case No. PF-C-22-51-E, the Commonwealth asserts that the requirement of a Class-C driver's license for the LEC position was a legitimate reason for reposting of the LEC vacancy announcement. On exceptions, the Commonwealth argues that the Hearing Examiner erred in rejecting its proffered reason based on the finding that "all the bargaining unit employees are required to have a valid Class C license already." (FF 25). The Commonwealth also argues that there is not substantial evidence to find that at the time of Director DeCoskey's decision to repost the LEC vacancy announcement that he was aware that WCO Wyant had applied for the position. However, the evidence of record clearly shows that the Commonwealth's challenges to these findings of fact are without merit.

First, there is substantial evidence of record supporting the finding that all bargaining unit employees were required to have a valid driver's license. In fact, Director DeCoskey admitted that bargaining unit employees who have lost their driver's license were disciplined by the PGC. His testimony in this regard was corroborated by David Mitchell, the PGC Deputy Executive Director of Field Operations, who confirmed that bargaining unit employees, that lose their driver's license, are subject to discipline. (FF 25). Moreover, in Director DeCoskey's August 29, 2022 meeting with PGC Executive Director Burhans, regarding vehicles for the LEC position, Director DeCoskey indicated that he reviewed the numbers regarding how often the LECs would need a vehicle and how often they were going to the vehicle pool to obtain one. (FF 21). A reasonable inference can be drawn that in order to obtain a Commonwealth vehicle through the vehicle pool the LEC was required to possess a valid driver's license.

Further, as found by the Hearing Examiner the LEC position was open to employees who held the position of Wildlife Conservation Officer, Wildlife Conservation Officer Supervisor, or Game Land Management Group Supervisor, which receive a state-issued vehicle, and require employees to maintain a valid Pennsylvania driver's license to perform their duties in those vehicles. (FF 18). Thus, to be qualified for the LEC position, any bargaining unit employee was required to possess a valid Class C driver's license. Thus, the alleged added requirement of a driver's license for the LEC position had no bearing on the qualifications for a promotion to LEC position, and the Hearing Examiner did not err in rejecting the proffer of a driver's license as a legitimate justification for reposting of the LEC vacancy.

Secondly, the Commonwealth argues on exceptions that the Hearing Examiner erred in finding that Director DeCoskey had known that WCO Wyant had applied for the LEC position prior to his decision to repost the vacancy announcement. However, Director DeCoskey testified that he became aware that WCO Wyant applied for the LEC position during the first announcement sometime after the August 29, 2022 meeting with Executive Director Burhans regarding

vehicles for the LEC position. (FF 29). Consistent therewith, Director DeCoskey testified that during his brief telephone conversation with Ms. Boylan on September 7, 2022, Ms. Boylan told him at that time that there was only one applicant who responded to the August 25, 2022 posting for the LEC position. (N.T. 128). Further, Ms. Boylan admitted during the hearing that Director DeCoskey told her during their telephone conversation on September 7, 2022, that the PGC wanted a deeper applicant pool for the LEC position. (FF 37). From these facts it is a reasonable inference that prior to the close of the vacancy announcement on September 8, 2022, Director DeCoskey was "fully aware that Wyant was the sole applicant" for the LEC position.

Accordingly, the Commonwealth's exceptions to the Hearing Examiner's findings of fact regarding the requirement of a Class C driver's license and that Director DeCoskey was aware that WCO Wyant was the sole applicant to the first vacancy announcement, are dismissed. Even more so, when the timing of the reposting and the alleged driver's license requirement are considered together, it is more than evident that the PGC was searching for a pretextual reason to preclude WCO Wyant from being the sole applicant for the LEC position.

Despite having nine days left in the posting, and knowing as of August 29, 2022 that a valid Class C license is required for bargaining unit employees issued a Commonwealth vehicle, Director DeCoskey waited until September 7, 2022, the day before the vacancy closing date, to contact Ms. Boylan about reposting the vacancy announcement. Indeed, the delay is consistent with Director DeCoskey's testimony that he became aware that WCO Wyant was an applicant for the LEC position sometime after his August 29, 2022 meeting with Executive Director Burhans. Further, it was after Ms. Boylan's telephone call with Director DeCoskey on September 7, 2022, during which she advised Director DeCoskey that there was only one applicant, that Director DeCoskey decided to repost the vacancy. Despite that the posting closed on September 8, 2022, with WCO Wyant as the only qualified applicant, Ms. Boylan did not forward WCO Wyant's application to Director DeCoskey. Instead on September 9, 2022, Ms. Boylan emailed Director DeCoskey that "Wyant is the only applicant so I will repost this first thing Monday morning." (FF 28).³ Thus, it is a reasonable inference from the totality of the circumstances, that the reposting premised on a driver's license was pretext and nothing but a veiled effort to preclude WCO Wyant from being the only applicant for the vacant LEC position.

The Commonwealth also argues on exceptions that WCO Wyant did not suffer an adverse employment action as a result of the reposting of the vacancy announcement, and that the Hearing Examiner abused his discretion in awarding WCO Wyant the LEC position as remedial relief. However, there is substantial evidence, even from the Commonwealth witnesses, that when a vacancy announcement posting closes with only one qualified applicant, that application is forwarded to the hiring manager for an interview. (FF 29).

Ms. Boylan testified that the eligibility section of the vacancy announcement set forth the minimum experience and training required for the LEC position. (FF 17). Ms. Boylan further explained that the LEC promotion was governed by the Civil Service Act, and that employees in the next lower

³ Indeed, the wording of Ms. Boylan's email is telling, as the conjunctive use of the word "so" makes the PGC's intent clear - because WCO Wyant is the only applicant the position will be reposted.

class would be eligible for the promotion without having to take an exam. (FF 19). Ms. Boylan admitted that WCO Wyant met the requirements for eligibility for the LEC position and submitted an application on September 1, 2022, during the August 25 to September 8, 2022 window. (FF 24). Thus, the August 25, 2022 vacancy announcement for the LEC position closed on September 8, 2022, with WCO Wyant as the only qualified applicant, meeting all criteria for the LEC position. However, Ms. Boylan did not forward WCO Wyant's application to Director DeCoskey for an interview. (FF 29). Instead, on September 9, 2022, after the August 25, 2022 vacancy announcement already closed, Ms. Boylan advised Director DeCoskey that because WCO Wyant was the only qualified applicant, the vacancy would be reposted on the following Monday, September 12, 2022. (FF 24).

Had WCO Wyant been afforded an interview in response to the August 25, 2022 vacancy announcement, for which he was the only applicant, the testimony and substantial evidence supports the finding that WCO Wyant would have been awarded the promotion to the LEC position. Indeed, Director DeCoskey acknowledged that WCO Wyant had excellent EPRs and more seniority with the PGC. (FF 40). Both Director DeCoskey and Director Reeder conceded that WCO Wyant interviewed well, with Director DeCoskey going so far as to state that WCO Wyant interviews "extremely well" and is "well-studied," along with being "well-versed" in relation to the position for which he applies. Director DeCoskey testified that although 60 to 70 percent of the LEC job involves purchasing or procurement duties the panel did not ask any specific questions about purchasing or procurement during the interviews. (FF 53). In that regard, WCO Wyant testified that he was hoping that the panel would ask about purchasing experience so he could highlight his own purchasing and procurement experience for the year he spent in the Federal Aid Supervisor position. (FF 49). Accordingly, it is apparent on this record, that had WCO Wyant been afforded an interview in response to the August 25, 2022 posting, he would have met all qualifications for the LEC position, would have been knowledgeable about the position, and would have interviewed well, and as the only qualifying candidate, would have, of necessity, received the promotion to the LEC position.

To be sure, the Hearing Examiner thoroughly explained his reasons for rejecting the Commonwealth's shifting and unsubstantiated reasons for selecting WCO Frederick over WCO Wyant in response to the second vacancy announcement. For example, despite the alleged importance of the purchasing experience that WCO Frederick expressed during his 9:00 am interview on October 24, 2022, the hiring panel chose not to inquire whether WCO Wyant had any purchasing or procurement experience during his 11:00 am interview. Further, as noted by the Hearing Examiner, Director DeCoskey's belated alternate reasons given during the second day of hearing for why he selected WCO Frederick for the position were simply not credible or substantiated in any way. Indeed, Director Reeder, a member of the hiring committee, admitted that the hiring committee had no independent concerns with WCO Wyant for the LEC position, but based their decision to recommend WCO Frederick on what Director DeCoskey, their supervisor, told them about WCO Wyant. (PDO at 16). Notwithstanding the numerous other bases for discrediting the Commonwealth's testimony, this admission alone is substantial evidence supporting the Hearing Examiner's rejection of the Commonwealth testimony suggesting that WCO Frederick was the better candidate, or that WCO Wyant was undeserving of the promotion to LEC. Thus, the evidence is clear that had WCO Wyant been the only candidate to interview after the closing of the August 25, 2022 vacancy announcement, he would have been promoted to the LEC position. Accordingly, the Hearing Examiner's remedy of awarding the promotion to LEC to WCO Wyant

for the unfair labor practices committed in Case No. PF-C-22-51-E, is remedial in nature and was not an abuse of discretion.

With regard to Case No. PF-C-22-53-E, the Commonwealth argues that the Hearing Examiner erred in concluding that its investigation and verbal counseling of WCO Wyant for his telephone call to WCO Frederick was unlawfully motivated in violation of Section 6(1)(c) of the PLRA. The Commonwealth further argues that the investigation, pre-disciplinary hearing, and verbal counseling of WCO Wyant was not an adverse employment action.

First off, it is quite clear from the recounting of the telephone conversation by WCO Frederick and WCO Wyant, that WCO Wyant contacted WCO Frederick as President of the FOP concerning the FOP's unfair labor practice charge filed against the Commonwealth. Both WCO Wyant and WCO Frederick testified that WCO Wyant was cordial, did not threaten, intimidate, nor discourage WCO Frederick from pursuing the promotion to LEC. The conversation was nothing more than the FOP advising WCO Frederick of the unfair labor practice charge. Despite that WCO Frederick did not make any complaints to Director DeCoskey about how WCO Wyant conducted himself on the call, and asked Director DeCoskey only about his options should the FOP prevail, Director DeCoskey directed WCO Frederick to contact human resources. (FF 43).

Although Director DeCoskey knew that WCO Wyant had contacted fellow bargaining unit member WCO Frederick as the FOP President to discuss the FOP's unfair labor practice charge, that WCO Frederick had no complaints about how WCO Wyant conducted himself on the call, and that WCO Wyant did not intimidate, threaten or discourage WCO Frederick from applying for the LEC position, Director DeCoskey nevertheless contacted PGC's Labor Relations Coordinator Steffan and advised her that WCO Frederick made a complaint about WCO Wyant contacting WCO Frederick regarding the FOP's charge of unfair labor practices. (FF 44). Even after WCO Frederick provided a witness statement to Labor Relations Coordinator Steffan in which he again unequivocally stated that "I don't believe Warden Wyant contacted me to intimidate me, rather he wanted me to hear it firsthand that he would be filing a ULP with the possibility if he would win the case, it may impact me if I am the selected candidate for the position," (FF 45), Labor Relations Coordinator Steffan held a pre-disciplinary conference and interview with WCO Wyant. At that pre-disciplinary conference, WCO Wyant stated that as a friend and as the FOP president he merely contacted WCO Frederick, a fellow bargaining unit member, to advise him of the FOP's charge of unfair practices.

Following the October 24, 2022 pre-disciplinary conference, by email dated October 28, 2022, Labor Relations Coordinator Steffan indicated the following, in relevant part, to Supervisor Malehorn and Regional Director David Carlini:

As a follow up to the PDC held for Warden Wyant, he should be issued a verbal counseling upon his return for the inappropriate conduct when he contacted Warden Frederick about his intentions to file a ULP. Please provide Warden Wyant expectations moving forward that he should not be making contact to other Warden's [sic]/employees that may appear to be intimidating, threatening or interfering. Explain that his actions did in fact result in some doubt from Warden Frederick. Please let me know what date you plan to hold this meeting so I can update my records accordingly...

(FF 60). Supervisor Malehorn, who read the email to WCO Wyant on October 28, 2022 as the verbal counseling, did not know what WCO Wyant had done wrong in the situation. (FF 61).

Remarkably, Labor Relations Coordinator Steffan testified that WCO Wyant should not have reached out to the other candidate himself, but should have gone through the chain of command instead, and that WCO Wyant was given the opportunity to contact Director DeCoskey with any concerns that WCO Wyant had. (FF 60). When placed in context as found by the Hearing Examiner, Labor Relations Coordinator Steffan basically stated that the PGC believed that WCO Wyant, as the FOP President, should not have reached out to a fellow bargaining unit employee concerning the FOP's Unfair Labor Practice Charge, but that the FOP should have gone through management instead, and should have contact Director DeCoskey concerning any alleged unfair labor practices the FOP asserted against Director DeCoskey. On its face, Labor Relations Coordinator Steffan's description of the alleged wrongdoing is, at the very least, an admission of a violation of Section 6(1)(a) of the PLRA. Coupled with the fact that the investigation and counselling ensued despite numerous statements from WCO Frederick that there were no complaints about WCO Wyant's conduct, this amounts to evidence of a discriminatory unlawful motive for WCO Wyant's protected activity of contacting a fellow bargaining unit member as the FOP President concerning official FOP business in violation of Section 6(1)(c) of the PLRA. See Lancaster County, supra.; Pennsylvania State Police v. PLRB, 626 C.D. 2010, 2011 WL 10843672 (Pa. Cmwlth., *unreported*, January 6, 2011).

Furthermore, Labor Relations Coordinator Steffan's request that Supervisor Malehorn "let [her] know what date you plan to hold this meeting so I can update my records...", is substantial evidence supporting that a record was made of the verbal counseling, and along with the fact that a pre-disciplinary conference was held, there is substantial evidence that the investigation and verbal counselling constituted the adverse employment action of discipline for WCO Wyant engaging in a protected activity as FOP President. Thus, the Hearing Examiner's directive to immediately purge WCO Wyant's personnel file of any and all mention of or references to the internal investigation, including but not limited to the October 24, 2022 pre-disciplinary conference and the October 28, 2022 verbal counseling, is appropriate remedial relief for the unfair labor practices in Case No. PF-C-22-53-E.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the Commonwealth violated Section 6(1)(a) and (c) of the PLRA by reposting the LEC vacancy after the September 8, 2022 closing date without interviewing or offering WCO Wyant the promotion to LEC, and violated Section 6(1)(a) and (c) of the PLRA by investigating and issuing a verbal counselling to WCO Wyant for his conversation with WCO Frederick regarding the FOP's Unfair Labor Practice Charge concerning the reposting of the LEC vacancy announcement. 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 Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Commonwealth of Pennsylvania, Pennsylvania Game Commission are hereby dismissed, and the Proposed Decision and Order issued on September 21, 2023, shall 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, this sixteenth day of April, 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

FRATERNAL ORDER OF POLICE PENNSYLVANIA	:	
CONSERVATION POLICE OFFICERS	:	
LODGE 114	:	
	:	Case Nos. PF-C-22-51-E
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	:	
COMMONWEALTH OF PENNSYLVANIA	:	

AFFIDAVIT OF COMPLIANCE

The Commonwealth of Pennsylvania, Pennsylvania Game Commission hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order and Final Order as directed therein by immediately making an unconditional offer to promote Jonathan Wyant to the position of Law Enforcement Coordinator and make him whole for all wages and benefits, plus six percent per annum interest, that he would have earned in the LEC position, beginning with the date the PGC promoted Frederick to the LEC position through the date the PGC promotes Wyant to the position; that it has immediately purged Wyant's personnel file, to include all paper and electronic copies and records, of any and all mention of or references to the internal investigation, including but not limited to the October 24, 2022 PDC and the October 28, 2022 verbal counseling; that it has posted a copy of the Proposed Decision and Order and Final Order as directed therein; and that it has served an executed 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